

# Measures to Strengthen Effective Enforcement in response to Diversified Procurement Activities

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## 1. Enforcement Activities in Japan

# Japan's Export Control System

## Legal Structure

### (1) Law

Foreign Exchange and Foreign Trade Act (FEFTA)

— Basic framework

### (2) Cabinet Orders

Export Control Order

— List of goods

Foreign Exchange Order

— List of technologies

### (3) Ministerial Orders

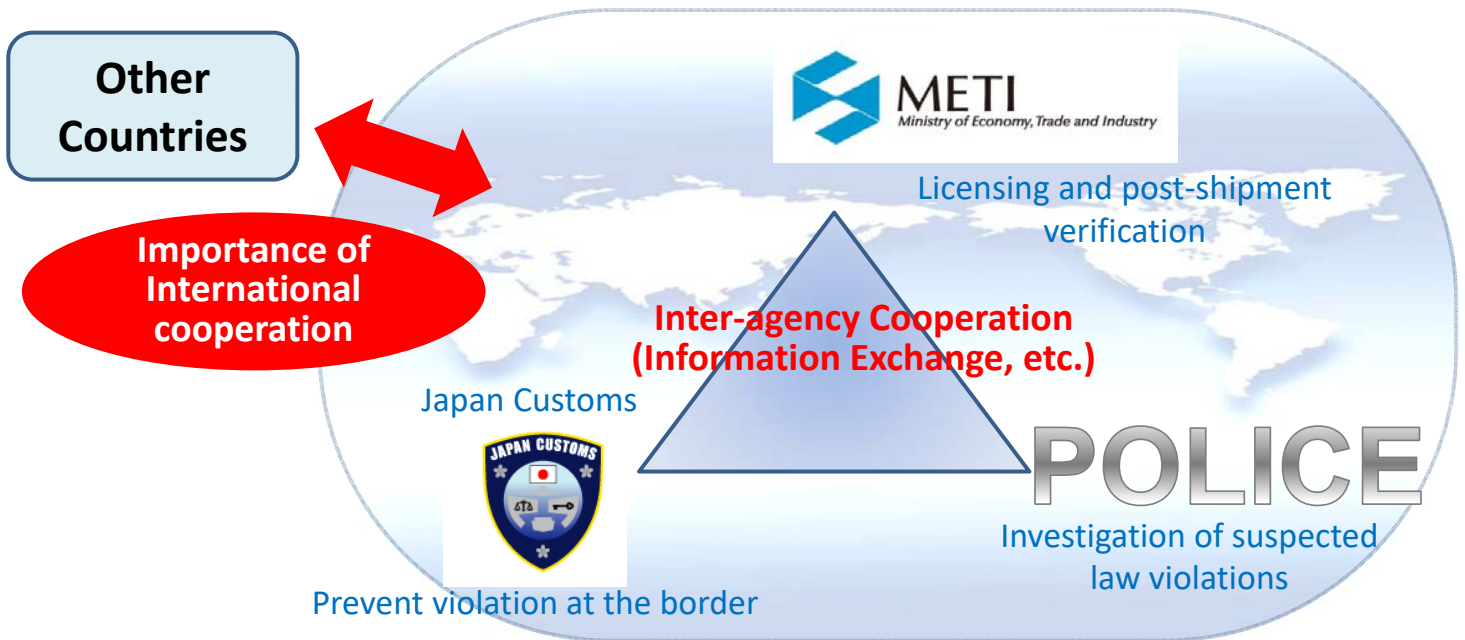
— Details (specifications and interpretations of listed items)

## Control List Structure

Cabinet Order		Regime list	
Item 1	Weapons	WA/ML	List control
2	Dual-use items	NSG	
3		AG	
3-2			
4		MTCR	
5		WA/BL·SL	
5			
13			
14	Others	WA/ML (excluding item 1)	
15	Dual-use items	WA/VSL	
16	Catch-all		Catch-all control

