

Export Control System and Practices in Japan

June 2022

Trade Control Department

Ministry of Economy, Trade and Industry (METI), Japan

Contents

1. Security Export Control system

2. Recent updates

3. Export Control practices

4. Outreach Activities

Japan's Security Export Control system (Overview)

- When advanced items and technologies are passed on to countries and regions that develop Weapons of Mass Destruction and Conventional Weapons, they become an **international threat and can destabilize the international situation**.
- To prevent these problems, export control and technology transaction control are being promoted through international export control regimes.
- These controls are implemented based on the “**Foreign Exchange and Foreign Trade Act**”.

Carbon Fiber



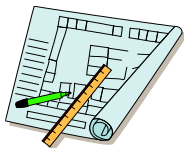
Export of Goods

Regulate exports of goods that disrupt **maintenance of international peace and security**



Permission System

Blueprints



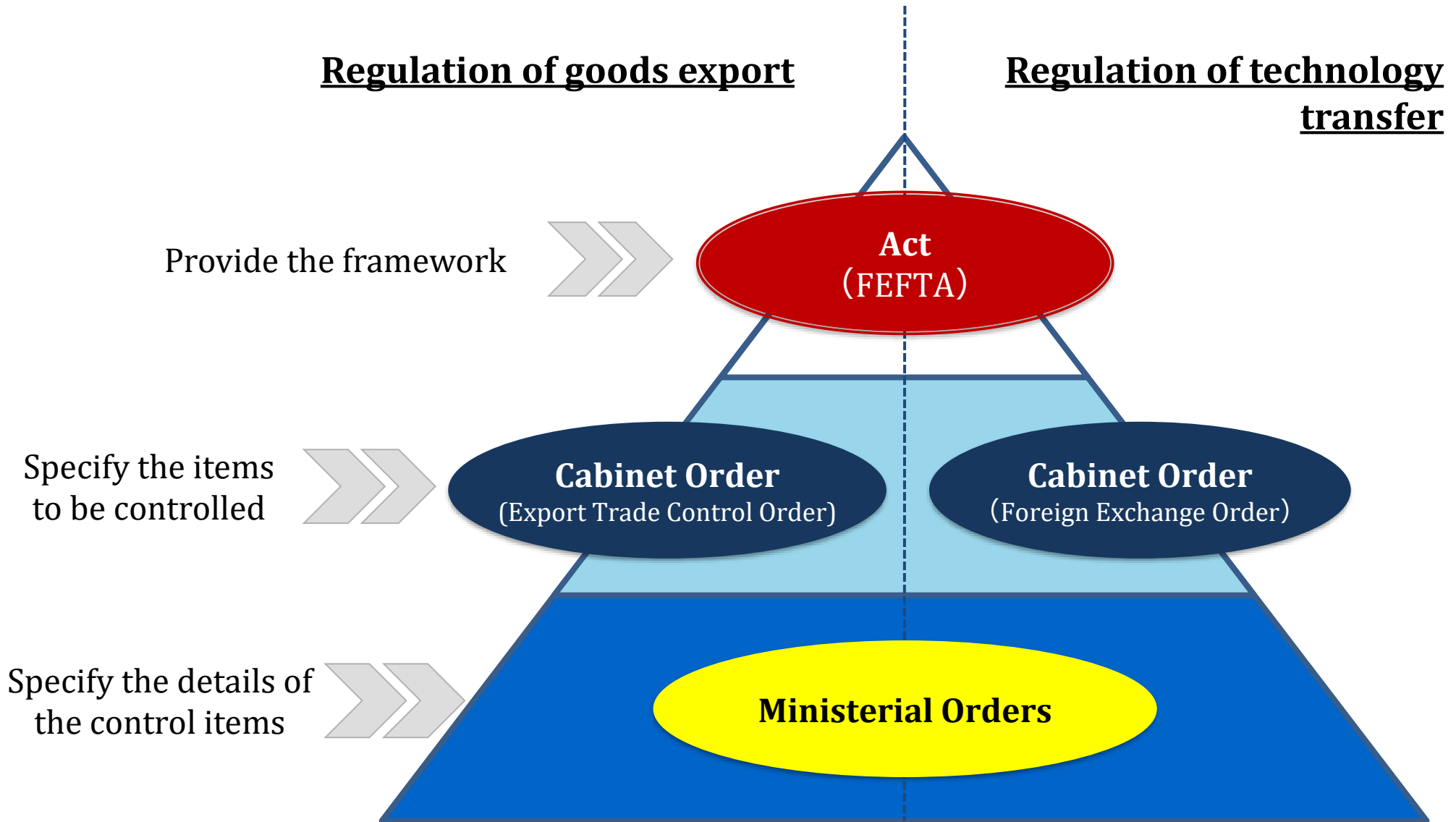
Transfer of Technology

Regulate transfer of technology that disrupts the **maintenance of international peace and security**



Permission System

(Ref) Legal Structure under the Act



※ FEFTA : Foreign Exchange and Foreign Trade Act

Overview of Japan's Export Controls under the FEFTA

	List control	Catch-all control		
		WMD	Conventional weapons	
Items to be controlled	<u>Arms and sensitive goods and technologies</u> (specified by cabinet/ministerial orders)	<u>All items</u> other than those subject to the List controls (excluding food, lumber, etc.)		
Regions subject to control	<u>All regions</u>	All regions <u>except Group A</u>	Countries/regions under <u>UNSC Arms Embargo</u>	<u>General countries</u>
