

# Overview of Japan's Export Control System

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  - **Reform of the Law and Regulations**
  - **Intangible Technology Transfer (ITT)**
  - **International Outreach Cooperation**

# Importance of Strategic Trade Management

- **Strategic trade management** is critical against the threat of the proliferation of WMD and their means of delivery, and destabilizing flows of advanced conventional weapons.

## Carbon Fiber



Golf shaft



Structural material  
for fighter

## Power Semiconductor



Power amplifier



Radar for naval  
ship

- Nuclear Suppliers Group (NSG) since 1978
- Australia Group (AG) since 1985
- Missile Technology Control Regime (MTCR) since 1987
- Wassenaar Arrangement (WA) since 1996
- United Nations Security Council Resolutions 1540 in 2004

# **1. Japan's Export Control System**

- **Outline of the Control System by FEFTA**
- **Industry's Efforts**

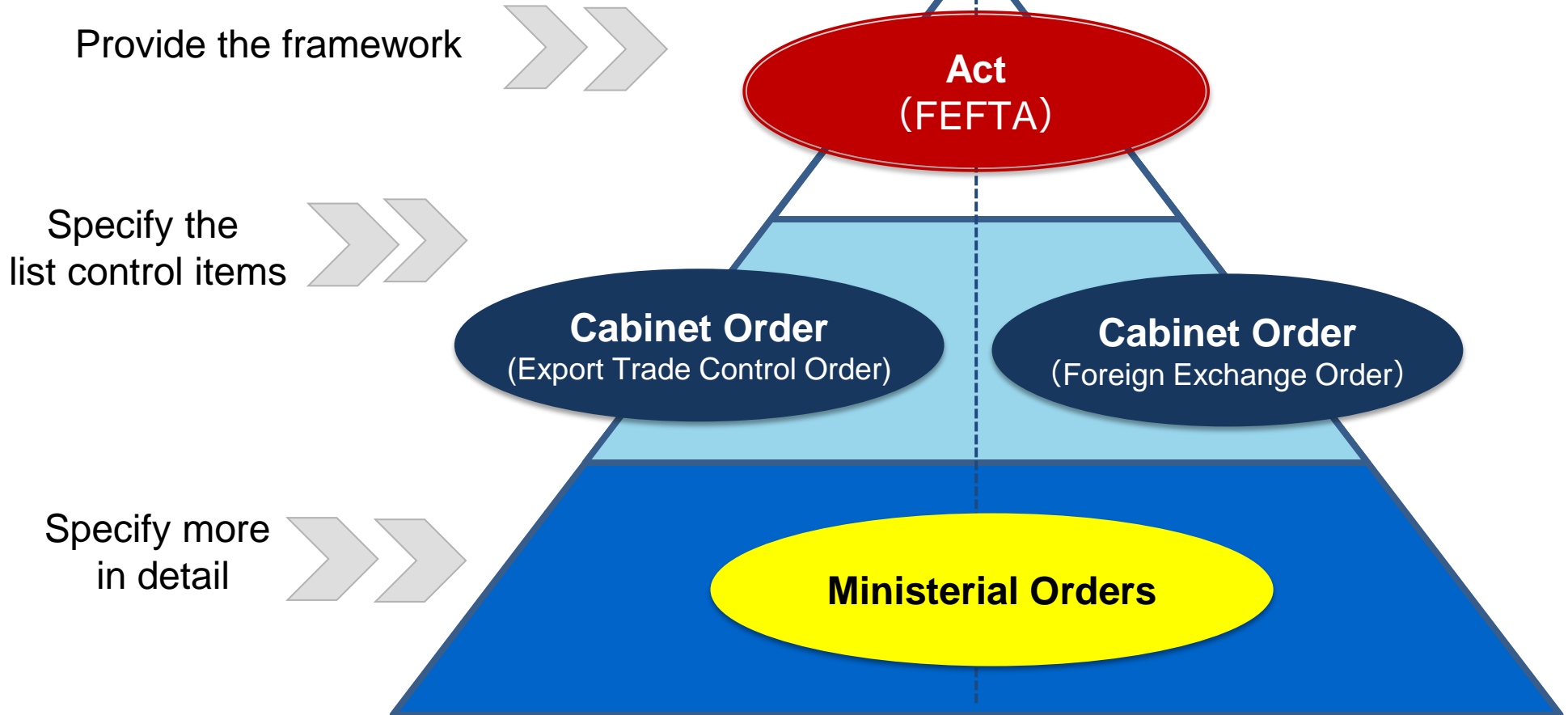
## **2. Current and Future Efforts**

- **Reform of the Law and Regulation**
- **Intangible Technology Transfer (ITT)**
- **International Outreach Cooperation**

# Foreign Exchange and Foreign Trade Act (FEFTA)

## Regulation of goods export

## Regulation of technology transfer



## ■ 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 the listed items)*

## ■ Control List Structure

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

List control

Catch-all control

# Legal framework for Security Export Control: 2

- **FEFTA** also sets forth **catch-all control** for items which could contribute to WMD related or military end-use activities.

FEFTA	Cabinet Order	List Control	Catch-all control of WMD	Catch-all control of Conventional Weapons
Article 48	Export Control Order	Category 1-15 <div>List of Goods</div>	Category 16 <div>List of Goods</div>	
Article 25	Foreign Exchange Order	Category 1-15 <div>List of Technologies</div>	Category 16 <div>List of Technologies</div>	
<div> <b>Country Chart</b> <ol style="list-style-type: none"> <li>White countries: <b>27</b> countries with strict export control systems</li> <li>UN arms embargo countries</li> <li>Other countries</li> </ol> </div>		<b>Regulated Items</b> <ul style="list-style-type: none"> <li>weapons</li> <li>listed dual use items related to WMD and conventional weapons</li> </ul>	<b>Regulated Items</b> All items or technologies that could contribute to WMD related or military end-use activities	
		<b>Regulated Destination</b> All countries	<b>Regulated Destination</b> All countries except for White countries	

- In case **there are concerns** that the goods or technologies in question could **contribute to WMD proliferation programs**, exporters **have to apply for an export license**.

