

## Japan export control update: Introduction of prior reporting obligations for international transfer of key technologies and new exporter verification requirements

The direction of export control reform proposed by the METI Security Trade Control Subcommittee

Competition Law / International Trade Newsletter

May 28, 2024

Authors:

[Kazuho Nakajima](#)

[k.nakajima@nishimura.com](mailto:k.nakajima@nishimura.com)

[Hanako Ohwada](#)

[h.ohwada@nishimura.com](mailto:h.ohwada@nishimura.com)

[Yuki Sakurada](#)

[y.sakurada@nishimura.com](mailto:y.sakurada@nishimura.com)

[Kazuki Yoshii](#)

[k.yoshii@nishimura.com](mailto:k.yoshii@nishimura.com)

On April 24, 2024, the Security Trade Control Subcommittee of the Industrial Structure Council (“**Subcommittee**”), established within the Ministry of Economy, Trade and Industry (METI) and consisting of expert members, issued an interim report (“**Interim Report**”)<sup>1</sup> recommending changes to export control regulation under the Foreign Exchange and Foreign Trade Act (“**FEFTA**”). This recommendation comes against the backdrop of a new national security environment in which we observe rapid technological advances and rising risk that general-use goods and technologies (collectively, “**items**”) are converted to military-use<sup>2</sup>.

Export control under the FEFTA consists of regulations requiring a license for the export of (a) certain listed items (list control) and (b) non-listed items when there is a risk that the item will be used for the development, manufacture, or use (collectively “**development, etc.**”) of weapons of mass destruction or conventional weapons (catch-all control). The items subject to the list control mainly consist of those that, under international export control regimes, have been agreed upon as highly likely to be used for the development, etc., of weapons of mass destruction and conventional weapons.

The Interim Report raises the following issues relating to the list control, which is based on international export control regimes, in particular, the Wassenaar Arrangement (“**WA**”), which aims to prevent excessive accumulation of conventional weapons.

- (i) “States with domestic industrial and technological infrastructures,” which the WA did not envision, are now the subject of national security concerns, as such states may be capable of developing underdeveloped technologies or non-advanced dual-use technologies into military use.
- (ii) Technologies of national security importance are not limited to those that are subject to the control under the international export control regimes, and the possibility of military application of general-

---

<sup>1</sup> <[https://www.meti.go.jp/shingikai/sankoshin/tsusho\\_boeki/anzen\\_hosho/pdf/20240424\\_1.pdf](https://www.meti.go.jp/shingikai/sankoshin/tsusho_boeki/anzen_hosho/pdf/20240424_1.pdf)>, available in Japanese.

<sup>2</sup> Since November 2023, the Subcommittee has met five times with the agenda item “Current Status and Issues on Security Trade Control,” but it has not disclosed any of its discussions, as the materials and the minutes of the meetings are closed to the public. On the other hand, “Action Plan for Strengthening Industrial and Technological Infrastructure for Economic Security (Progress since Adoption and Future Direction),” a document published by METI in February 2024, revealed that the Subcommittee was discussing a reform in export control as a measure against technology leaks. In particular, the document stated that “unlike goods, technologies are difficult to control once they have been leaked; therefore, a new control mechanism focusing on technologies is an important issue to be discussed”.

use items is increasing.

- (iii) Technology-holding countries that do not participate in the WA (such as China and Israel) have come to possess sensitive technologies, and sensitive technologies are proliferating outside the WA framework.

In this newsletter, we explain the potential changes to the export control regulations proposed by the Interim Report. It is expected that METI will proceed to revise the relevant cabinet and ministerial ordinances<sup>3</sup> (media coverage suggests such revision by autumn of this year.).

## 1. Verification requirement concerning end-use and end-users regarding conventional weapons when exporting to General Countries (including China and Russia) and establishment of new “inform” requirements for exports to Group A countries (including the U.S.)

The catch-all control consists of two categories: (i) regulations related to weapons of mass destruction and (ii) regulations related to conventional weapons. The latter, the catch-all control relating to conventional weapons, has different regulations depending on the destination country of the export: (a) “Group A” countries, consisting of 26 countries<sup>4</sup> including the U.S., (b) UN arms embargo countries (such as Iran and North Korea), and (c) other countries including China and Russia (“**General Countries**”).

### ***Proposed license requirement regarding exports to General Countries***

First, the current regulations on exports (including exports of goods and transfers of technologies; the same applies in this section 1) to General Countries, including Russia and China, do not require a license unless METI informs the exporter of a risk that the item will be used for the development, etc., of conventional weapons (the “inform” requirement). Here, the Interim Report proposes an additional category of license requirement for exports to General Countries, which is triggered when the exporter identifies a risk of the exported item being used for the development, etc., of conventional weapons (the objective requirement).

The Interim Reports states that the targets of this new license requirement should be limited to items of high national security concern<sup>5</sup> and items for which the exporter can verify the end-use and end-users.<sup>6</sup>

The Interim Report further proposes that the verification required of exporters extends not only to the end-use

---

<sup>3</sup> While the Subcommittee has issued several “interim” reports proposing regulatory changes, it has not published a “final” report for any of the suggested regulatory changes – so is expected for this Interim Report.