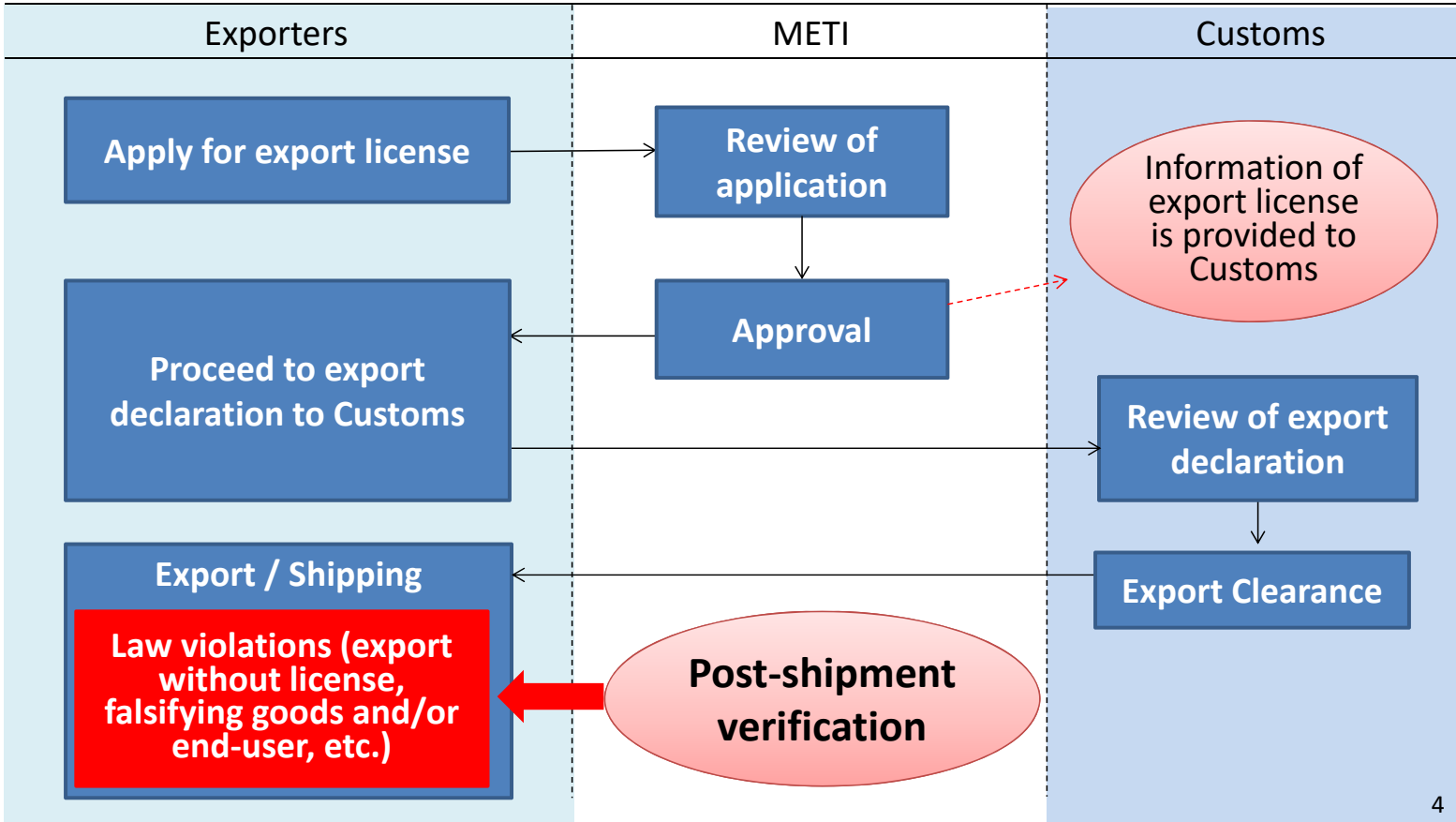
## Cooperation for Effective Enforcement

- Recently, there are many cases where countries of concern attempt to procure sensitive items by circumventing trade.
- METI is strengthening inter-agency cooperation with customs and police authorities for more effective enforcement.
- Furthermore, in order to strengthen countermeasures against circumvention, international cooperation is of great importance.



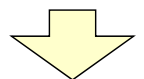
# Procedure of export and post-shipment verification

- METI conducts post-shipment verification against law violations including export without obtaining export license, falsifying goods and/or end-user, etc.

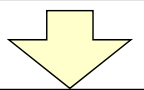


# Overview of Post-shipment Verification

Self report by exporter; Discover during inspection; Information from related authorities



- Arbitrary interrogation:** Interrogate what happened from the exporter (person in charge) to understand the situation
- Collection of reports:** Ask exporter to report the situation
- Inspection:** Visit exporter's office and check documents



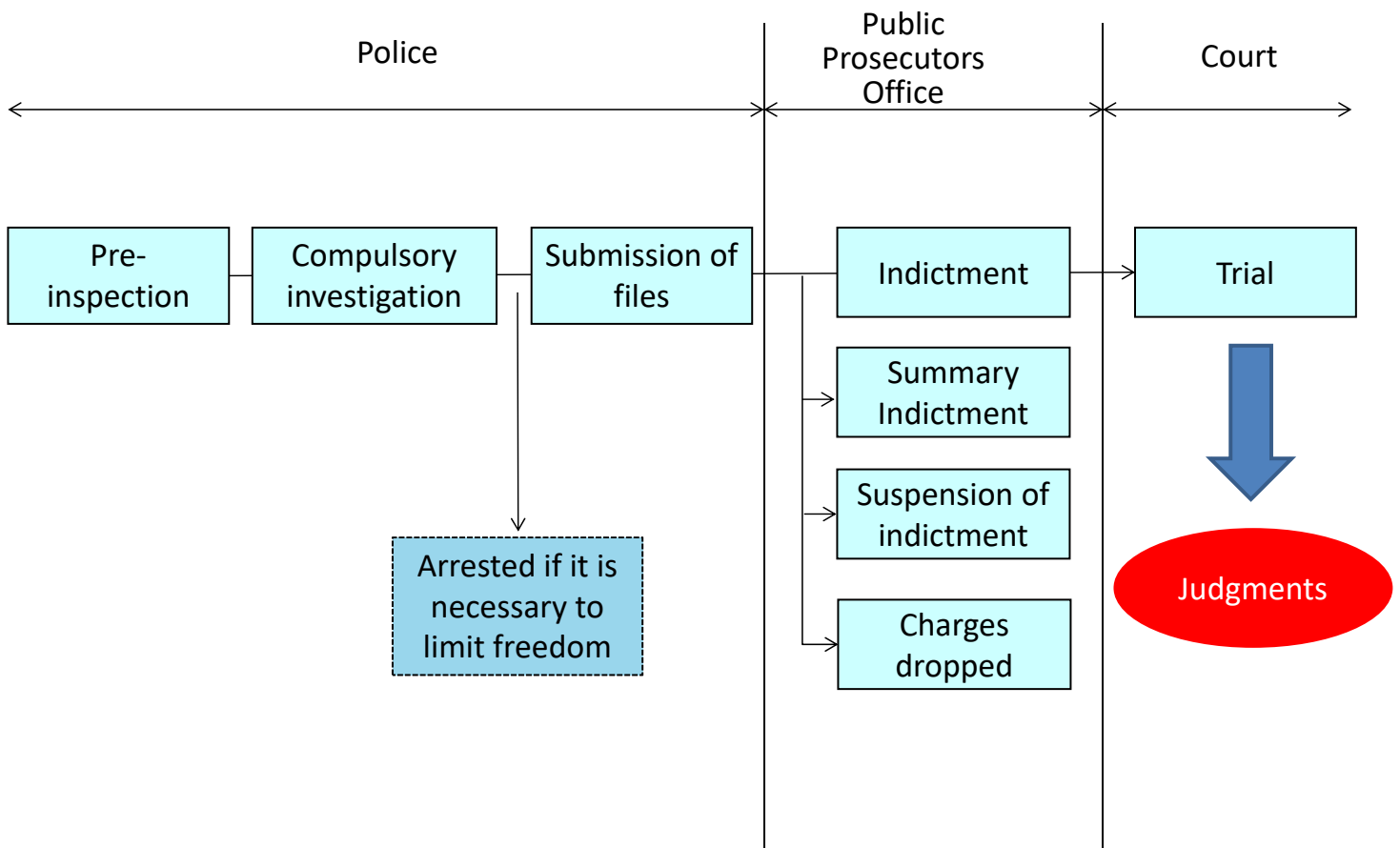
METI's review and consideration of application of penalty