## Items

**Any Items which are not on the list** (except for food, etc.)

The Commodity Watch List (40 +12\* items)

## Conditions

(\*only for Syria, as from 15 April. 2015)

### (1) The “Know” Condition

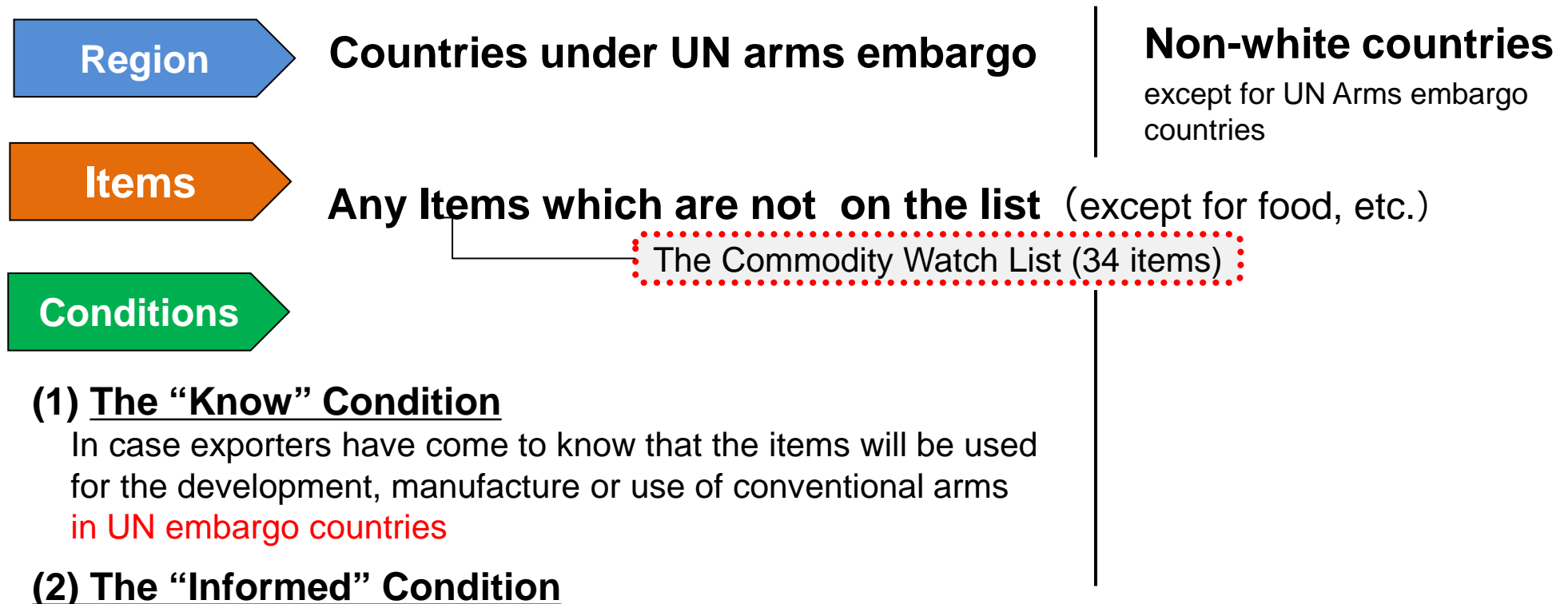
- In case exporters have come to know that the items will be used for the development, manufacture, use, storage etc. of WMD
- In case exporters have come to know that the end user is/was involved in WMD-related program, e.g. through “Foreign End User List”. However, it is not the case when it’s apparent that the item in question is to be used for a purpose other than the WMD-related activities,

### (2) The “Informed” Condition

- METI will inform an exporter to apply for an export license when METI considers that the items in question are/may be intended for WMD.



- In case **there are concerns** that the goods or technologies in question could **contribute to military end-use**, exporters **have to apply for an export license**.



## (1) The “Know” Condition

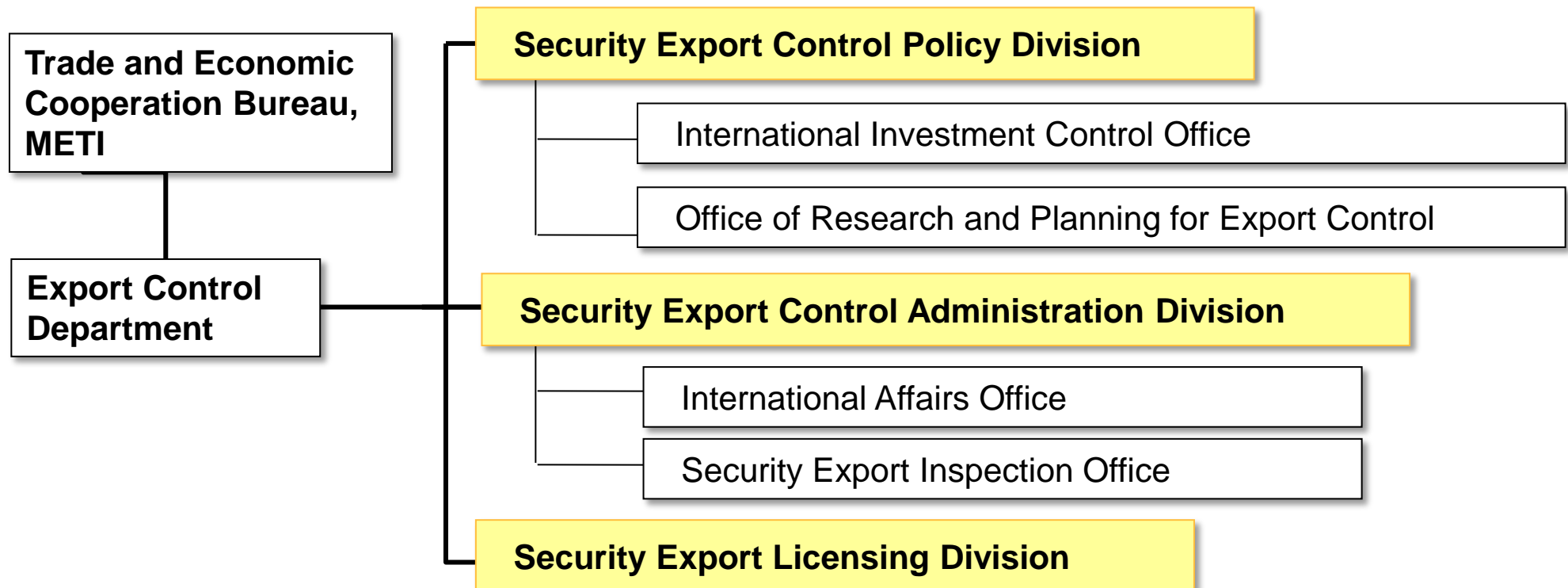
In case exporters have come to know that the items will be used for the development, manufacture or use of conventional arms  
in UN embargo countries

