

Introduction of Prior Reporting Obligations for International Transfers of Key Technologies

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Author:

[Kazuho Nakajima](#)

k.nakajima@nishimura.com

[Hanako Ohwada](#)

h.ohwada@nishimura.com

[Yuki Sakurada](#)

y.sakurada@nishimura.com

[Yurara Hirayama](#)

yur.hirayama@nishimura.com

On September 6, 2024, the Ministry of Economy, Trade and Industry (METI) of Japan published a draft ministerial ordinance¹ (“**Draft Ministerial Ordinance**”) and a draft public notice² (“**Draft Public Notice**”) concerning the establishment of a public-private dialogue system for strengthening the management of technology (“**Proposed System**”). The public comment procedure for the drafts ran until October 5. The establishment of this public-private dialogue system is based on the [interim report](#) (“**Interim Report**”) of the Security Trade Control Subcommittee of METI’s Industrial Structure Council, dated April 24, 2024, which proposed a review of export controls in light of the new security environment, including rapid technological advances and rising risks of dual-use goods and technologies being diverted to military use.³

METI stated that the Draft Ministerial Ordinance and Draft Public Notice were scheduled to be promulgated in mid-October, with a two-month public notice period, and to come into effect before the end of the year. As of the date of this newsletter, the Draft Ministerial Ordinance and Draft Public Notice have not yet been promulgated.

1. Overview of Proposed System

Japan’s conventional security trade control system has focused on whether there is a concern about the risk of goods and technologies being used as weapons at the time of cross-border transactions. However, once technology has been transferred, there is a risk that it will spread over time. Recently, the boundary between military and civilian technology has disappeared; therefore, even if the purpose of a transaction is civilian use, there are concerns that the end user or the end use may change in a way that results in military use(s) that could not be foreseen at the time of the transaction. The Proposed System intends to establish a measure to strengthen the management of “technology” with a view to the passage of time, given these changing circumstances.⁴

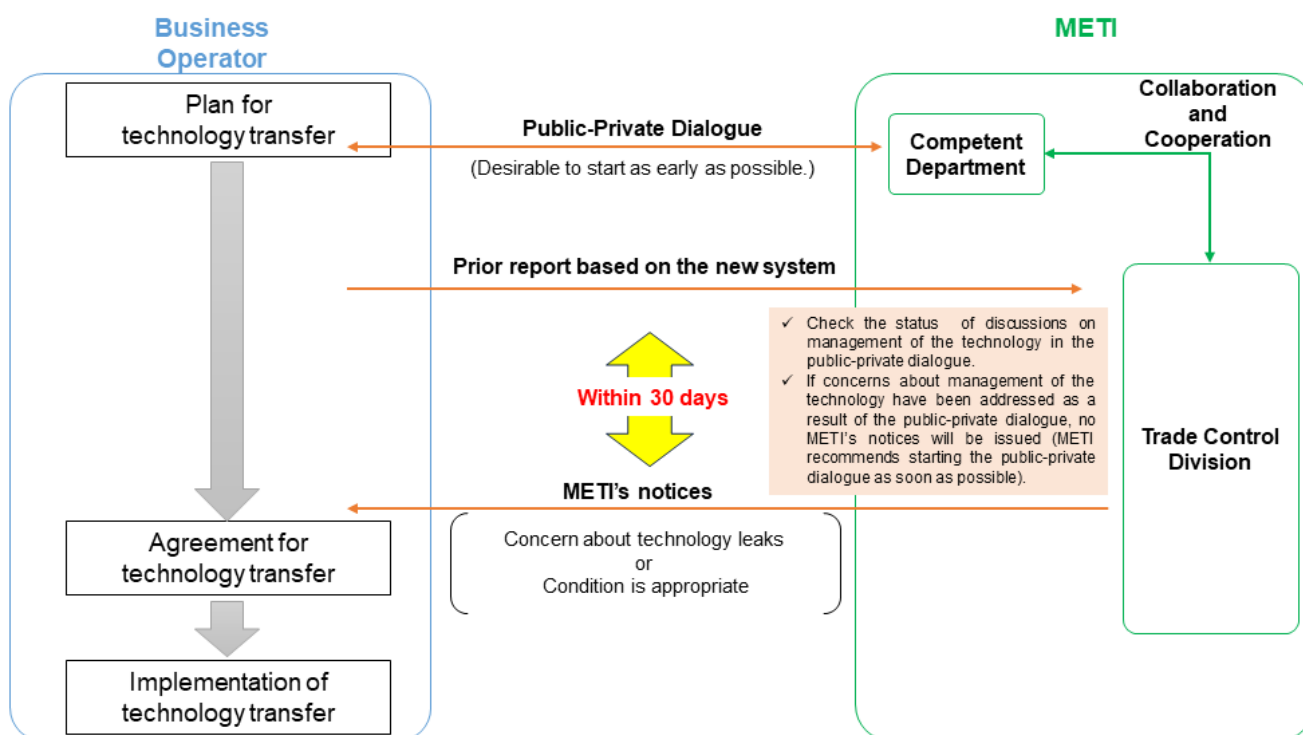
¹ Draft ministerial ordinance for partial revision of the Ministerial Ordinance on Trade Related Invisible Trade, etc.