If the violation is not serious

- Clarify the causes and processes
- Order to build preventive measures
- Check the status of implementation of preventive measures based on progress report

If the violation is serious

- Criminal Penalty:**
  - No more than 10 years of imprisonment
  - No more than 10 million yen or no more than 5 times in value of the items
- Administrative Penalty:**
  - METI may prohibit exports for no more than 3 years
- Warning and Publication:**
  - METI may issue warnings, which would be made public on the METI website



## Types of Illegal Export

### (1) Types of **intentional** illegal exports

<Example>

- The goods was exported by **hand carry** luggage without obtaining export license
- The goods was **disguised as non-controlled items** and declared for export to Customs
- The goods was exported to **false destination** for circumvention

### (2) Types of illegal exports due to **carelessness**

<Reason>

- Insufficient understanding of export control systems
- Misunderstand classification/ identification of the items, the scope of export license

<Example>

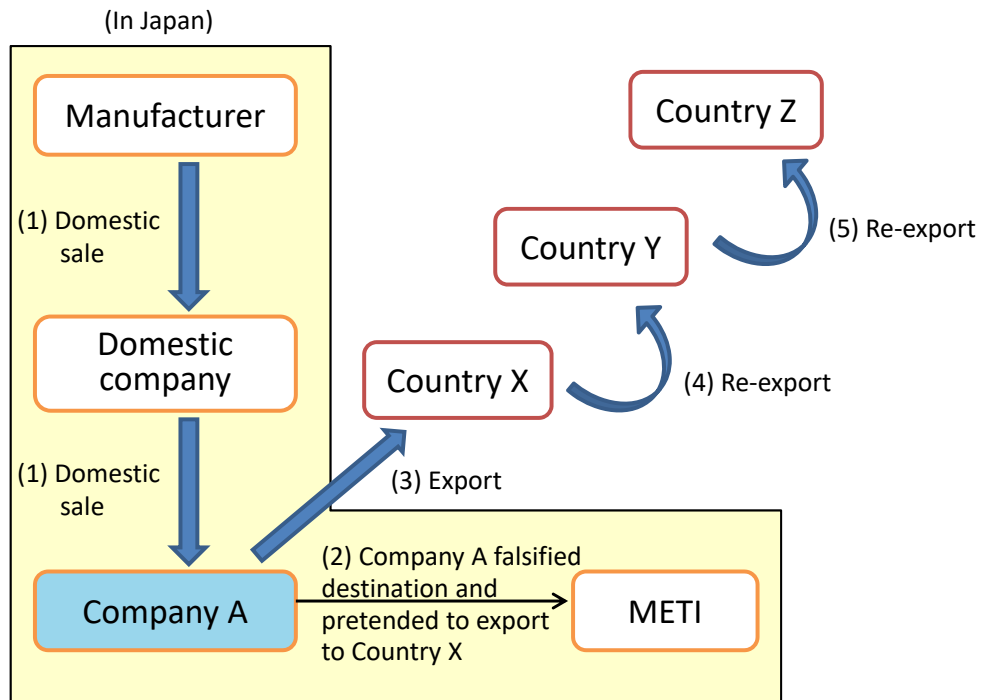
- **Lack of awareness of necessity of export license** (e.g., used machines, samples and test products are not subject to export control.)
- **Misunderstand classification of items** and obtain inappropriate export license.
- **Forget to apply for export license of software** installed in the goods.
- Mistake the goods to be exported (e.g. miscommunication between sales team and storage team in the company.)
- Misunderstand the scope of application of bulk export license, the term of validity or the quantity of goods under export license, etc.

# Circumvention and Diversion

Although many countries have established export control systems, entities of concern have diversified procurement activities by circumventing trade, using third country, front company or falsifying information, etc.