## (2) The “Informed” Condition

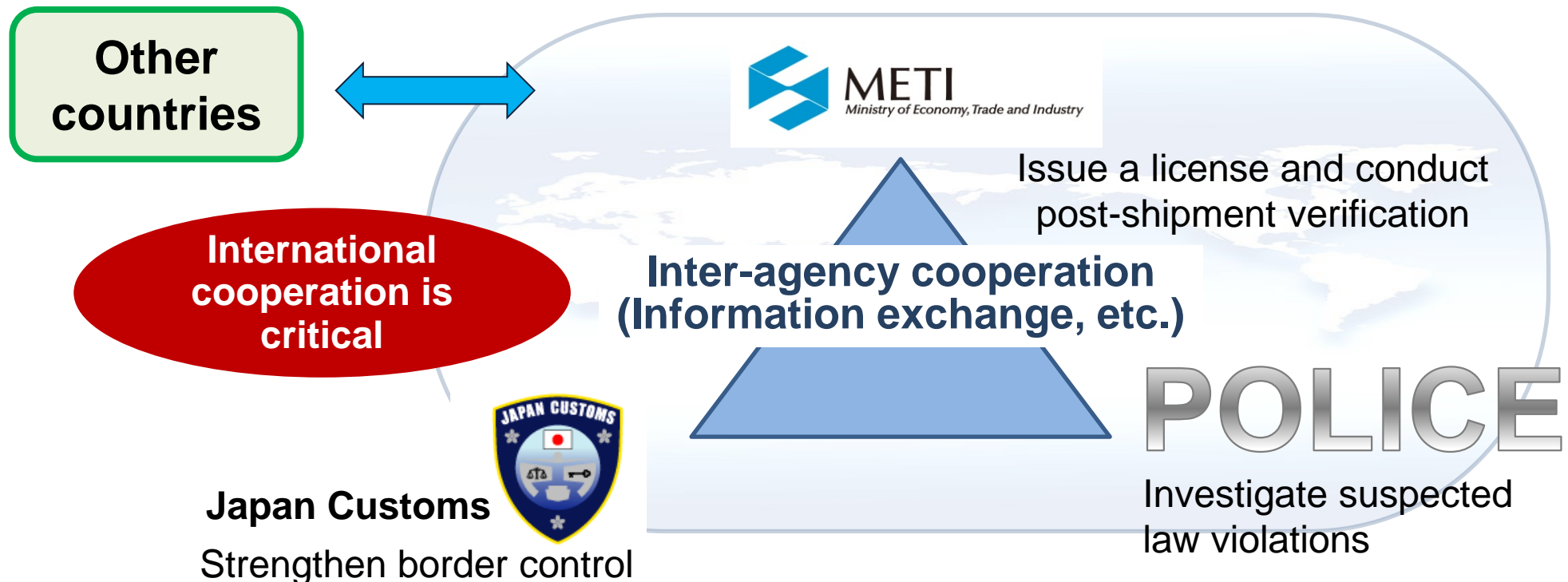
METI will inform an exporter to apply for an export license when METI considers that the items in question are/may be intended for a military end-use.

# Organization for Security Export Control in METI

- **METI** is in charge of export control with about **100 staff** concerning the security field.
- An export license is **issued only by METI** under FEFTA.
- METI **expanded its function** from June 2016.



- 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.
- To strengthen countermeasures against circumvention, **international cooperation is critical**.



# Penalties stipulated under the Act

## Criminal Penalty

- ✓ **Imprisonment** (up to a maximum of 10 years)
- ✓ **Fines** (up to a maximum of **10 million yen** or **five times in value** of the goods)

## Publication

- ✓ **A warning by METI**, which would be made public through METI website

## Administrative Penalty

- ✓ **Prohibition of export** (up to a maximum of three years)

# 1. Japan's Export Control System

- Outline of the Control System by FEFTA
- **Industry's Efforts**

# 2. Current and Future Efforts

- Reform of the Law and Regulation
- Intangible Technology Transfer (ITT)
- International Outreach Cooperation

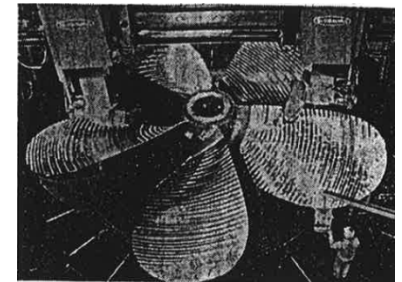
- **1949** The Foreign Exchange and Foreign Trade Control Act (FEFTA) was established.
- **1952** Japan acceded to **COCOM** (Coordinating Committee for Multilateral Export Controls)



Implementation of export control based on FEFTA

- **1987 Toshiba Machine Company Incident**  
(Export of machine tools from Japan to the Soviet Union)

**Strong anti-Japan sentiment in the US**



Mainichi Shimbun, Evening paper, 1987

- 
- ✓ **Loss of Japan's credibility**
  - ✓ **Replacement of the executives of the firm which exported machine tool**
  - ✓ **Shareholder lawsuit**

- After the incident, **strict export control was introduced and implemented** by the effort of both government and industries.

