

ICP Implementation & Enforcement Activity in Japan

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- 1. Enforcement of Security Export Control and Internal Compliance Program(ICP)**
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- Self management control by exporters is most important for proper enforcement of export management

■ Aim of self management control by Exporters

- Efficient enforcement of the FEFTA
- Increase of company's reliability to customer and foreign governments

■ Role of Government

- Encouragement for establishing self management control by exporters through instruction to them and providing incentives (dissemination of Internal Compliance Program etc.)
- Post shipment verification and imposition of administrative penalty

Basic Flow of Export procedures in Japan

Inquiry of goods / technology



Classification

- Classify whether an export item is subject to controlled list



Transaction
Screening

- Check the end-user(customer) and purpose of use.
 - ✓ whether the goods will be actually delivered to the end user, and actually used by the said end user
 - ✓ whether the goods will not be used for the purpose of impeding the maintenance of international peace and security
 - ✓ whether the end user will appropriately control the goods



Application

- Apply for export license



Shipment
Control

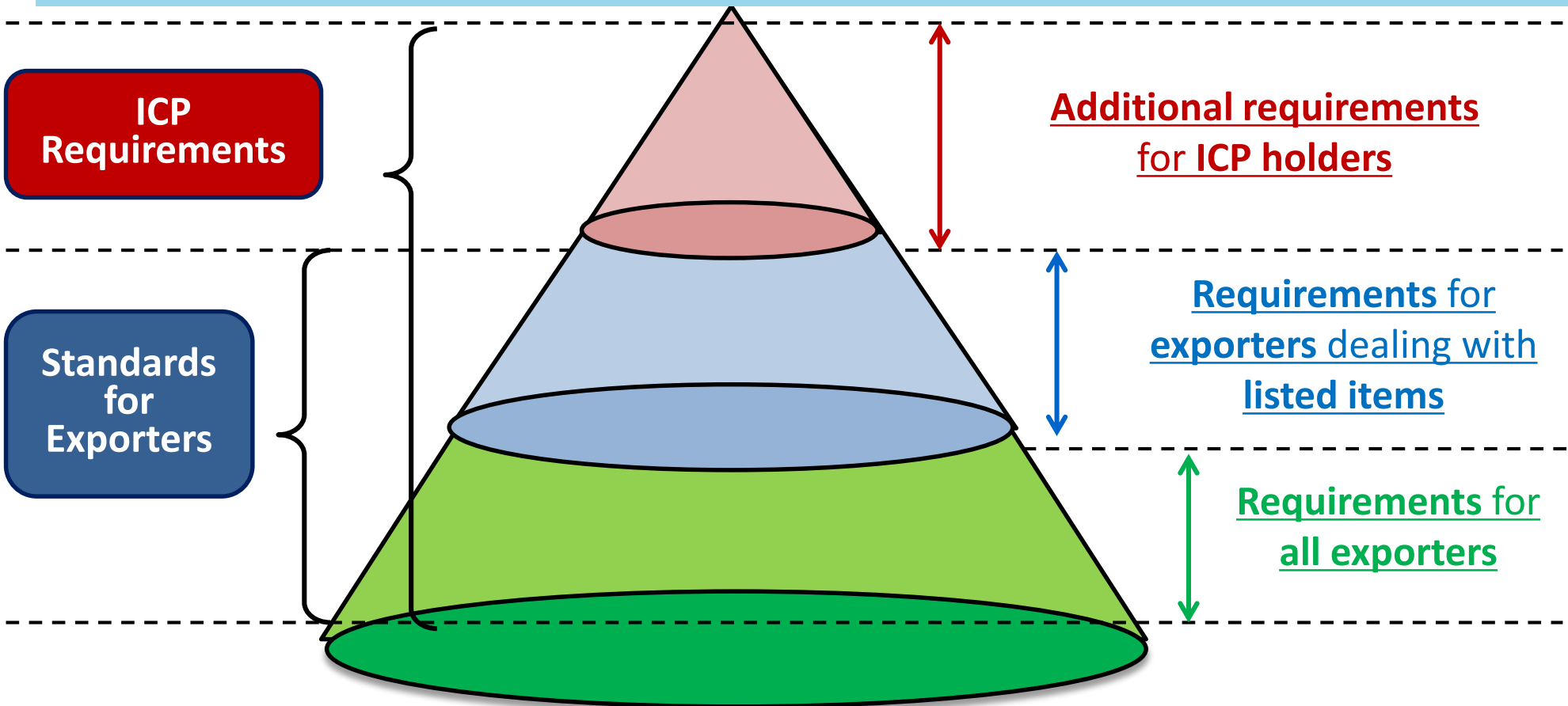
- Before export, confirm whether an export license has been issued and whether the goods are the same as the goods permitted.