<sup>4</sup> Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, South Korea, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States.

<sup>5</sup> Examples of the Interim Report include technologies related to precision guided weapons, technologies that contribute to the advancement of military command systems, and game-changing technologies.

<sup>6</sup> Examples of the Interim Report include equipment that is jointly developed with the end-user, specially designed equipment that is manufactured in response to the end-user’s request or is to be incorporated into a specific product, and equipment that requires local installation and maintenance by the exporter.

(i.e., whether the exported items will be used for the development, etc., of conventional weapons) but also to the end-users (i.e., whether the end-users have performed development, etc., of conventional weapons in the past or are planning to do so in the future). To facilitate end-user verification, it is proposed that the government provide exporters with information on the entities of concern. The Interim Report raises three ways in which the government can provide information on entities of concern: public announcement and dissemination (e.g., as in the U.S.<sup>7</sup>), closed and individual information sharing (e.g., as in the U.K. and South Korea), or a combination of these two methods.

Furthermore, the end-users may explain to the exporters that the items subject to the export will not be used for any activities relating to conventional weapons despite the fact that the end-users have performed development, etc., of conventional weapons or are planning to do so. In this case, the exporters may find it difficult to determine the existence of risk that the items will be used for purposes relating to conventional weapons. The Interim Report addresses such potential difficulty in the exporters' decision making by proposing to announce Red Flags<sup>8</sup> that help the exporters evaluate the risk of items being used for the development, etc., of conventional weapons, based on the conditions and circumstances of the relevant transactions.

Therefore, Japan's export control regulations, if amended as proposed by the Interim Report, will create items ("Designated Items") for which exporters will need to verify the end-use and end-users from a conventional weapons perspective, without waiting for METI's "inform" notice, when exporting them to General Countries, including China and Russia. Such verification will need to be performed carefully by reviewing the conditions and circumstances of the relevant transactions in accordance with the Red Flags which are to be published.

To comply with these new rules, the exporters will need to establish or change their internal classification procedures to cover the Designated Items, and to establish an internal system to verify the end-use and end-users and conduct negative checks in accordance with the Red Flags based on the conditions and circumstances of the transaction.

### ***Proposed license requirement regarding exports to Group A countries***

Next, while exports to Group A countries are not subject to the catch-all control under the current regulations, the Interim Report emphasizes the need to prevent countries of concern from circumventing the regulations by transferring items via Group A countries. The Interim Report not only proposes that the Japanese government promote cooperation with the relevant authorities of Group A countries, but also recommends that, as a last resort, exports to Group A countries should be subject to the "inform" requirement, by which METI can impose a license obligation by notifying the exporter.

---

<sup>7</sup> <<https://www.bis.gov/regulations/end-user-guidance#military-end-use-and-military-end-users>>

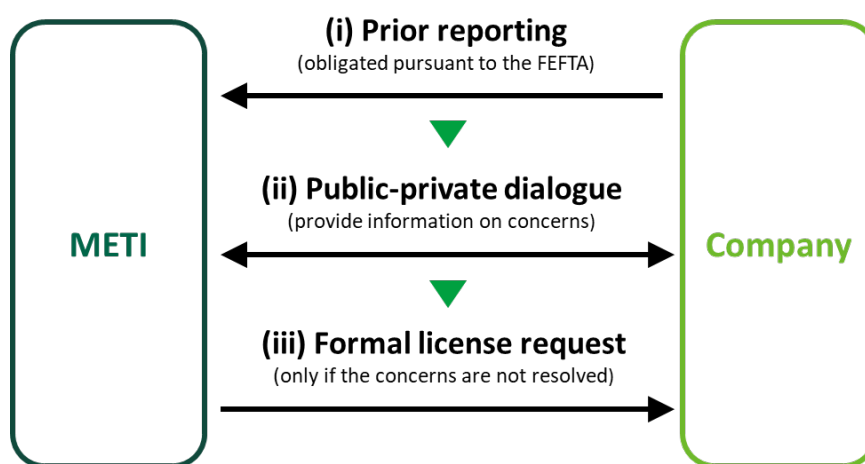
<sup>8</sup> The Appendix of the Interim Report introduces the Red Flags of the U.S. Export Administration Regulations (EAR) (Supplement No. 3 to Part 732) as an example of regulations in other countries. The EAR's Red Flags include, for example, "the customer or purchasing agent is reluctant to offer information about the end-use of a product," "when questioned, the buyer is evasive or unclear about whether the purchased product is for domestic use, export or reexport. or re-export," and "the customer is unfamiliar with the product's performance characteristics but still wants the product."

## 2. Prior reporting obligations for the international transfer of key Japanese technologies

Under the current interpretation and operation of the FEFTA, whether an export license is required for the export of goods or the transfer of technologies depends on the intended use of the goods or technology at the time of the transactions. Because of concerns that civilian purposes at the time of the transactions eventually may be converted to military purposes, and given that, if such concerns arise, the degree of difficulty in managing the technology is higher than managing the goods, the Interim Report recommends the prevention of technology leakage from Japan to foreign entities of concern by identifying high-risk transactions in terms of both technology type and transaction type.