## [Diversion Case with complicated circulation]

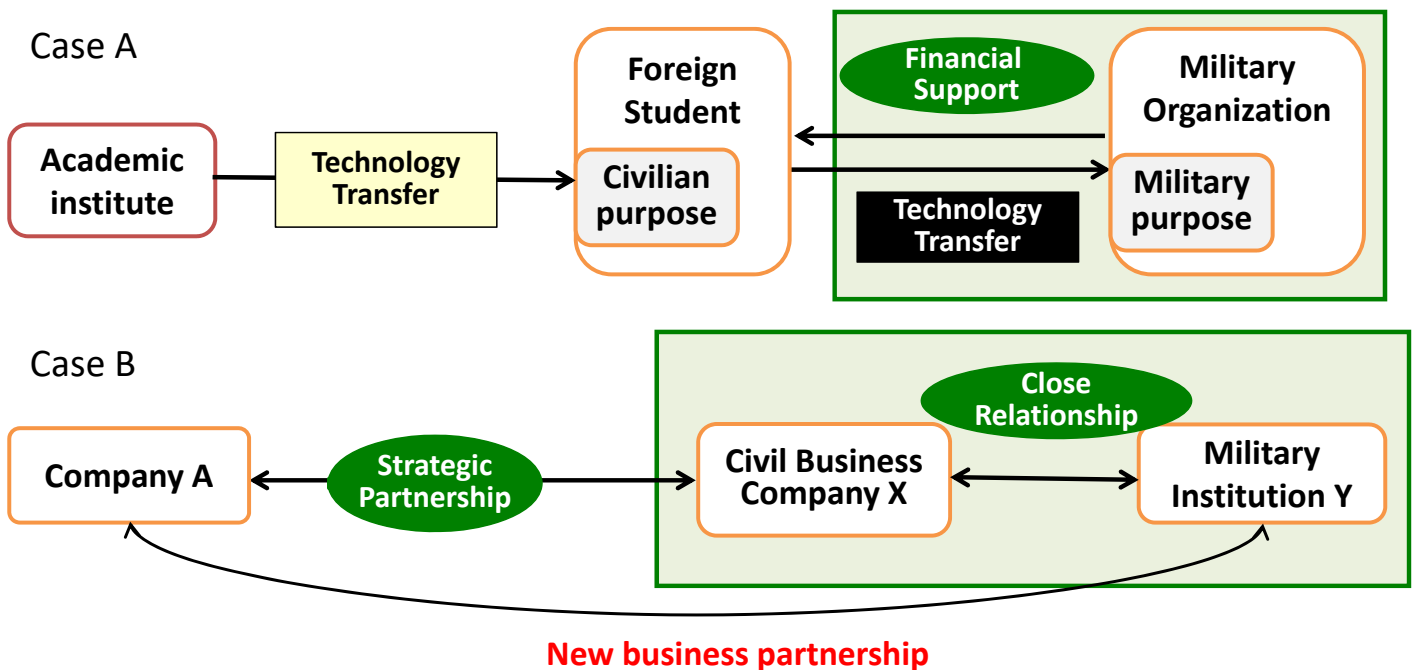
- In January 2010, Company A exported carbon fiber to Country Y which was transited via Country X. Company A falsified destination as Country X, but actually Country Y.
- In June 2015, the court sentenced a fine of 1 million yen against Company A and 1 million yen against employees.
- In January 2016, METI ordered prohibition of export to all areas for 4 months to Company A as administrative sanction.



# Advanced Methods of Technology Acquisitions

In addition to circumventing trade, entities of concern have acquired sensitive technology through

- (A) academic activities and research project - access to and exchange of information and data via intangible technology transfer (ITT)
- (B) business alliance and corporate acquisition - direct acquisition of R&D capability, access to new business network

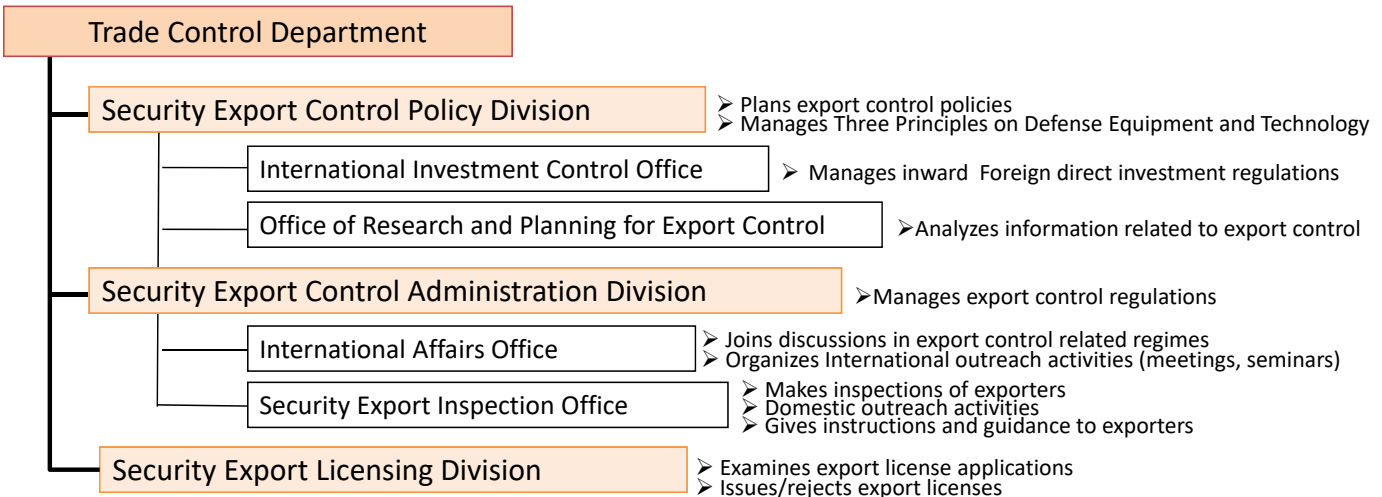


## 2. Measures to Strengthen Security Export Control

### Recent Organizational Change for Security Export Control in METI

- METI is export control authority in Japan and around 100 staff are working for security export control issues.
- Security export control divisions in the Headquarter of METI control and examine trade of sensitive items while twelve local branches deal with less sensitive items.
- **METI changed the organization of security export control in June 2016 in order to strengthen the policy planning, direct inward investment control, outreach for academia and overseas, and collaboration with enforcement authorities.**