² Draft matters to be reported by a person who intends to engage in a transaction for purposes of providing technology subject to important management based on the Provisions of Article 10, Paragraph 3 of the Ministerial Ordinance on Trade Relation Invisible Trade, etc.

³ Please also see our newsletter “[Japan export control update: Introduction of prior reporting obligations for international transfer of key technologies and new exporter verification requirements](#)” published on May 28, 2024.

⁴ Page 9 of the Interim Report. “Goods” are not covered by this Proposed System. The provisions concerning goods (Article 4, Paragraph 1, Item 3, Sub-items (b) and (d) of the Export Trade Control Order), which correspond to Article 9, Paragraph 2, Item 7, Sub-items (b) and (d) of the Draft Ministerial Ordinance, have not been amended.

The Proposed System would require persons or entities that plan to engage in transactions involving the international transfer of technologies in which Japan has an advantage to file a report with METI in advance. If a business operator receives a notice from METI that there is a risk of technology leaks (diversion to military use) as a result of a dialogue between the business operator and METI on management of the technology, the business operator will be required to obtain a technology transfer license.⁵ Export controls under the Foreign Exchange and Foreign Trade Act (“FEFTA”) consist of list controls and catch-all controls. The requirement of the technology transfer license under the Proposed System is triggered by METI’s notices under the catch-all controls. The Proposed System is characterized by the procedures where (i) public-private dialogue with the competent department of METI (“Competent Department”) and (ii) prior reporting obligations to METI’s trade control division (“Trade Control Division”) precede METI’s notices.



METI “[Regarding the Establishment of a New Public-Private Dialogue System for Strengthening Technology Management](#)” (September 2024) (“Documents Related to Public-Private Dialogue System.”) Prepared with reference to page 6.

(1) Transactions subject to prior reporting

The Interim Report recommends that transactions covered by the Proposed System should be strictly limited to those that are high-risk from the perspectives of both the type of technology at issue and the type of transaction activities, considering the burden on industry and the dispersion of examination resources. The Draft Public Notice limits the types of covered technologies and transaction activities as follows.

⁵ Article 55-8 of the FEFTA, Article 18-8, Paragraph 1 of the Foreign Exchange Order (hereinafter referred to as the “Foreign Exchange Order”), Article 10, Paragraph 3 of the Draft Ministerial Ordinance, and the Draft Public Notice.

【Types of Technologies】

The covered technologies are those that other countries are interested in acquiring and in which Japan has a competitive advantage. These includes technologies that: (1) are subject to catch-all controls (technologies listed in the middle column of row 16 of the Appended Table of the Foreign Exchange Order) and (2) carry risks of diversion to military use⁶ if the recipient of the technology does not properly manage the information containing the technology after the technology is provided. The Draft Public Notice designates technologies related to the design or manufacturing of the following 10 items, in the fields of “electronic components,” “fibers,” “semiconductor integrated circuits,” and “electron microscopes.” The Draft Public Notice refers to these technologies as “technologies subject to important management.” Please note that the scope of some of the covered technologies is limited by specifications.