First, the Interim Report states in general terms that the technology types to be regulated are those that other countries are interested in acquiring and those in which Japan has an indispensable or advantageous position. It also states that in identifying specific technologies to be regulated, the Japanese government needs to strengthen its intelligence functions and engage in dialogue with the industrial community. The report continues by stating the transaction types to be regulated are those related to activities that enable manufacturing or product development in other countries, including transfer of manufacturing to local subsidiaries or joint ventures or international outsourcing and licensing.

On the other hand, with respect to the enforcement of the regulations, the Interim Report recommends a step-by-step approach where METI will not impose export license requirements from the outset, but will instead impose reporting requirements prior to transactions (i.e., before transaction agreements are concluded) by indicating to the exporters the types of technology and transaction activities subject to the reporting requirements<sup>9</sup>, and will engage in dialogue with the exporters, including sharing information on concerns, and, only if the concerns are not resolved, will impose export license requirements. Since the procedures require the exporters to report to and consult with METI prior to commencement of transactions, the Interim Report requests that METI indicate the time required for the procedures.



Created based on Chart 4 of the Interim Report

<sup>9</sup> The Interim Report proposes, for example, to make the report subject to reporting under Article 55-8 of the FEFTA. If the matter is subject to reporting under Article 55-8 of the FEFTA, penalties may be imposed for failure to report or for making a false report (Article 71, item 9 of the FEFTA).



The Interim Report also states that if exporters fail to report in advance, METI should act through a careful guidance process based on the Compliance Standards for Exporters and Transferers (the standards that business operators are required to comply with under Japan's export control regulations when they exports goods or transfer technologies), except in cases of malicious conduct, and encourage exporters to develop internal systems to enable them to manage transactions subject to the regulations.

If Japan's export controls regulations are amended as proposed by the Interim Report, certain transactions involving technologies in which Japan has an advantage that enable manufacturing or product development in other countries will require prior reporting to and consultation with METI. In some of these cases, export licenses may be required, so the following issues must be addressed and communicated within a company: (i) development of an internal system to identify transactions subject to the regulations (especially since reporting is required prior to the conclusion of an agreement, it is necessary to inform the transaction team so that they can accurately understand the regulations), (ii) consideration of the regulation's impact on the success or failure of the transaction and the timeline of the transaction if the company is required to comply with the procedures<sup>10</sup> and (iii) measures to reduce the risk of technology leakage.

### 3. Multi-layered international cooperation other than the WA

The Interim Report points out that the WA involves quite a large number of countries and requires consensus among participating countries to make decisions. As such, it may take considerable time before an item is added to the list of controlled items. On the other hand, export controls taken independently by each country are ineffective and lack predictability for exporters. Considering these circumstances, the following recommendations are presented in the Interim Report.

- (1) Items for which technical discussions have matured within the international export control regime, including the WA, should be subject to advance controls implemented by allied and like-minded countries (even if total consensus cannot be reached for political reasons, advance controls should be implemented by allies and comrades).
- (2) As a more agile approach, proactive export control should be implemented in cooperation with countries that share security concerns and possess technologies similar to those of Japan.<sup>11</sup>

In May last year, the Japanese government made high-performance semiconductor manufacturing equipment subject to export controls from the perspective of complementing the WA. Given the recommendations above, more items may be added to the list of controlled items from the perspective of complementing the WA in the

---

<sup>10</sup> For example, if the establishment of a manufacturing site or joint venture is premised on the transfer of a certain technology, the availability of such technology transfer is expected to affect the availability and schedule of the establishment of the manufacturing site or joint venture.

<sup>11</sup> The European Commission has similarly recognized the problems with the multilateral international export control regime, and in its [White Paper](#) on the review of export control rules applicable to EU member states published on January 24, the European Commission also noted the importance of finding an immediate solution to include items not adopted under the multilateral international export control regime due to opposition by certain member states (notably Russia). It is proposed that the problems be addressed by revising the EU's list of dual-use controlled items.



future.

The Interim Report also indicates the following measures with a view to strengthening enforcement activities against circumventing exports:

- (3) Prevention of loopholes in export control through coordinating reviews and operations in the WA (exchange of information on rejected cases and concerns).
- (4) Prevention of circumvention of exports via third countries through coordination of export control with non-WA participating countries (especially Singapore, Malaysia, and the Philippines).

In order to respond to the business needs of our clients, we publish newsletters on a variety of timely topics. Back numbers can be found [here](#). If you would like to subscribe to the N&A Newsletter, please fill out [the N&A Newsletter subscription form](#).

This newsletter is the product of its authors and does not reflect the views or opinion of Nishimura & Asahi. In addition, this newsletter is not intended to create an attorney-client relationship or to be legal advice and should not be considered to be a substitute for legal advice. Individual legal and factual circumstances should be taken into consideration in consultation with professional counsel prior to taking any action related to the subject matter of this newsletter.

**Public Relations Section, Nishimura & Asahi** [newsletter@nishimura.com](mailto:newsletter@nishimura.com)