Export

Structural Image of an ICP and “Standards for Exporters”

- Self-management control by exporters can be classified to 3 layers.
- The “Standards for exporters”, which is first and second layers, requires a minimum level of self-management. Observation of it is mandatory.
- ICP, which is third layer, requires advanced level of management. Establishment of ICP is not mandatory.



“Standards for Exporters”

- In April 2010, FEFTA was amended and the “Standards for Exporters” was introduced.
- The “Standards of Exporters” requires every single individual, company or academic institution that is engaged in export of goods or transaction of technology to have a system guaranteeing a minimum level of self-management.
- Observation of the “Standards for Exporters” is a legal obligation. A violator of the Standards may receive a penalty.

Requirements for Exporters

- The “Standards for exporters” has a **double-layered** structure.
 - The Standards require that **all exporters observe the two points.**
 - The Standards also require that **exporters who are dealing with controlled items under FEFTA observe the nine additional points.**

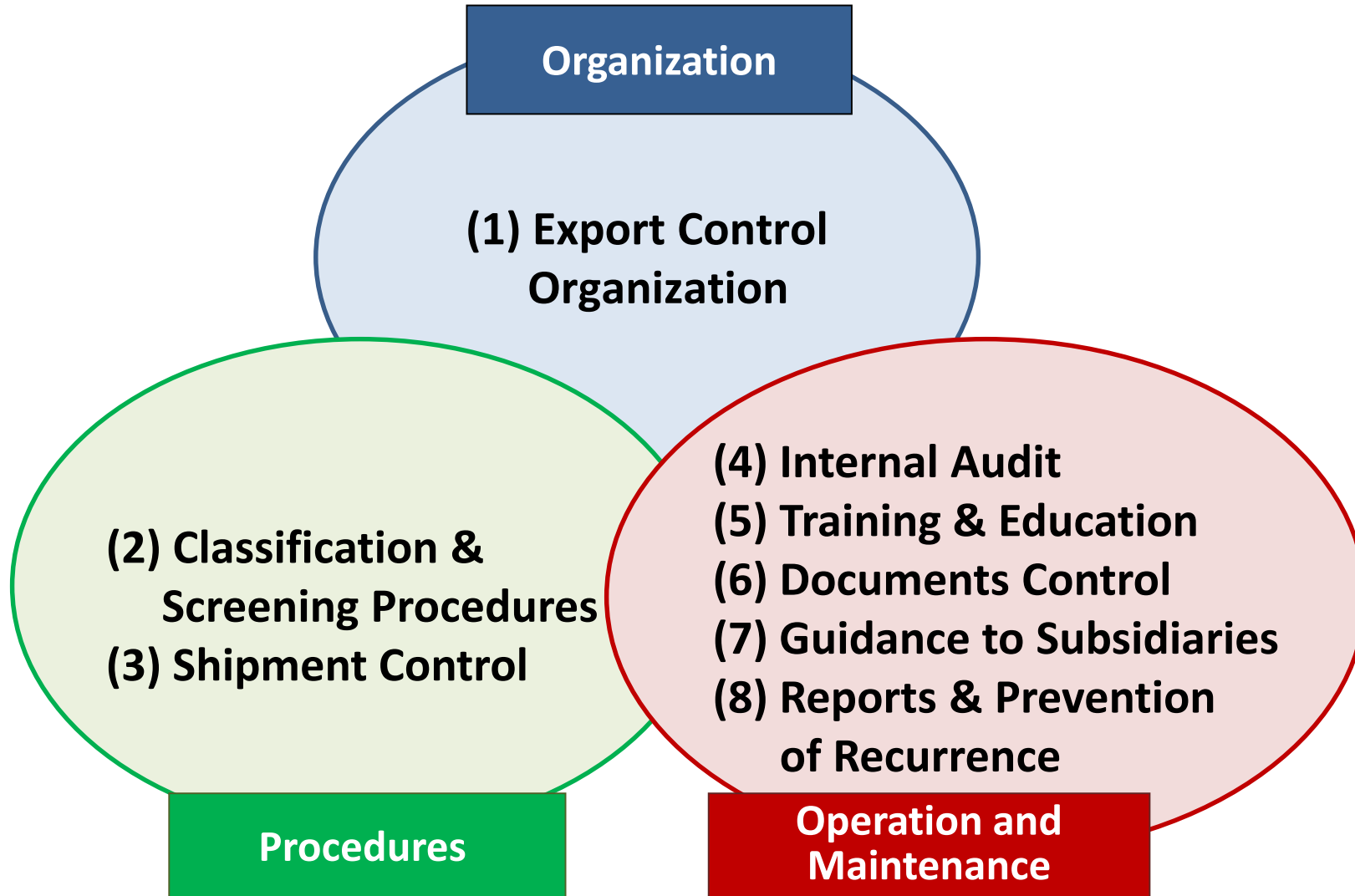


1. To appoint a person who represents the organization as the person responsible for export control
2. To clarify responsibilities of each section related to export control
3. To establish proper procedures for classification
4. To establish proper procedures for transaction screening, and conduct them accordingly
5. To conduct proper shipment control
6. To make all reasonable efforts to establish proper procedures for auditing, and conduct them accordingly
7. To make all reasonable efforts to give proper training for all members engaged in export control
8. To make all reasonable efforts to keep export control documents for an appropriate period
9. To report immediately to METI if exporters commit violations, and take remedial measures

Overview of an Internal Compliance Program (ICP) METI Ministry of Economy, Trade and Industry

- An Internal Compliance Program (ICP) is an exporter's internal policy to comply with the export control laws and regulations.
- Having an ICP is not mandatory, but METI has been encouraging exporters in Japan to establish an ICP since 1987.
- MITI (METI's predecessor) introduced the ICP system in 1987 after the occurrence of the serious illegal export case by a Japanese company.
- As of the end of 2016, over 1400 exporters in Japan had registered their ICPs with METI.

Main Requirements for an ICP



Requirements for an ICP

- ICP requirements are very similar to the “Standards for Exporters,” but the requirements of an ICP is a little higher than the Standards.
- Differences between the two are as follows:
 - properly conducting auditing, training and keeping export control documents (more stringent requirements than the Standards)
 - properly instructing subsidiaries and affiliated companies regarding export control
- Exporters who have registered an ICP with METI automatically satisfy the requirements of the “Standards for Exporters.”

A. “Standard for Exporters” Requirements for All Exporters under FEFTA