#### METI / Trade and Economic Cooperation Bureau



#### 12 Local Branches for Licensing and Inspection

Sapporo, Sendai, Saitama, Tokyo, Yokohama, Nagoya, Osaka, Kobe, Hiroshima, Takamatsu, Fukuoka and Okinawa

# Future Directions for Security Export Control in Japan

(Interim Report of Subcommittee on Security Export Control/ Trade Committee/Industrial Structure Council , January 23, 2017)

## 1. Changes in the global security environment and economic structure

- (1) Increase importance of dual use technology in the military sector
- (2) Increased presence of emerging and developing countries in the global economy (increase supply of sensitive goods/technology)
- (3) Changes of security environment in Asia (North Korea's nuclear weapons tests, etc.)
- (4) Increased threat by non-state actors (use of chemical weapon in Syria, etc. )



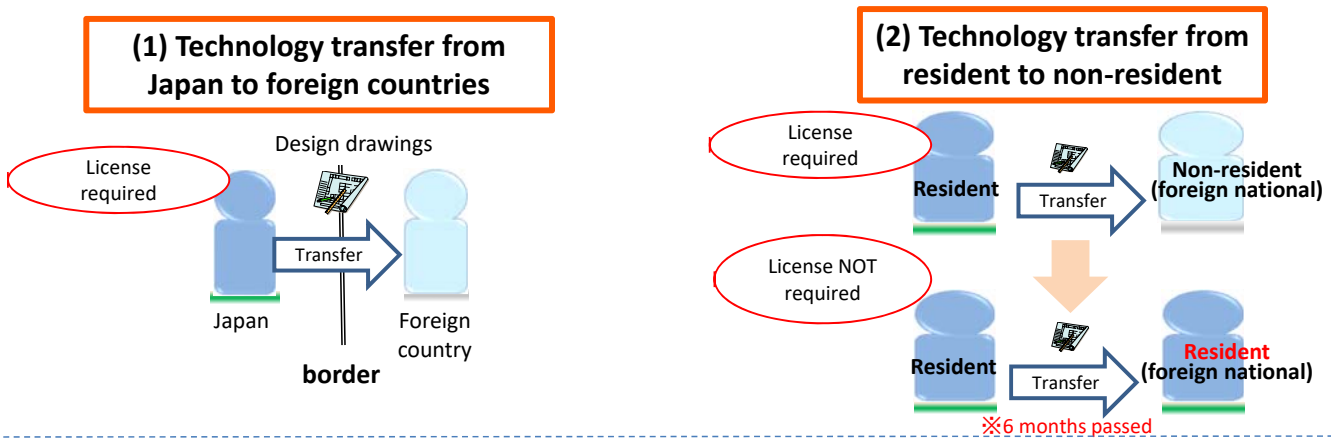
## 2. Challenges in Security Export Control System in Japan

- (1) How to strengthen Intangible Technology Transfer control
- (2) How to strengthen Inward Direct Investment control
- (3) How to enhance the effectiveness of enforcement
- (4) How to reduce the burden of exporters (harmonization of control list)

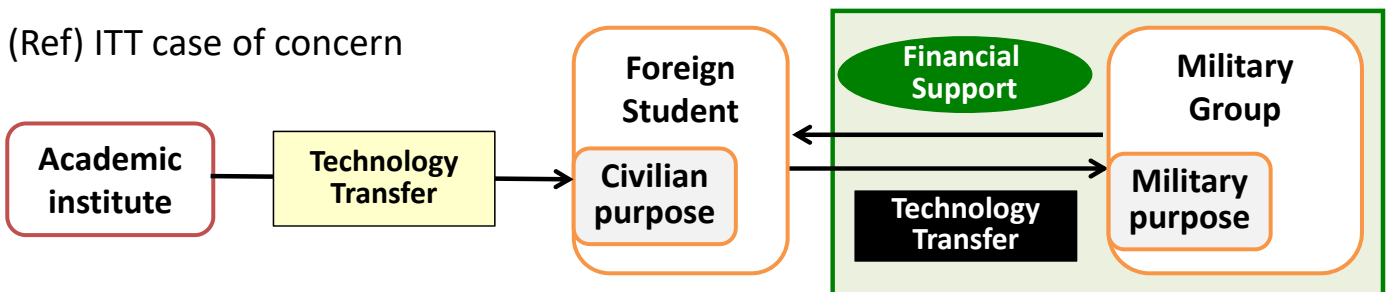
(Ref) [http://www.meti.go.jp/committee/sankoushin/tsusho\\_boueki/anzenhoshou/pdf/003\\_04\\_00.pdf](http://www.meti.go.jp/committee/sankoushin/tsusho_boueki/anzenhoshou/pdf/003_04_00.pdf)  
(Japanese version only)

## Challenges (1) How to strengthen Intangible Technology Transfer control

- Based on FEFTA, Intangible Technology Transfer (ITT) is regulated as follows.
  - (1) Technology transfer from Japan to foreign countries
  - (2) Technology transfer from resident to non-resident (deemed exports)
- It is necessary to discuss more effective ITT control in consideration of the foreign countries system.