## Government

- ✓ Strengthened export control organization
- ✓ Strengthened penalties
- ✓ Extended the prosecution prescription for illegal export
- ✓ Introduced Internal Compliance Program (ICP)

## Industries

- ✓ Introduced and implemented strict export control ICP
- ✓ Implemented independent measures  
(e.g. Relocation detection devices)

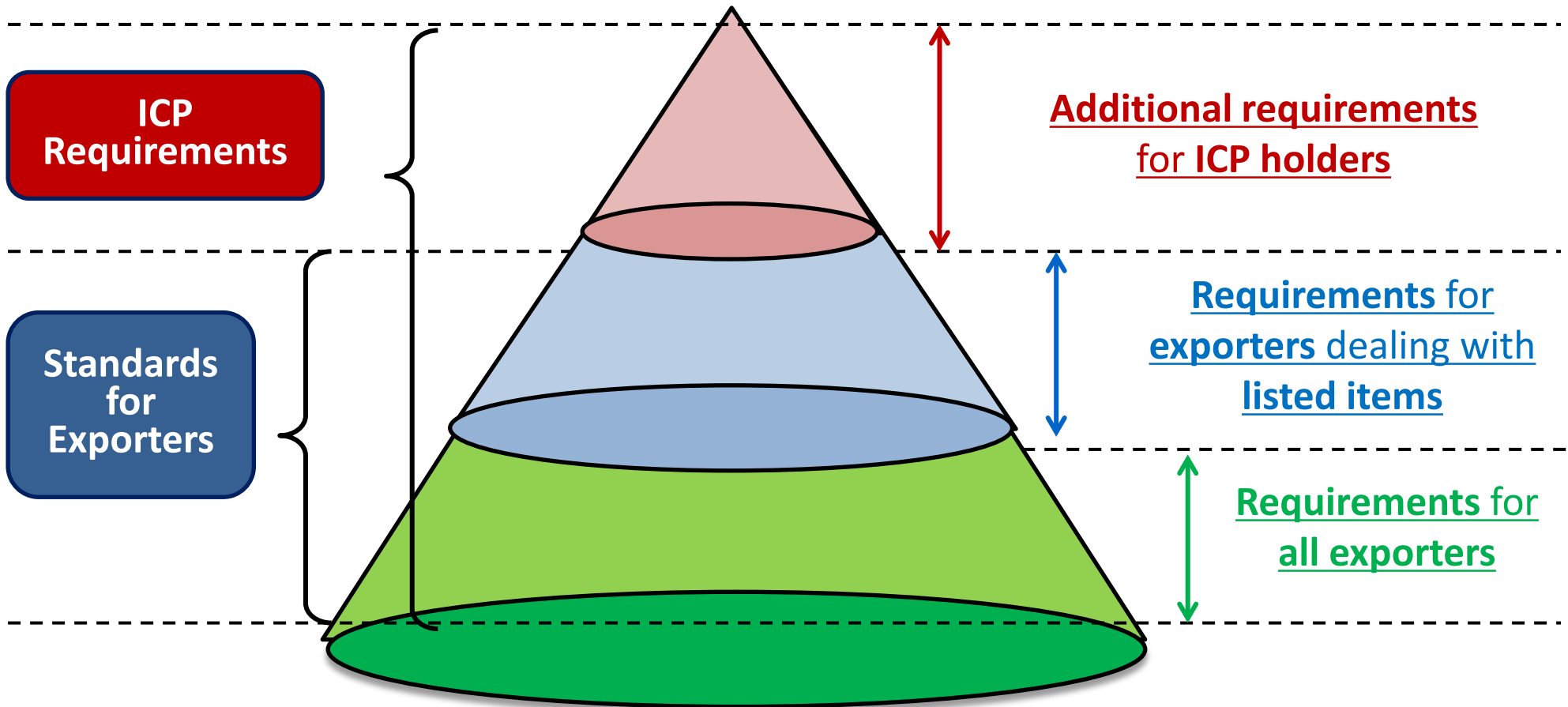


**Restore  
credibility**

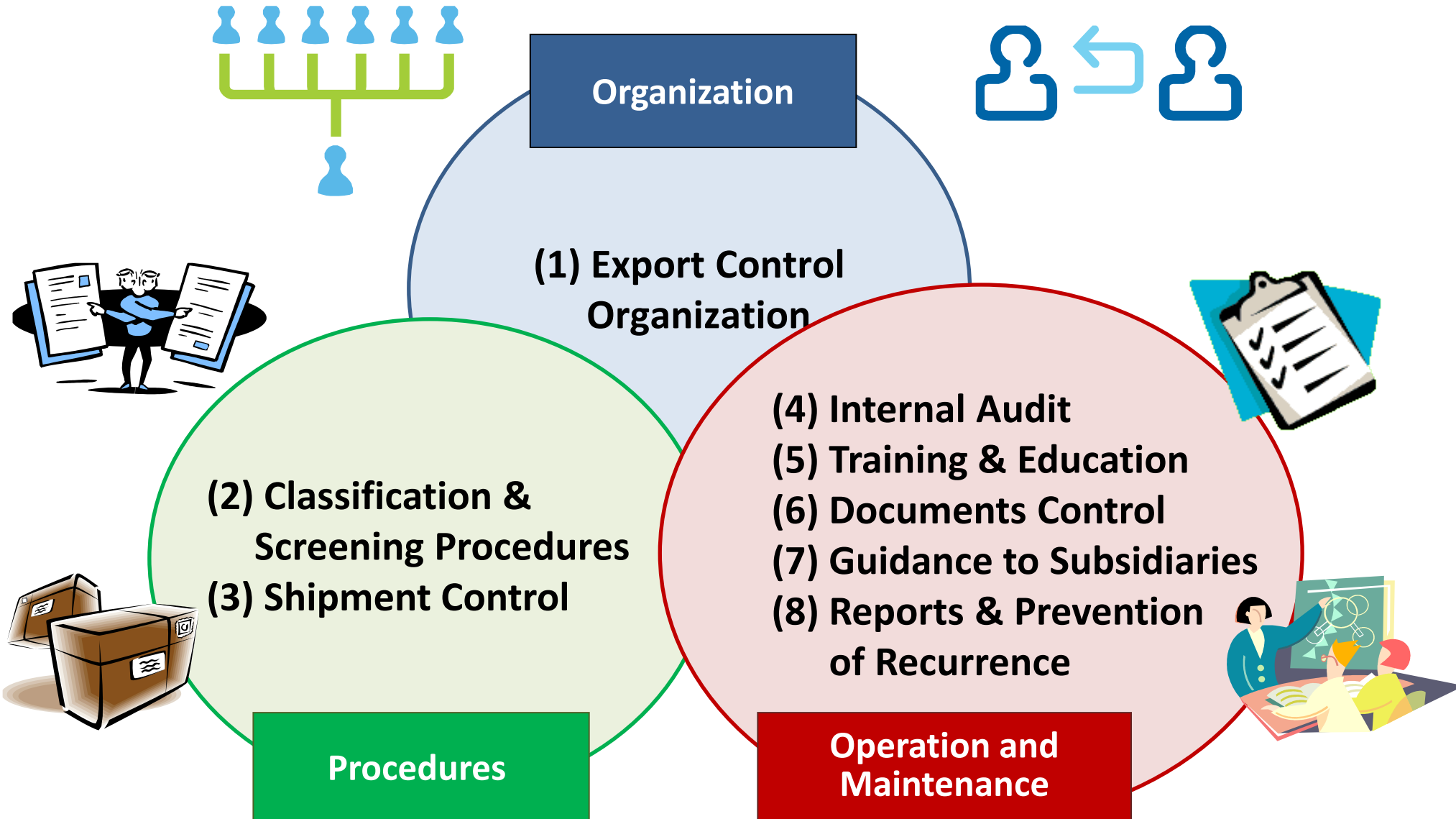
- An **ICP** is an **exporter's internal policy** to comply with the export control law and regulations.
- Having an ICP is **not mandatory**, but METI has been encouraging exporters in Japan to establish an ICP, and exporters which have developed ICPs are **registered by METI since 1987**.
- METI has also been encouraging overseas subsidiaries to develop ICPs since 2005.
- Currently the number of companies which have been registered is about **1,500**.



# ICPs and “Standards for Exporters”



# Main requirements for ICPs



## Exporters



**Can clarify their internal procedures and responsibilities.**



**Can minimize the risk of failing to follow the export control procedures.**



**Can appeal to the public as an excellent exporter.**



**Can apply for a bulk export license.**

## Government



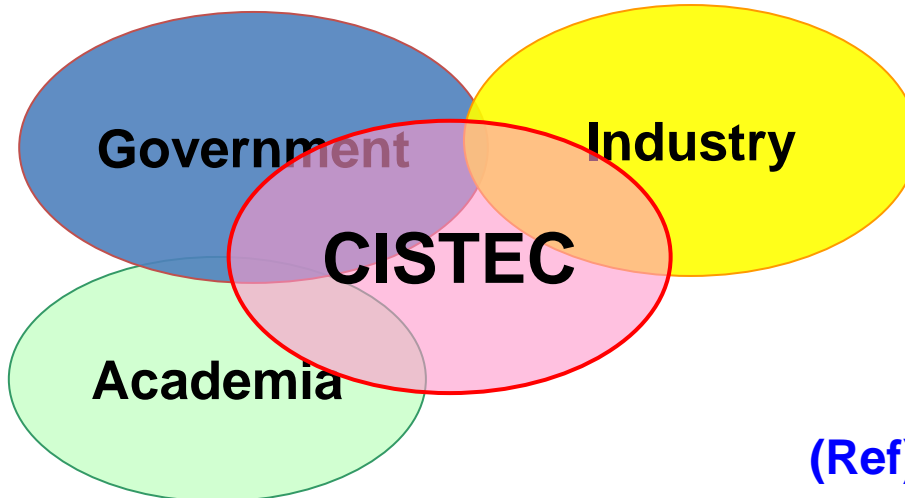