1. To appoint a person responsible for classification
2. To give necessary instructions to export control staff so that they observe the latest laws and regulations

B. “Standard for Exporters” Requirements for Exporters dealing with Controlled Items under FEFTA

1. To appoint a person who represents the organization as the person responsible for export control
2. To clarify responsibilities of each section related to export control
3. To establish proper procedures for classification
4. To establish proper procedures for transaction screening, and conduct them accordingly
5. To conduct proper shipment control
6. To make all reasonable efforts to establish proper procedures for auditing, and conduct them accordingly
7. To make all reasonable efforts to give proper training for all members engaged in export control
8. To make all reasonable efforts to keep export control documents for an appropriate period
9. To report immediately to METI if exporters commit violations, and take remedial measures

C. Additional Requirements for ICPs

1. To properly conduct auditing, training and keeping export control documents (more stringent requirements than B. 6 - 8)
2. To properly instruct subsidiaries and affiliated companies regarding export control

- METI conducts two types of audits: one is a paper audit using a “Check List (CL),” and the other is an on-site inspection.

Check List

- A CL is a document that confirms whether an exporter carries out export control in accordance with its ICP.
- A CL consists of 41 check items. By filling out a CL, exporters can check whether they are implementing their ICP properly.
- Exporters who have registered an ICP with METI are annually required to submit a CL to METI (CL is one of the requirements to obtain bulk licenses).
- METI checks each submitted CL, and issues a proof of CL registration if it finds a submitted CL appropriate.

(Reference) Example of a Check List

Check Items		Provisions in the ICP		Implementation Status		Notes
Internal Export Control System						
1.1	Is the chief export control officer a person who represents the organization?		<div style="border: 2px solid red; padding: 5px; display: inline-block; margin-bottom: 10px;">Choose the appropriate option</div> <p>(1) Stipulated in the ICP (2) Stipulated in internal rules other than the ICP (3) Not stipulated</p>		<p>(A) A representative of the organization is appointed in accordance with the ICP (B) A representative is appointed despite not being in accordance with the ICP (C) An individual other than representatives is appointed (D) Nobody is appointed</p>	<p>Provide the name of the ICP and relevant articles</p> <p>Name of ICP: Articles:</p>
1.2	Is the scope of responsibilities regarding export control clearly defined?		<p>(1) Stipulated in the ICP (2) Stipulated in internal rules other than the ICP (3) Not stipulated</p>		<p><u>If (1) or (2) was selected</u> (A) Operating in accordance with the ICP (B) Not operating in accordance with the ICP <u>If (3) was selected</u> (C) The scope of responsibilities is clearly defined in practice (D) Not clearly defined</p>	<p>Provide the name of the ICP and relevant articles</p> <p>Name of ICP: Articles:</p>
	⋮		⋮		⋮	⋮