(Ref) ITT case of concern



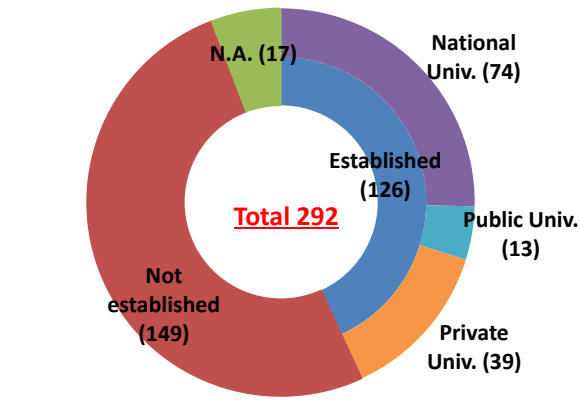


# (Reference) Outreach to academia

- In order to support export control activities of academic institution, METI will conduct the following outreach activities in cooperation with related ministries.
- (1) Hold export control seminars for academic institutions and industry. (100 seminars in 2016FY)
- (2) Revise the supportive documents of export control such as guidance and FAQs.
- (3) Dispatch export control advisors to academic institutions in order to support establishment of internal export control system and raising awareness of researchers. (start from 2017FY)

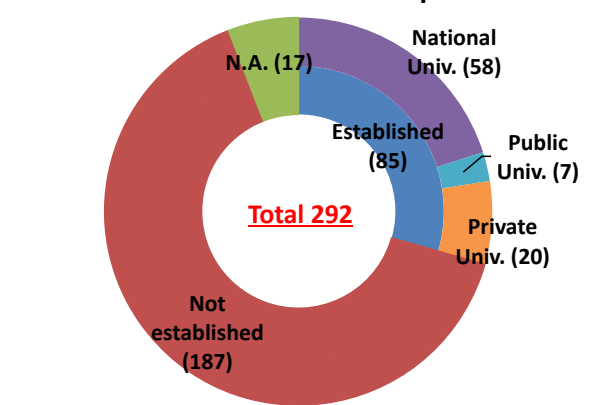
## Survey to national university, public and private university which have medical and/or engineering dept.

### 1. Establishment of export control organization



	Established
National Univ.	86%
Public and private Univ.	25%

### 2. Establishment of ICP for export control



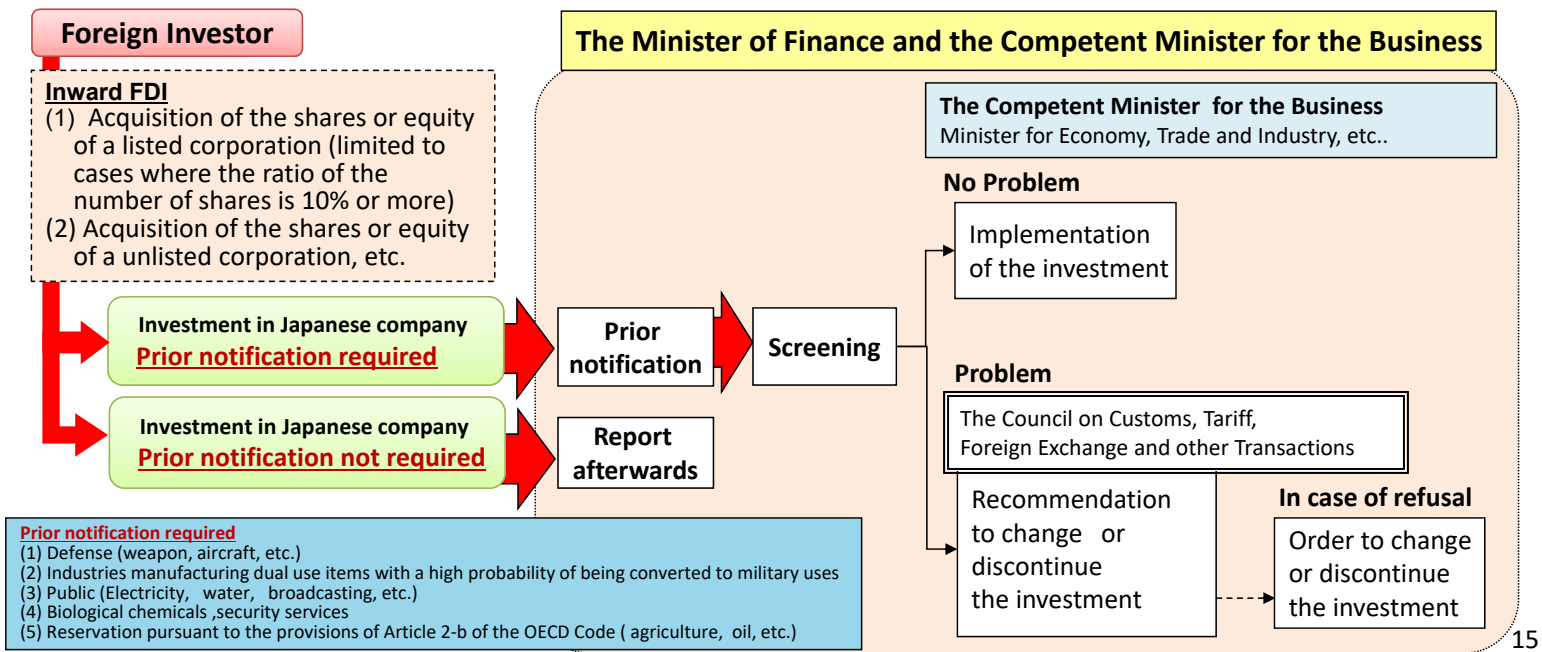
	Established
National Univ.	67%
Public and private Univ.	13%

(Ref) Survey by Ministry of Education, Culture, Sports, Science and Technology (MEXT), etc.

# Challenges (2) How to strengthen Inward Direct Investment control

- Japan is promoting inward direct investment from overseas, but, there is increasing concern over leakage of sensitive technology through M&A.
- Under existing regulation, there are penalties for illegal investment, the monitoring measures after investment is limited and there is no corrective measure. In addition, the procedure for unlisted corporation is simplified and prior notification is not required after the corporation was merged by foreign entity.
- It should be considered on how to monitor investment of concern and regulate it if there is concern that threatens security in Japan.