**Can reduce the risk of inadvertent illegal exports.**



**Can concentrate human resources on crucial matters.**

**Beneficial for both exporters and the government**

- Center for Information on Security Trade Control (CISTEC) is the **only non-profit and non-governmental organization** specializing in security export control in Japan.
- Founded in 1989, operated by the fund from the industry.
- The number of associated members: **422** (including major exporting companies in Japan)
- Major mission: serving as a **channel** among the industry, government and academia.



(Ref) <http://www.cistec.or.jp/english/index.html>

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# Changes of Security Environment

## Europe

- Terrorist attacks in Paris in November, 2015.  
Truck attack in Nice in July, 2016.
- Bombings in Brussels in March, 2016.
- Terrorists seeking atomic materials (dirty bomb).  
Possible use of drones for CBW.

## North Korea

- 4<sup>th</sup> and 5<sup>th</sup> nuclear tests in January and September, 2016
- Series of ballistic missiles launches including satellite launches and SLBMs. (more than 20 times in 2016)

## Africa

- Shopping mall attack in Nairobi in September 2013.
- Continuous terrorist attacks in Nigeria.

## South East Asia

- Bombing in Bangkok in August 2015.
- Bombing in Jakarta in Jan. and July, 2016.
- Attack in Dhaka in July 2016.

## Middle East

- Conflicts in Syria and Iraq. Actual use of chemical weapon (mustard gas, chlorine gas).
- Ballistic missiles launch by Iran in March, 2016.
- Airport attack in Istanbul in July, 2016.