Electronic components

- (a) Multilayer ceramic capacitors
- (b) Surface acoustic wave (SAW) filters and bulk acoustic wave (BAW) filters
- (c) Electrolytic copper foil⁷
- (d) Dielectric film⁸
- (e) Barium titanate powder

Fibers

- (f) Precursors for carbon fiber
- (g) Precursors for silicon carbide fiber

Semiconductor integrated circuits

- (h) Photoresists⁹
- (i) Non-ferrous metal target material¹⁰

Electron microscopes

- (j) Scanning electron microscopes and transmission electron microscopes

⁶ “Risks of diversion to military use” refers to any of the following situations:

(1) the technology is likely to be used for the development, manufacture, use or storage of nuclear weapons, chemical weapon agents or military bacterial agents or devices for spraying said agents, or rockets or unmanned aerial vehicles capable of transporting these with a range or flight range of 300km or longer (Ministerial Ordinance on Trade Related Invisible Trade, etc. Article 9, Paragraph 2, Item 7, (b)); or

(2) the technology is likely to be used for the development, manufacture, or use of weapons (the goods listed in the middle column of row 1 of Appended Table 1 of the Export Trade Control Order) (Ministerial Ordinance on Trade Related Invisible Trade, etc. Article 9, Paragraph 2, Item 7, (d)).

⁷ Limited to technologies for circuit boards that have the same or higher performance than U in the IPC-4562B standard established by the Institute of Electrical and Electronics Engineers.

⁸ Limited to technologies that can be used in smoothing film capacitors for devices that control the energy of electric-powered vehicles (including those that use fuel).

⁹ Limited to technologies that are optimized for use with light of a wavelength of 248 nanometers or less.

¹⁰ Limited to technologies that are used to increase the purity of metals for use in manufacturing integrated circuits, when manufacturing ingots from raw materials or, where ingot manufacturing is not involved, when mixing and synthesizing raw material powder, which is necessary for manufacturing non-ferrous metal target materials that are used in the wiring process for integrated circuits that are formed using equipment for manufacturing integrated circuits using extreme ultraviolet rays.

However, METI states that there are other candidate technologies as well, and that after the Proposed System enters into effect, METI will continue to coordinate with industry, conduct surveys and analysis of individual technologies, and add technologies to the list above in a timely manner.¹¹

【Types of Transaction Activities】

The types of transaction activities are “investments into, manufacturing consignment to, and other business activities involving foreign entities,” but exclude “transactions for the purpose of providing technology for inspection, testing, or quality assurance, as well as other, similar transactions that clearly are unlikely to be diverted to military use.”¹² METI states as follows in the Documents Related to Public-Private Dialogue System.¹³

- For the time being, after [the system's] entry into force, it will be limited to technology transfers that enable manufacturing and development of products in other countries, such as the transfer of manufacturing to local subsidiaries or merged companies, and the outsourcing of manufacturing and granting licenses to companies in other countries.
- Granting a license that does not involve direct technical guidance is excluded.
- In the future, METI will review the system in response to incidents that occur.

As with the existing catch-all controls, technology transfers to the 27 countries known as Group A countries (listed in Appended Table 3 of the Export Trade Control Order),¹⁴ including the United States, United Kingdom, Germany, France, and South Korea, will be exempt from the regulations.

(2) Prior reporting obligations

Business operators that engage in transactions that fall within the scope of this Proposed System must report to METI prior to executing a contract for technology transfer, in accordance with Article 55-8 of the FEFTA.¹⁵ It is important to note that the report must be filed before the contract is executed, not before the technology transfer is carried out. Business operators will be required to report by submitting the form attached to the Draft Public Notice “Report on Transactions for the Purpose of Providing Technologies Subject to Important Management” to the Minister of METI. The report must contain information on the following six items, and the form of the report is simple and just one-page.

- Counterparty of transactions
- Scheduled date of contract execution

¹¹ Page 5 of the Documents Related to Public-Private Dialogue System.

¹² Item 1 of the Draft Public Notice.

¹³ Page 4 of the Documents Related to Public-Private Dialogue System.

¹⁴ Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, South Korea, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom, the United States

¹⁵ Article 18-8, Paragraph 1 of the Foreign Exchange Order, Article 10, Paragraph 3 of the Ministerial Ordinance on Trade Related Invisible Trade, etc., and the draft Public Notice.