On-site inspection

- METI annually conducts over 100 on-site inspections of exporters, including small and medium enterprises.
- Inspectors go to exporters' offices to examine how requirements of the "Standard for Exporters" and ICPs are implemented.
- The results of inspections are placed into three categories:
 - **Guidance** for cases where an exporter has violated provisions of the FEFTA or has seriously failed to implement the "Standard for Exporters" requirements or the ICP.
 - **Advice** for cases where an exporter has partially failed to implement the "Standard for Exporters" requirements or the ICP.
 - **No instruction** for cases where an exporter has properly carried out export control in accordance with the "Standard for Exporters" or its ICP.
- If a violation of provisions of the FEFTA is found by on-site inspections, METI starts post-shipment inspection.

- METI implements various measures in order to encourage exporters to establish ICPs.
- Over 1400 exporters, including most of main trading companies and manufacturing companies, had registered ICPs with METI regardless of non-mandatory requirement.

➤ Bulk license

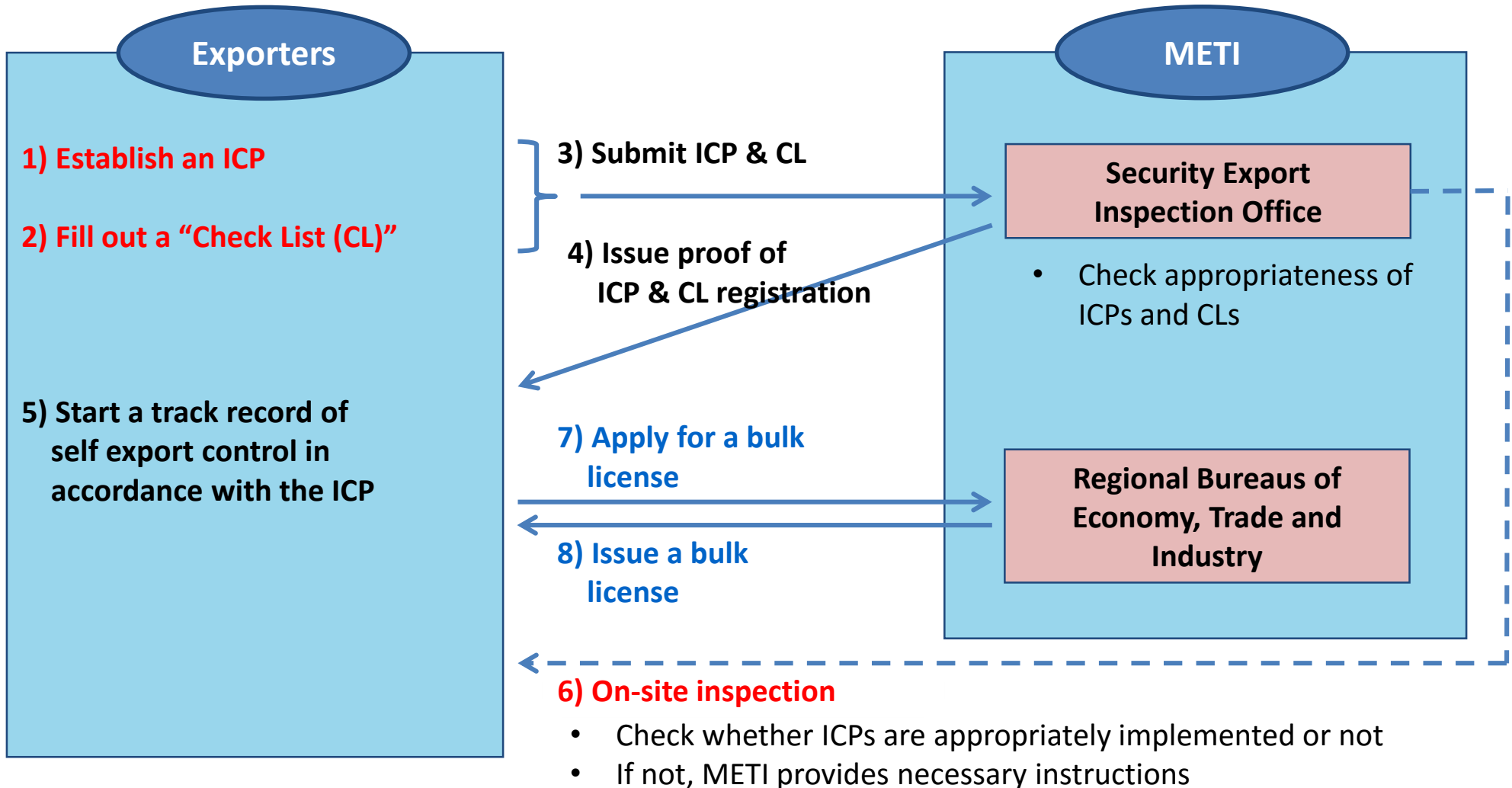
- Those who have registered an ICP to METI can apply for bulk licenses.