# Important Elements for Effective STM

- **Foreign Direct Investment (FDI) and Intangible Transfer of Technology (ITT)**
  - FDI - direct acquisition of R&D capability
  - ITT - academic and research activities FD
- **International Cooperation**
  - Rapid economic growth of Asian regions and the development of international businesses
  - Diversified procurement activities by circumventing trade, using third countries, front companies or falsifying information, etc.



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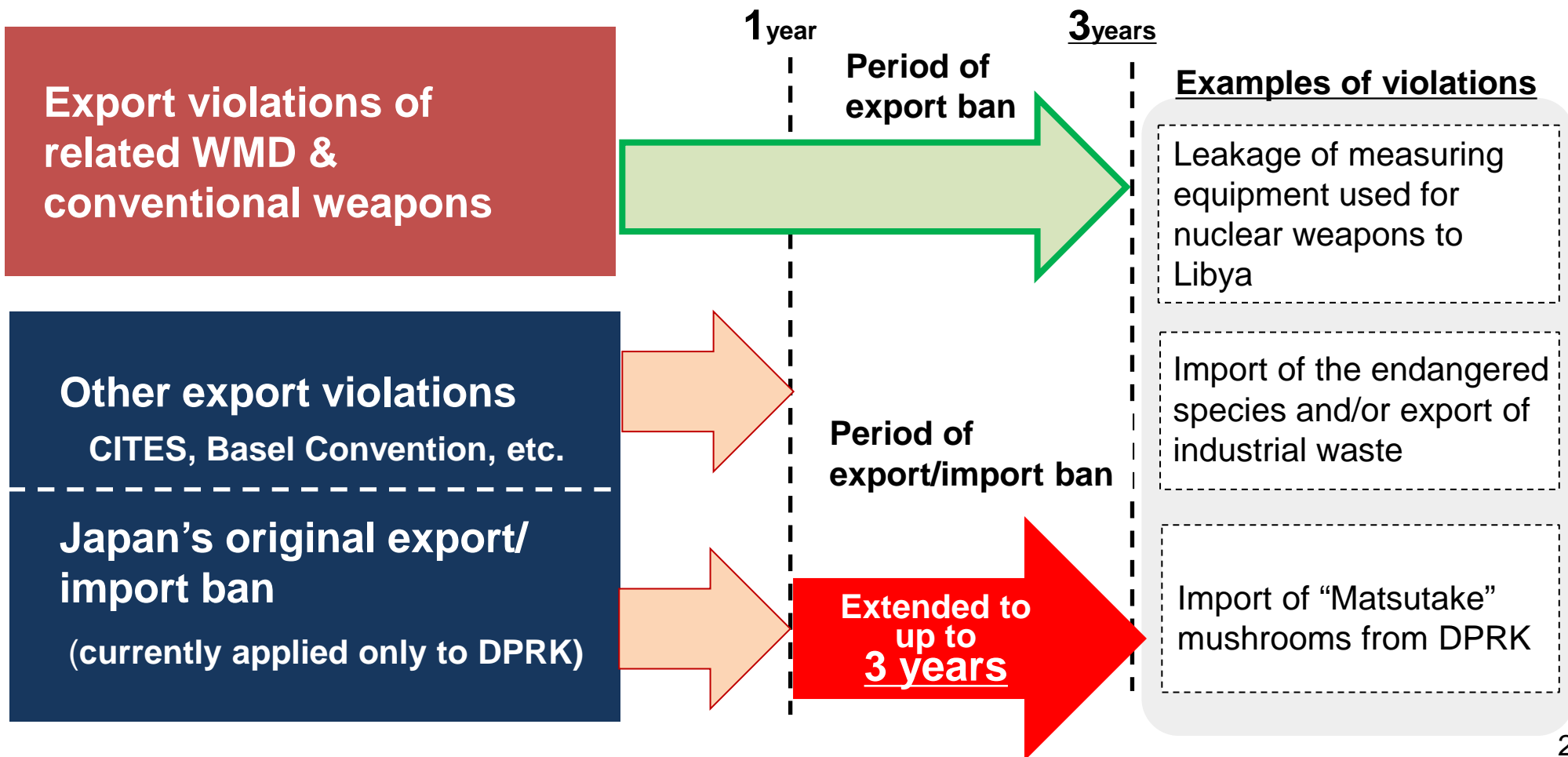
# Modification of the FEFTA on Criminal Charges I

- The amount of fines applied to illegal conducts of exports or imports **will be raised** (The maximum fines will be increased).
- Criminal charges (imprisonment + fine) will **be applied against violations of the license requirements** (before: no criminal fines).