- Scheduled date of technology transfer
- Type and content of technology
- Overview of transactions (purposes, backgrounds, content)
- Other matters

If a business operator fails to file the report when required pursuant to the Proposed System, the Minister of METI may provide necessary guidance and advice to the business operator to ensure the procedures are carried out in accordance with the Compliance Standards for Exporters, etc.¹⁶ If the business operator is found to be in violation of the Compliance Standards for Exporters, etc., despite the guidance and advice, the Minister of METI can issue a recommendation to the relevant business operator, and if the business operator does not comply with the recommendation, the Minister of METI can issue an order for improvement.¹⁷ A business operator that fails to comply with the order for improvement or is particularly malicious may be subject to penalties (either imprisonment for up to 6 months or a fine of up to 500,000 yen).¹⁸

2. Public-Private Dialogue and Operation of Prior Reports

After a prior report is submitted pursuant to the Proposed System, the Trade Control Division will examine the risk of the technology to be transferred being diverted to military use; in principle, the examination will be completed within 30 days, after considering the status of management of the technology described in the dialogue between the Competent Department of METI and the business operator, and the Trade Control Division will decide whether or not to issue its notices.

The Competent Department will hold discussions with the business operator, and after aligning their understanding of the current situation and relevant issues, they will consider government policy support,¹⁹ provide information,²⁰ offer advice on specific measures for management of the technology,²¹ and work with the Trade Control Division on the content of these discussions. METI recommends that the business operator start discussions with the Competent Department as early as possible.

The Draft Ministerial Ordinance clarifies that the risk of diversion to military use includes situations in which the

¹⁶ Article 55-11 of the FEFTA

¹⁷ Article 55-12 of the FEFTA

¹⁸ Article 71, Items 9 and 11 of the FEFTA. The dual criminal liability provision also applies under Article 72, Paragraph 1, Item 5 of the FEFTA. See page 6 of the Documents Related to Public-Private Dialogue System.

¹⁹ Support measures such as budget measures, institutional responses such as deregulation, and promotion of cooperation within and across industries (Page 2 of the Documents Related to Public-Private Dialogue System).

²⁰ Information on concerns about business partners, actual cases of technology leaks at other companies, past measures taken in similar cases, etc. (Page 2 of the Documents Related to Public-Private Dialogue System). As the information provided may include sensitive information related to economic security, it is necessary to provide the information using appropriate information management, including the use of a security clearance system (Page 11 of the Interim Report).

²¹ Identify core technologies and ensure thorough management, review of terms of trade and investment ratio, etc. (Page 2 of the Documents Related to Public-Private Dialogue System).

technology is not managed appropriately by the recipient of the technology.²² This appears to reflect the point, raised in the Interim Report, that “once technology is transferred, it becomes more difficult to manage, including the risks of proliferation over time. For this reason, we should focus on technology transactions and take new measures to strengthen management with a view to the passage of time.”²³

METI’s notices will be issued when concerns about technology leaks cannot be addressed through public-private dialogues on management of the technology. In this regard, these notices will be issued when it is appropriate to impose conditions on technology transfers, as well as when a technology transfer is not likely to be approved even if an application for a technology transfer license is submitted.²⁴

3. Impact on Business Practices

The Proposed System covers not only transactions that involve only technology transfers, but also mergers and acquisitions (M&A) and commercial transactions that involve international transfers of technology, such as the transfer of manufacturing to local subsidiaries or joint ventures, or the outsourcing of manufacturing to other companies. In addition, although the covered technologies currently are limited to 10 items in four fields, METI states that it plans to expand the scope of the covered technologies in the future. Business operators must identify relevant technology and confirm whether or not it is covered by the Proposed System before executing a contract for a transaction involving the international transfer of technology.

In addition, because in principle the Trade Control Division is supposed to make a decision within 30 days of receiving a prior report, business operators that intend to engage in transactions governed by the Proposed System must submit a prior report at least 30 days before executing a contract governing the transaction, and the Trade Control Division will take into account the status of discussions on management of the technology between the business operator and the Competent Department when making its decision. Therefore, it is advisable for business operators to maintain regular communication with the Competent Department in relation to their business, and also to start a dialogue with the Competent Department at an early stage regarding transactions that may be subject to the Proposed System.

When preparing for transactions, business operators need to take into account the time required for the public-private dialogue and prior reporting obligations. In addition, depending on the situation, it may be necessary to obtain a license or meet certain conditions relating to technology management imposed under the Proposed System. Therefore, business operators should note that the Proposed System may affect the schedules, and the terms and conditions of the transactions.

²² “Including the risk that may arise when the recipient of the technology does not properly manage the information that contains the technology after receiving it” (Article 9, Paragraph 2, Item 7, Sub-items (b) and (d) of the draft Ministerial Ordinance).

²³ Page 9 of the Interim Report.

²⁴ Page 6 of the Documents Related to Public-Private Dialogue System.



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Public Relations Section, Nishimura & Asahi newsletter@nishimura.com