➤ Seminar

- around 100 export control seminars annually across the nation and there are around 10,000 participants every year.
- There are several types of seminars – for industry overall, for specific industries, for customs brokers, and for academia.

Procedure for Obtaining a Bulk Export License

<In case of Special General Bulk Export License, Special Bulk Export License, etc.>



(Reference) Types of Bulk License

Bulk License

Valid for multiple transactions for 3 years

General Bulk Export License

- Export of specific items to white countries
- Only electronic application is acceptable.
- ICPs and prior on-site check are NOT required.

Special General Bulk Export License

- Exports of specific items to specific countries (i.e. export of WA/BL to non-WA countries, etc.).
- **ICPs and prior on-site check are required.**

Special Bulk Export License

- Repeated exports of specific items to specific customers.
- **ICPs and prior on-site check are required.**

Special Bulk Export License for Repair or Replacement

- Re-exports of arms and arms-related items (category 1) to the country of origin for repair or replacement.
- **ICPs and prior on-site check are required.**

Special Bulk Export License for Overseas Subsidiaries

- Exports of specific items to subsidiaries in foreign countries.
- **ICPs and prior on-site check are required.**

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Security Export Control Policy for University

- As dual-used technology has been widely spread, university obtaining critical technology is required to implement security export control.
(The Wall Street Journal, Sep 6th, “Behind North Korea’s Nuclear Advance: Scientists Who Bring Technology Home”)
- Control in studying flow, i.e. from admission to graduation, more and more matters and both government and university should take respective roles in each stage of flow.

METI’s “Guidance” to instruct university to take due care of foreign students/researchers.

Actions taken by University

➤ Admission review

Before admission

➤ Visa screening

- Access control
- Internal check system
- Compliance with rules/regulations

At university

- Export control
- ITT control
- Protection of confidential info

- Signing a written pledge
- Monitoring career afterwards

After graduation

- Export control
- ITT control

Government rules/regulations

- Many universities lack knowledge and awareness on security export control.
- Unique approach for university is required because of different missions and organizational structures university has compared to private firms
- Japanese Gov. has published “Guidance” that refers to the essential and recommended items for university, and has been disseminating the Guidance

Some Features of the Guidance

Identify Control Areas

Activity

- Admission and exit of foreign students
- Participation of international conference
- Collaborative research with other university
- Visiting fellows from overseas

Critical Research Areas

- Nuclear engineering
- Automatic control, robotics
- Aerospace engineering
- Telecommunication
- Sophisticated materials etc.

Control methodology

Organization

- Top-down system by the President
- Establishment of security export control division (establish branch as necessary for more appropriate administration)