(Ref) Outline of Inward Foreign Direct Investment



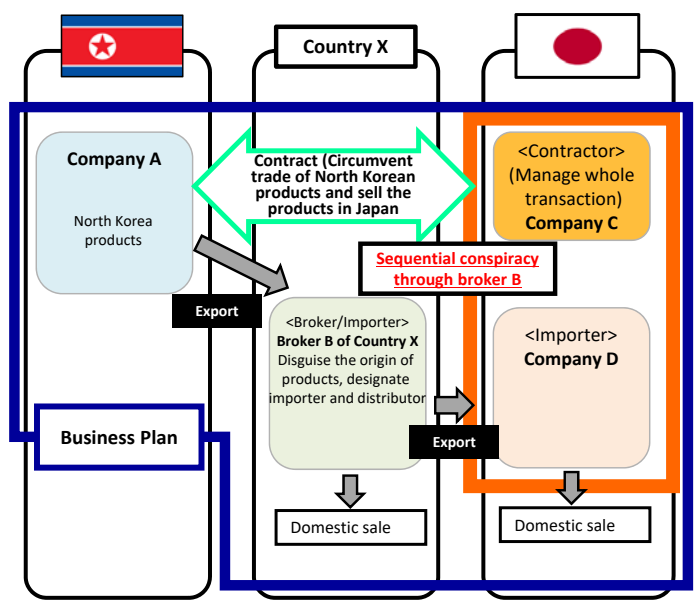
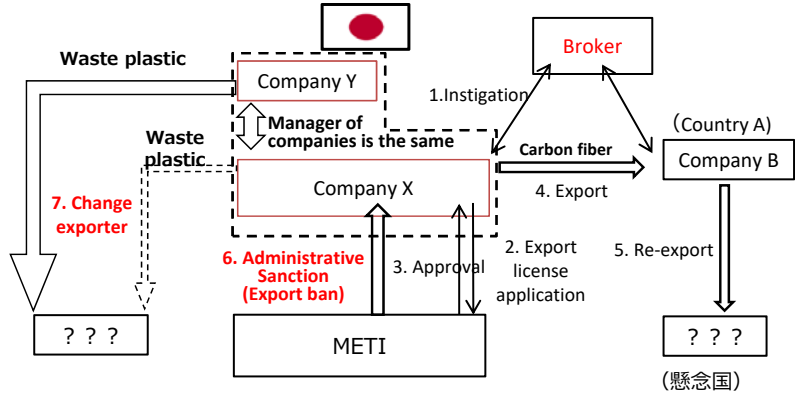


# Challenges (3) How to enhance the effectiveness of enforcement

- Since existing regulation on administrative sanction is not sufficient and case of concern has occurred using defects in the system. In addition, existing regulation does not cover conspiracy case.
- In order to enhance the effectiveness of enforcement, it should be considered to make the penal regulations and administrative sanction appropriate.

- Broker who do not conduct export transaction mediates trade transactions between Company X and Company B including negotiation of initial price and quantity.
- Although export ban was imposed to Company X, Company Y whose manager is the same with Company X substitutes for Company X and continues export of  
**→ No effective countermeasure against the above case**

Conspiracy case occurred in illegal trade with North Korea.



# Challenges (4) How to reduce the burden of exporters.

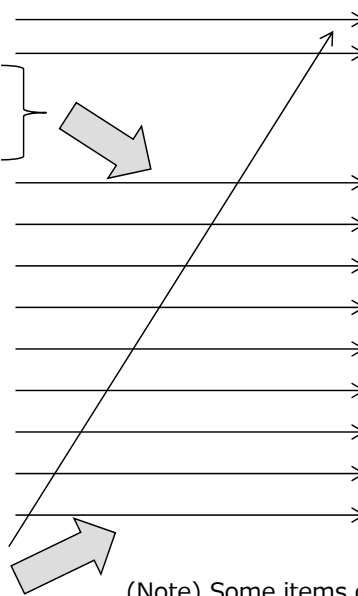
- Since the control list numbering system of Japan is different from other countries, it is an increasing burden for Japanese companies with overseas subsidiaries as well as foreign companies who have business transactions with Japanese companies.
- Since an increase of the burden of business operators may hinder their compliance activity, it should be considered to reduce such burden by making it consistent with EU control list.

<Japan's control list>

Category	Item	Export Control Regime
1	Munitions	WA (ML)
2	Nuclear related items	NSG
3, 3-2	Items related to Chemical Weapons and Biological weapons	AG
4	Missile related items	MTCR
5	Special Materials and Related Equipment	WA (Cat.1)
6	Materials Processing	WA (Cat.2)
7	Electronics	WA (Cat.3)
8	Computers	WA (Cat.4)
9	Telecommunication and "Information Security"	WA (Cat.5)
10	Sensors and "Lasers"	WA (Cat.6)
11	Navigation and Avionics	WA (Cat.7)
12	Marine	WA (Cat.8)
13	Aerospace and Propulsion	WA (Cat.9)
14	Other items	WA (ML)
15	Sensitive items	WA (VSL)
16	All items except food and wood, etc.	Catch-all

<EU control list>

Category	Item
M L	Munitions
Cat. 0	Nuclear related item
Cat.1	Special Materials and Related Equipment
Cat.2	Materials Processing
Cat.3	Electronics
Cat.4	Computers
Cat.5	Telecommunication and "Information Security"
Cat.6	Sensors and "Lasers"
Cat.7	Navigation and Avionics
Cat.8	Marine
Cat.9	Aerospace and Propulsion