License condition	—	1. Notice from METI 2. Decision by exporter (1) End-use condition (2) End-user condition	1. Notice from METI 2. Decision by exporter (1) End-use condition	1. Notice from METI

(1) **Group A:** Countries that participate in each multilateral export control regime and strictly enforce export controls

(2) **Countries/regions under UNSC Arms Embargo:** Countries to which the export of arms and their related goods, etc., are prohibited by the resolution of the United Nations Security Council

(3) **General countries:** All countries other than (1) and (2) above

Individual License

- **Transaction-based** examination
- Verify the contents of **each transaction**

(Ref) Four Pillars of the examination

1. The goods will be **actually delivered** to the end user.
2. The goods will be **actually used** by the stated end user.
3. The goods will not be used for the purposes of **impeding the maintenance of international peace and security**.
4. The end user will **appropriately control** the goods.

Bulk License

- For specific destination and specific items, **repeated transactions**, etc.
- Do **not** examine each transaction
- Check the **exporter's compliance** (ICPs, etc.)

Criminal Charges

- **Imprisonment** of up to ten years
- **Fine** of up to one billion yen (juridical persons)
- **Fine** of up to thirty million yen (individuals)

Administrative Sanctions

- **Prohibition of export** of goods or transfer of technologies for up to three years
- **Prohibition of working as the director**, etc., in charge of export of goods or transfer of technologies at a different company

Warning (disclosed in principle)

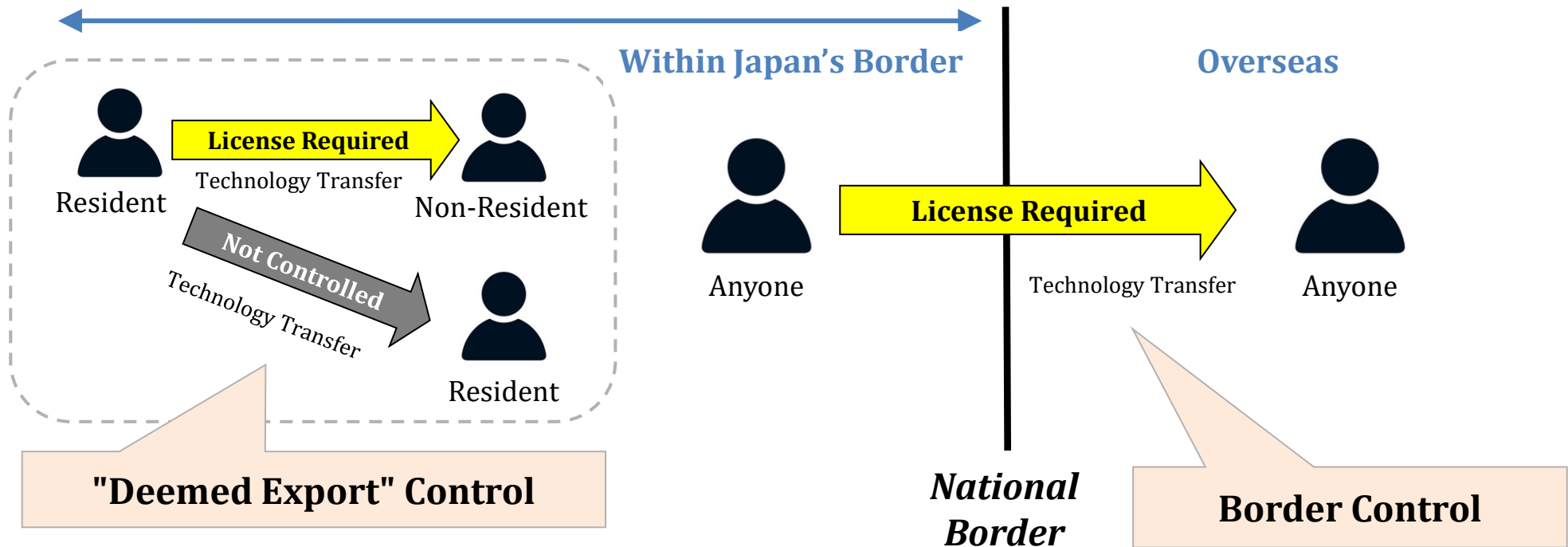
Submission of Background Statements/Reports (not disclosed in principle)