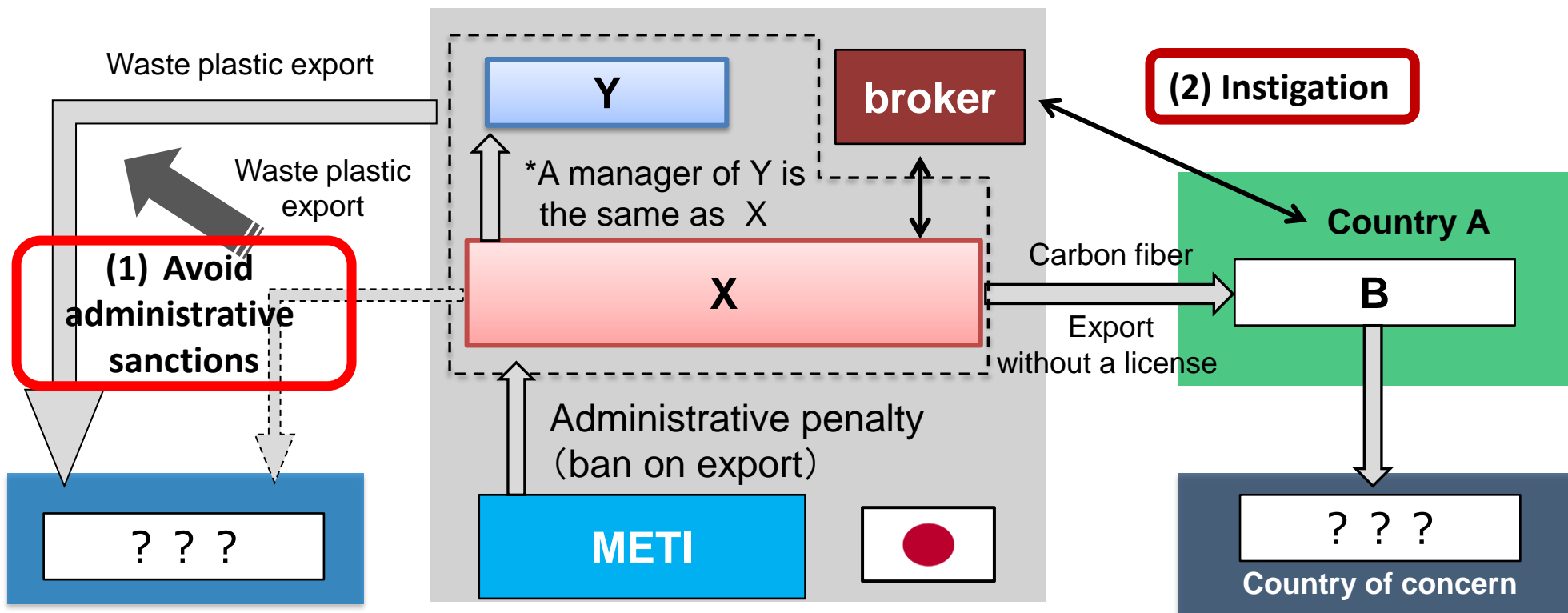
	Target	Illegal conduct of import/export		
		WMD	Conventional Arms	Others
Present System	Individual and Company	10 million yen or 5 times of the export price	7 million yen or 5 times of the export price	5 million yen or 5 times of the export price

Amendment	Individual	<u>30 million yen</u> or 5 times of the export price	<u>20 million yen</u> or 5 times of the export price	<u>10 million yen</u> or 5 times of the export price
	Company	<u>1 billion yen</u> or 5 times of the export price	<u>700 million yen</u> or 5 times of the export price	<u>500 million yen</u> or 5 times of the export price

- **Extension of the upper limit** of the period of administrative penalties imposed on violators who received export/import bans.



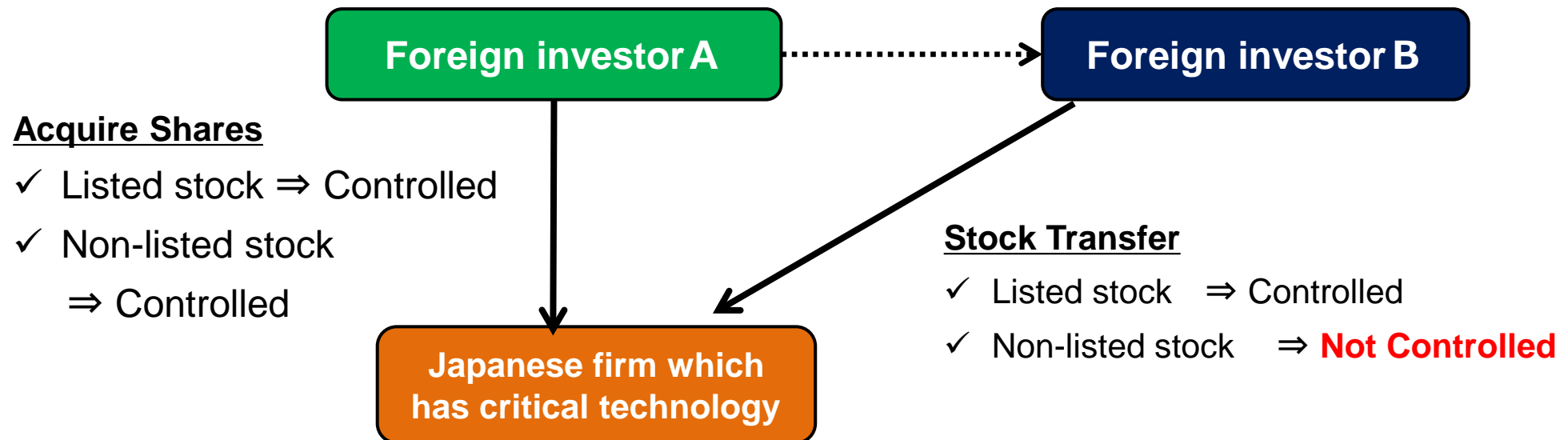
- Introduction of a new regulation to **prohibit persons who received administrative penalty from taking a new position in another company.**
- **Adding brokers related to suspicious transactions to the subject of on-site inspections.**



# Modification of the FEFTA on Inward Direct Investment

- **Foreign investors** who would **purchase non-listed stocks** from **other foreign investors**, are **obliged to submit prior notification to the GOJ** if such transaction is deemed to pose threat to the national security.
- Ministries **can order foreign investors to sell stocks**, stop the dealing, etc., where the investment is deemed as harming national security.