Division of roles

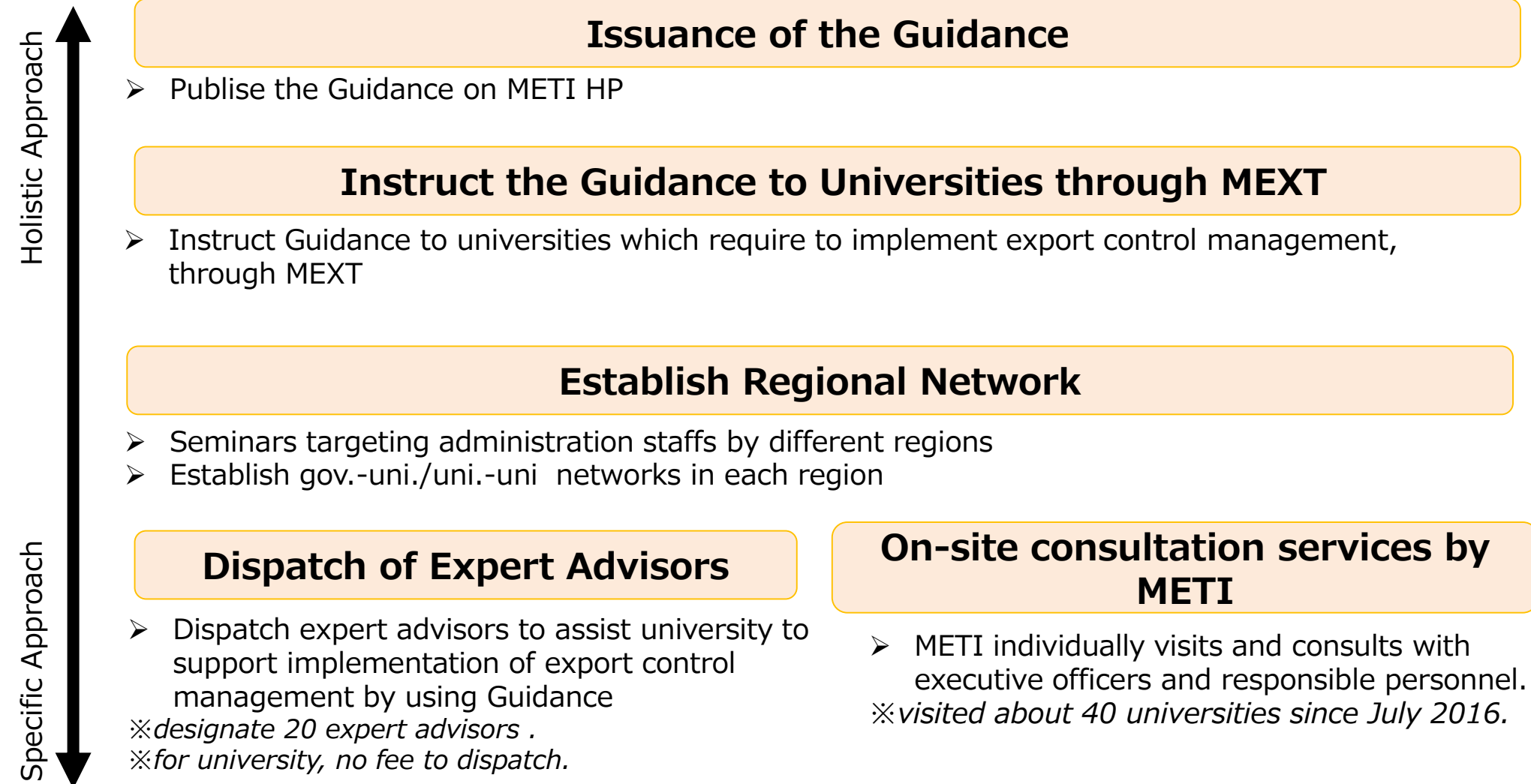
- Each Professor
 - ✓ Screening based on simple check sheet
- Administrative division
 - ✓ Careful review based on review sheet

Model documents

- Internal Compliance Program
 - ✓ Formulate two types according to the size of the university
- Check Sheet, Review sheet
 - ✓ Simple “Yes” or “No” format
 - ✓ Check the list for concerned research areas
- Written Pledge

Outreach activities for University

- **Conduct Outreach activities for various layers**
- **Disseminate the Guidance and share the best practice**



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- Among cases of violation of FEFTA , some cases are intentional, but most of them occurs due to the lack of knowledge of relevant laws, and the lack of awareness of security export control.

(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** where it is not allowed to export in order for circumvention.

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

<Example>

Lack of knowledge of FEFTA / Insufficient export control procedures

- An exporter **exports goods without an export license even though the goods are controlled items** (e.g., used machines, samples and test products)

Inappropriate implementation of classification

- An exporter **misunderstands classification of goods**, so that the goods are exported using a different export license.
- An exporter **does not check the classification of goods which are done by makers**, and exports the goods without knowing that the classification is wrong.
- An exporter applies for an export license for goods, such as machines, but **forgets to apply regarding software** installed in the goods.

Inappropriate implementation of shipment control

- An exporter **mistakes the goods to be exported** (e.g., miscommunication between sales team and storage team in the company.)