Contents

1. Security Export Control system
- 2. Recent updates of the system**
3. Export Control practices
4. Outreach Actions

Technology Control in Japan

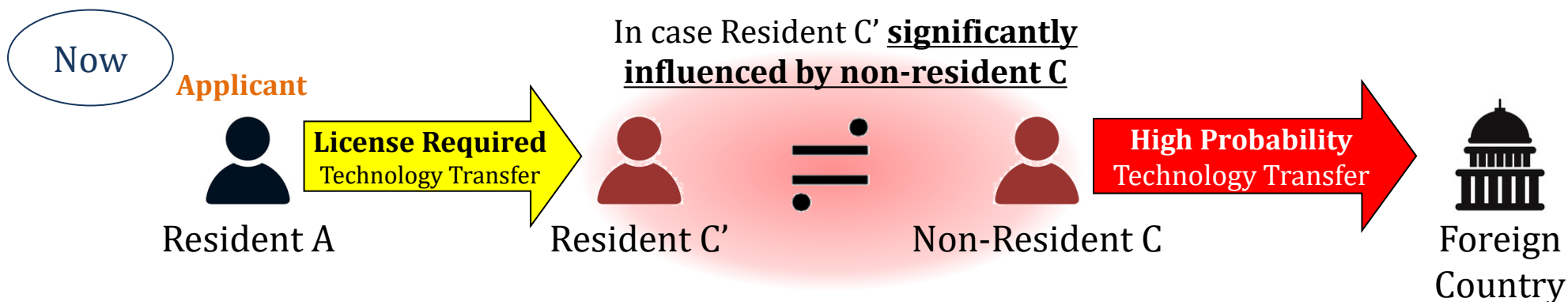
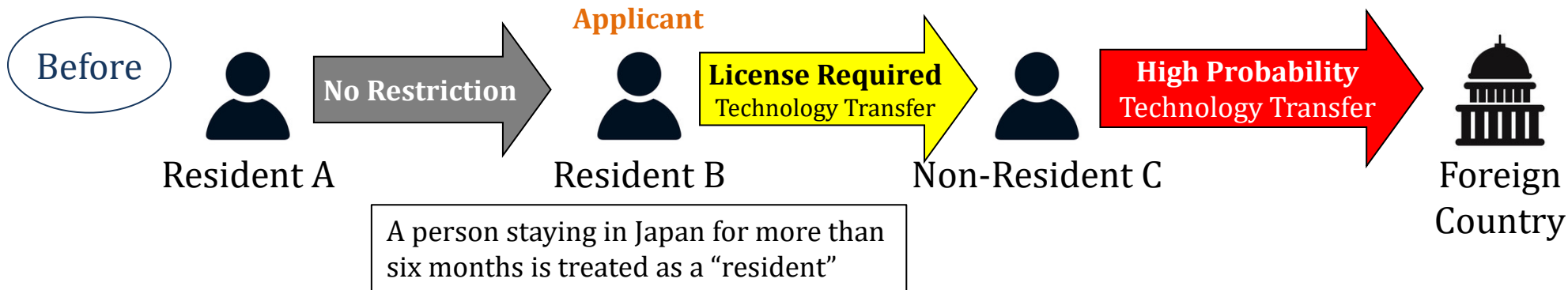
- Types of sensitive technology transfer controlled under the national law
 - (1) cross-border technology transfer (**Border control**)
 - (2) technology transfer from a “resident” to a “non-resident” (**“Deemed Export” Control**)