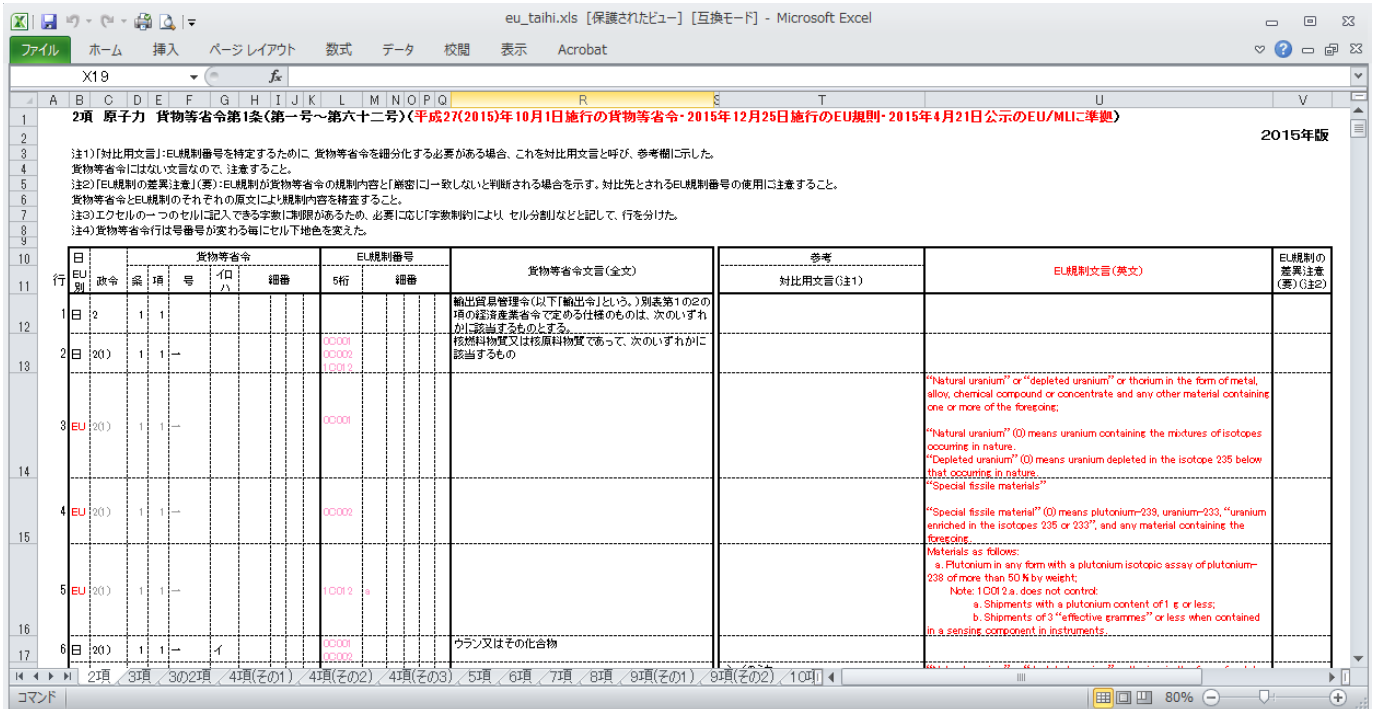
(Note) Some items of NSG, AG, MTCR and VSL of WA are allocated in Cat.1-9 under EU control list.

# (Reference) The comparative list of Japan's List and EU List

- CISTEC has published the comparative list of Japan's List and EU List since 2016.

[http://www.cistec.or.jp/service/eu\\_taihi.xls](http://www.cistec.or.jp/service/eu_taihi.xls)

(Japanese version only)



eu\_taihi.xls [保護されたビュー] [互換モード] - Microsoft Excel

2項 原子力 貨物等省令第1条(第一号～第六十二号)(平成27(2015)年10月1日施行の貨物等省令・2015年12月25日施行のEU規則・2015年4月21日公示のEU/MLIに準拠)

2015年版

注1)「対比用文言」:EU規則番号を特定するために、貨物等省令を細分化する必要がある場合、これを対比用文言と呼び、参考欄に示した。  
 貨物等省令にはない文言なので、注意すること。  
 注2)「EU規則の差異注意」(要):EU規則が貨物等省令の規制内容と「厳密」に一致しないと判断される場合を示す。対比先とされるEU規則番号の使用に注意すること。  
 貨物等省令とEU規則のそれぞれの原文により規制内容を精査すること。  
 注3)エクセルの一つのセルに記入できる文字に制限があるため、必要に応じ「字数制限」により、セル分割など記して、行を行を分けた。  
 注4)貨物等省令行は番号が変わる毎にセル下地色を変えた。

日EU別	政令	項	号	イロハ	細番	5桁	細番	貨物等省令文言(全文)	参考	EU規則文言(英文)	EU規則の差異注意(要)(注2)
1	2	1	1					輸出貨品管理令(以下「輸出令」という。)別表第1の2の項の核燃料物質又は核原料物質であって、次のいずれかに該当するもの			
2	20	1	1			00001	00002				
3	EU(20)	1	1			00001				"Natural uranium" or "depleted uranium" or thorium in the form of metal, alloy, chemical compound or concentrate and any other material containing one or more of the foregoing;	
4	EU(20)	1	1			00002				"Natural uranium" (0) means uranium containing the mixtures of isotopes occurring in nature. "Depleted uranium" (0) means uranium depleted in the isotope 235 below that occurring in nature. "Special fissile materials"	
5	EU(20)	1	1			10012				"Special fissile material" (0) means plutonium-238, uranium-233, "uranium enriched in the isotopes 235 or 233", and any material containing the foregoing. Materials as follows: a. Plutonium in any form with a plutonium isotopic assay of plutonium-238 of more than 50 % by weight. Note: 10012 a. does not control a. Shipments with a plutonium content of 1 g or less; b. Shipments of 3 "effective grammes" or less when contained in a sensitive component in instruments.	
6	日(20)	1	1		イ	00001	00002	ウラン又はその化合物			

Thank you for your attention!