## ■ Overview of the present regulation



# Export Control and Inward Direct Investment Foreign Exchange and Foreign Trade Act (FEFTA)

Carbon  
fiber



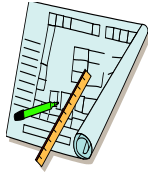
## Goods Export

Critical goods related to  
*international peace and security*



**Permission is  
required**

Design  
drawing



## Technology Transfer

Critical technologies related to  
*international peace and security*



**Permission is  
required**

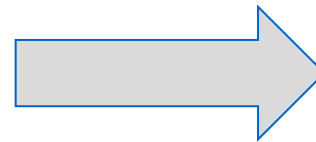
Japanese firm



## Inward Direct Investment

Inward direct investments related to

- concerns of national security
- maintenance of public order
- protection of public security



**Prior notification  
to the GOJ**

METI can order the company to change  
or discontinue the investment

***Have an effect on ITT***

# (Future Challenge) Restructure of the Control list

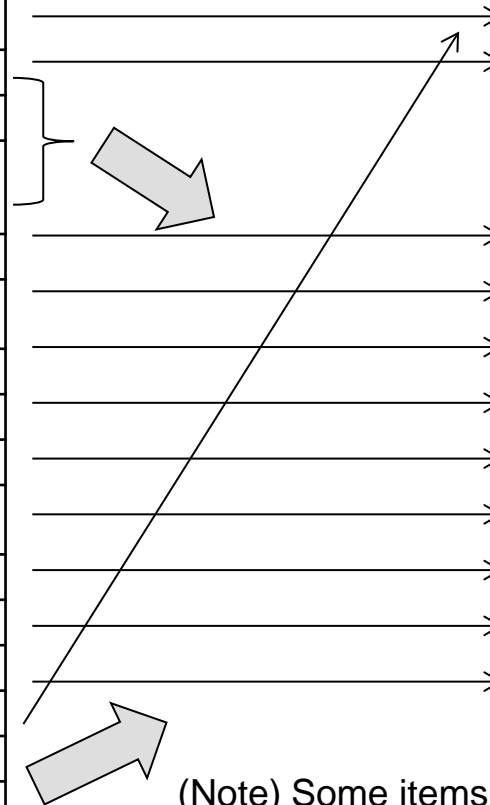
- The **numbering** of the control list of Japan is **different from other countries**, and to **mitigate the burden** of business operators, METI is considering of making it consistent with the EU control list.

## 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's 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. 29

## 1. Japan's Export Control System

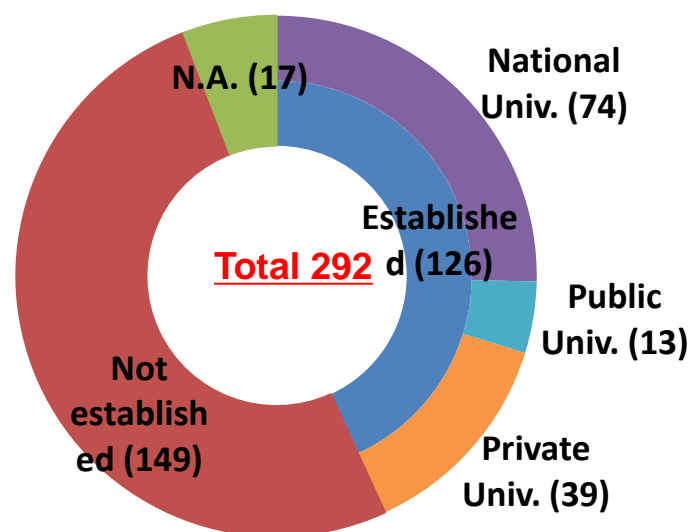
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## 2. Current and Future Efforts

- Reform of the Law and Regulation
- **Intangible Technology Transfer (ITT)**
- International Outreach Cooperation

- **Hold export control seminars** for academic institutions and industry.
- **Revise** the export control related documents (guidance and FAQs).
- **Dispatch export control advisors** to academic institutions to support establishing internal export control system and raise awareness of researchers. (FY 2017-)

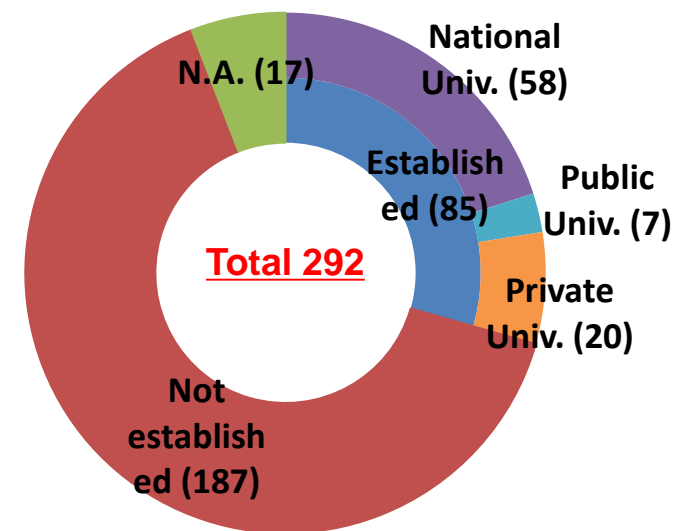
## 1. Establishment of an internal export control section



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

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

## 2. Establishment of ICP for export control



Ref: **Survey to universities with medical and/or engineering department**  
by the Ministry of Education, Culture, Sports, Science and Technology (MEXT), etc.



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## The 24<sup>th</sup> Asian Export Control Seminar was held - February 21-23, 2017

- **Organized by METI, MOFA, Center for Information on Security Trade Control (CISTEC)**
- **32 countries and regions, 190 participants in total**



<http://www.meti.go.jp/press/2016/03/2017030>

[2004/20170302004.html](http://www.meti.go.jp/press/2016/03/20170302004.html)

[http://supportoffice.jp/outreach/2016/asian\\_ec/](http://supportoffice.jp/outreach/2016/asian_ec/)

### ✓ **Asian countries and regions**

Bangladesh, Cambodia, China, Hong Kong, India, Indonesia, The Republic of Korea, The Lao PDR, Malaysia, Mongolia, Myanmar, Pakistan, the Philippines, Singapore, Sri Lanka, Chinese Taipei, Thailand and Viet Nam

### ✓ **Other countries and regions**

Australia, Canada, EU, France, Germany, Kazakhstan, Mexico, the Netherlands, Switzerland, Turkey, UAE, UK and USA

### ✓ **International Organization, etc.**

AG, MTCR, NSG, WA, WCO, Panel of Experts of UNSCR 1874, SIPRI, State University of New York, University of London, University of Georgia, etc.

- **Increase awareness** of the importance of export control
- Pursue to conduct **effective compliance programs** in industries