List of recent violations

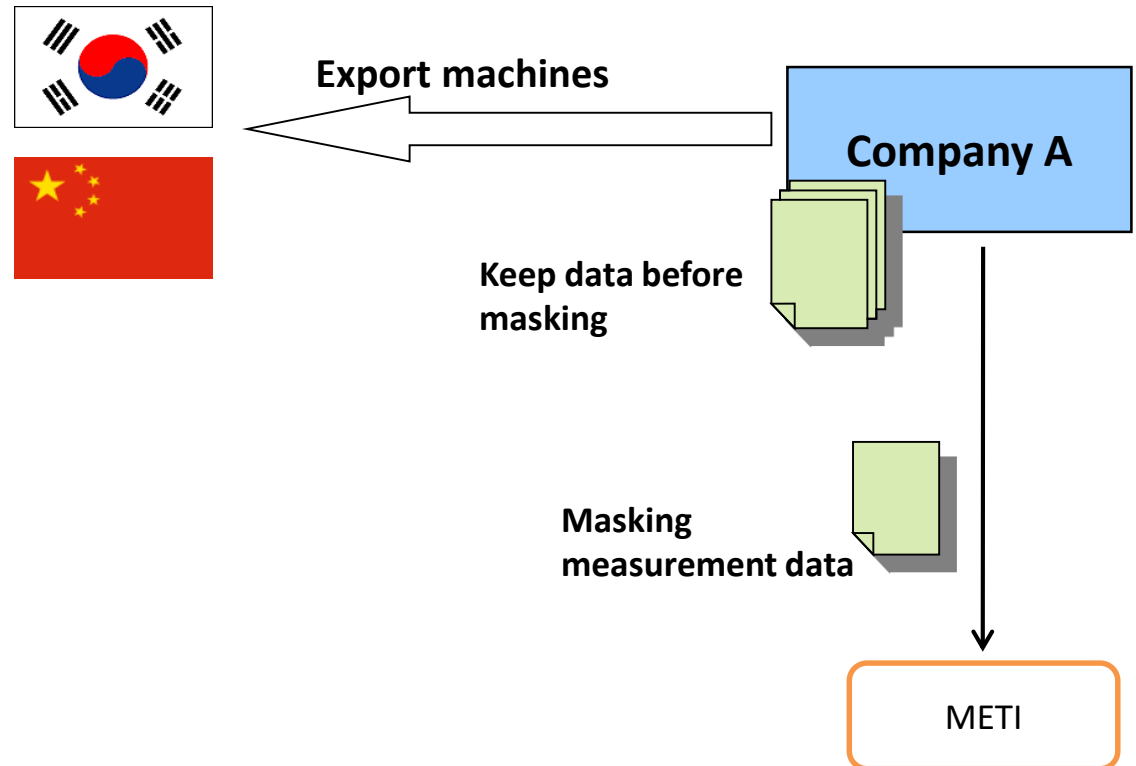
Time, Content of Judgment and Administrative Sanctions	Items, Destination	Note
June 15, 2015 (Summary Order): A fine of 1 million yen against employees and 1 million yen against the legal entity Jan. 20, 2016 (Administrative sanction): Prohibited exports to all areas for 4 months	<ul style="list-style-type: none"> • Carbon fiber (category 2 (17)) • China 	<ul style="list-style-type: none"> • Transshipped via Korea
Mar. 25, 2011 (Judgment): The president was sentenced 18 month imprisonment (suspended for 3 years), the legal entity was fined 1.2 million yen Jul. 20, 2016 (Administrative sanction): Prohibited exports to all areas for 13 months	<ul style="list-style-type: none"> • Excavator (Power shovel) • North Korea 	<ul style="list-style-type: none"> • Catch all control violation • Ignore notification • Transshipped via China
Nov. 5, 2009 (Judgment): The director was sentenced 24 month imprisonment (suspended for 4 years), the legal entity was fined 6 million yen Jun. 18, 2010 (Administrative sanction): Prohibited exports to all areas for 7 months	<ul style="list-style-type: none"> • Magnetic measuring device • Myanmar 	<ul style="list-style-type: none"> • Catch all control violation • Ignore notification • Transshipped via Malaysia
Aug.7, 2009 (Judgment): The director was sentenced 3 years imprisonment (suspended for 4 years), the legal entity was fined 5 million yen Jan. 19, 2010 (Administrative sanction): Prohibited exports to all areas for 16 months	<ul style="list-style-type: none"> • Tanker lorry etc. • North Korea 	<ul style="list-style-type: none"> • Catch all control violation • Ignore notification • Violation of sanctions against North Korea (with the luxury goods) • Transshipped via Korea
Jul. 16, 2009 (Judgment): 4 members in the Board of Director were sentenced from 1 year to 2 years and a half (suspended for 3 years), the company was fined 47 million yen Aug 14/8/2010 (Administrative sanction): Prohibited exports to all areas for 5 months	<ul style="list-style-type: none"> • Machine tool (Category 2 (12)) • Korea etc. 	<ul style="list-style-type: none"> • Mask measuring data, lower its spec to export as non control items
Jun. 25, 2007 (Judgment): 4 vice presidents were sentenced from 2 year to 3 years (suspended for 4-5 years), the company was fined 45 million yen Jun. 26, 2007 (Administrative sanction): Prohibited exports to all areas for 6 months Prohibited to export coordinate measuring machine (CMM) to all areas for 2 years and a half (total 3 years)	<ul style="list-style-type: none"> • Coordinate measuring machine (Category 2 (12)) Malaysia... 	<ul style="list-style-type: none"> • One was found at the nuclear weapon base in Libya • Mask testing data, lower its spec to export as non control items
Mar. 20, 2007 (Summary order): the company was fined 1 million yen May 11, 2007 (Administrative sanction): Prohibited to export unmanned helicopters to all areas for 9 months	<ul style="list-style-type: none"> • Unmanned helicopters (Category 4 (1-2)) • China 	<ul style="list-style-type: none"> • Failed

<Masking (Counterfeiting data)>

- Company A exported machine tools (numerically controlled machining centers), which could contribute to WMD related, to Korea and China etc. without obtaining export license by masking its measurement data and lowering spec of the machines.

[Point]

- Masking measurement data
- Keeping data before masking

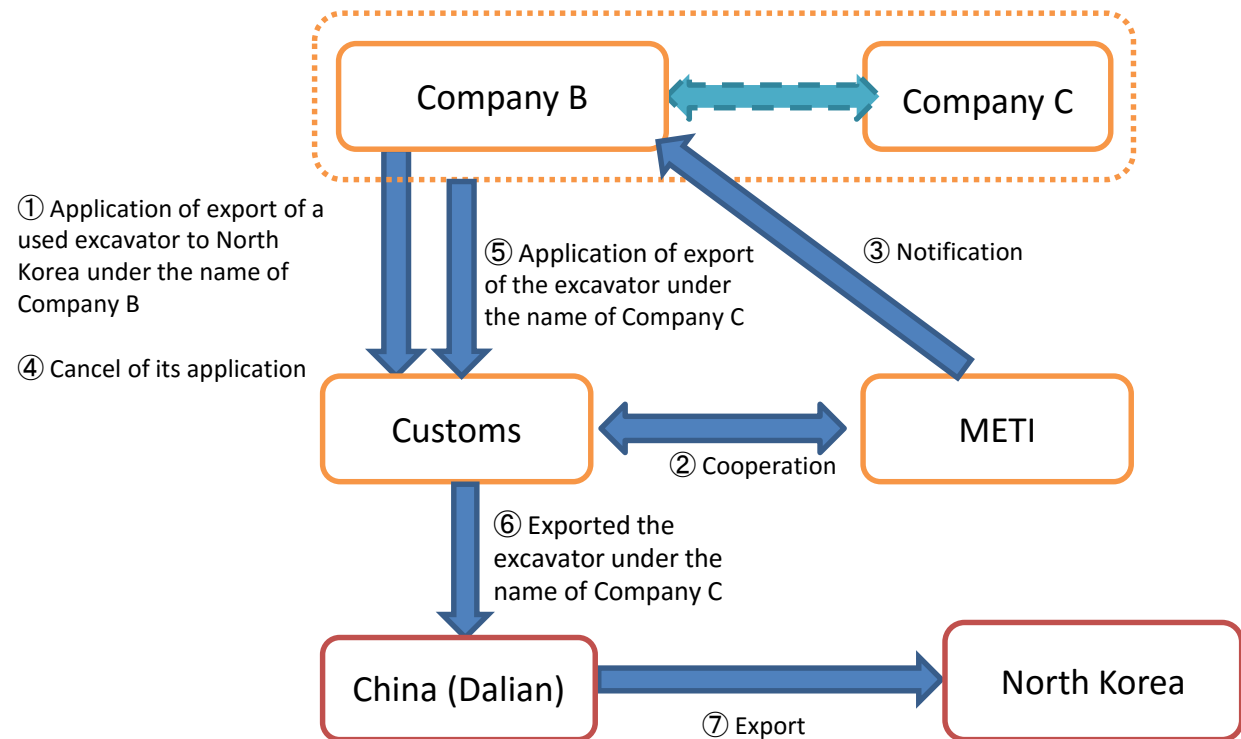


< Diversion export, camouflage >

- Company B received notification from METI when Company B attempted to export a used excavator, which could contribute to WMD related, to North Korea via China. Company B exported the excavator to North Korea via China under the name of Company C without obtaining export license even though Company B received the notification.

[Point]

- Inter-agency cooperation
- Notification from METI



<Diversions export>

- Company C exported about 3.6 tons of carbon fiber to China which transited via Korea without obtaining export license.

[Point]

- Diversions export
- Complicated transaction