※ Resident: a person who has lived in Japan for more than 6 months continuously

Review on the Scope of “Deemed Export” Control

- Expand the scope of controls to a “Resident” influenced by foreign countries.



(Ref) Specific Categories of Residents

- Technology transfer to a “Resident” who falls into the following three categories will be considered **effectively identical to transfer to “Non-Residents”**.



Category 1

A person who is under the control of a foreign government, etc.
based on a contract



Category 2

A person who is effectively under the control of a foreign government, etc.
based on economic benefits



Category 3

A person who acts in Japan **under the instruction** of a foreign government, etc. besides category 1 and 2

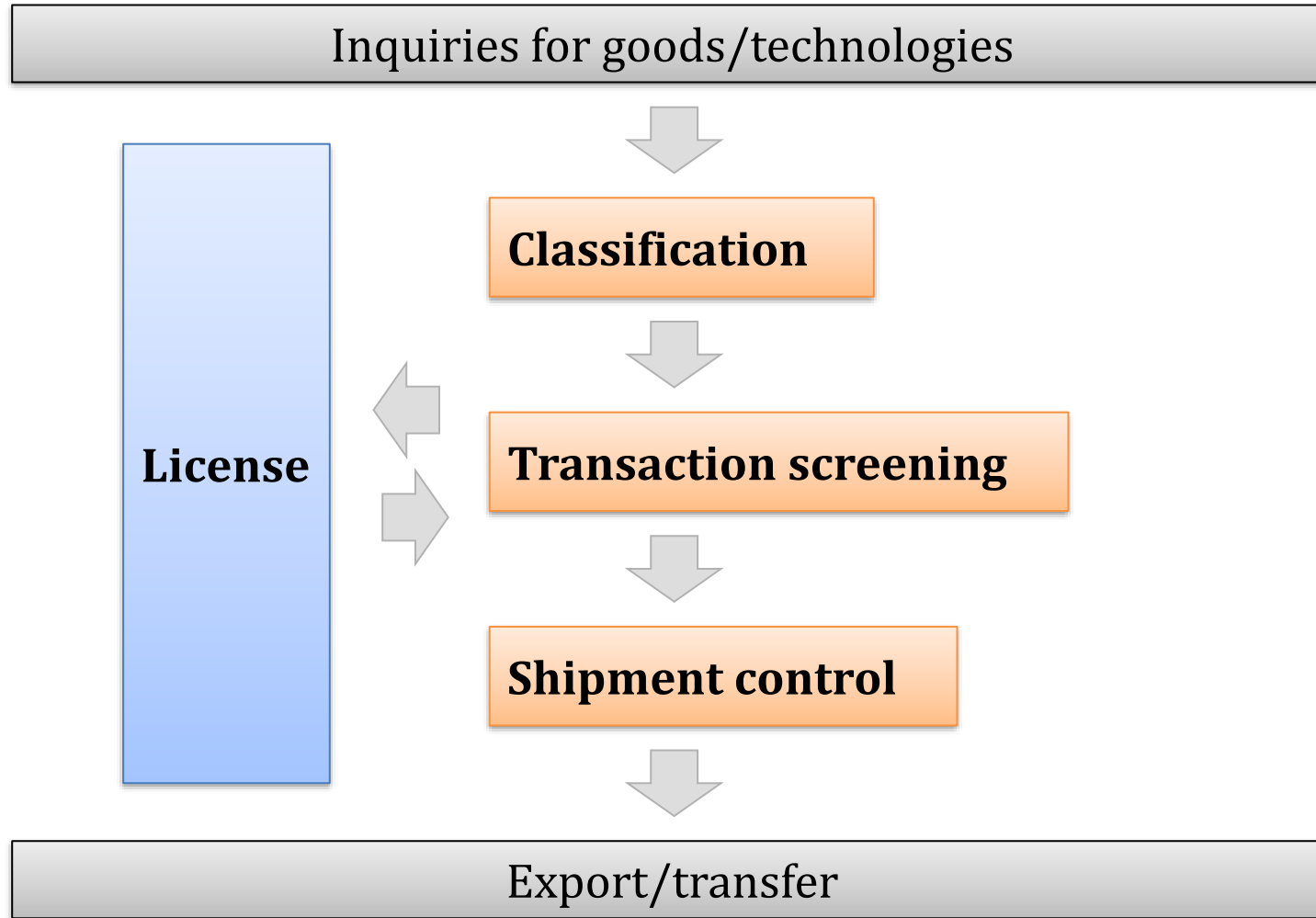


Technology transfer to a “Resident” who falls within these three categories will be **subject to the controls under the national law**

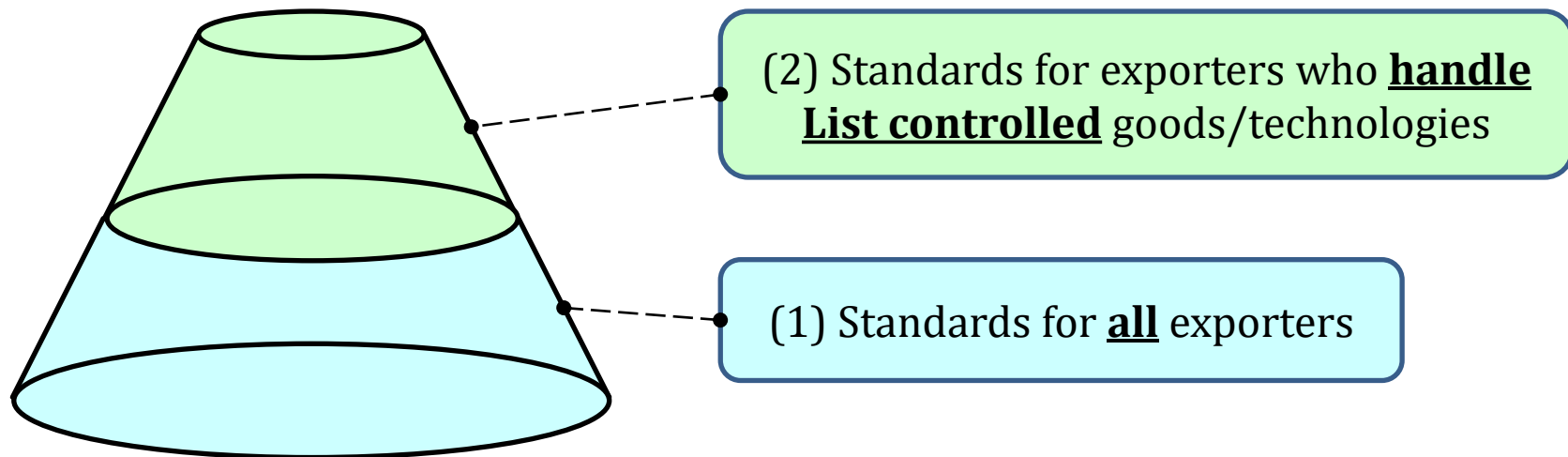
Contents

1. Security Export Control system
2. Recent updates
- 3. Export Control practices**
4. Outreach Activities

Overview of Export Control Practices



- Persons exporting goods/transferring technologies are **required to observe the Compliance Standards for Exporters.**
- Two levels of the standards:
 - (1) standards for **all** exporters and
 - (2) standards for exporters **who handle List controlled goods/technologies.**
- To observe the standards for exporters is a **legal obligation.**



(1) Appoint a person responsible for classification

- Assign a **person in charge of classification**, to determine whether goods/technologies to be exported/transferred fall under the List controls.

(2) Instructions of the latest laws and regulations

- For persons involved in such operations as exporting, ensure awareness of the latest regulations and offer necessary **instructions for compliance with provisions of such and other related regulations**.



1. Appointing a representative as the **person responsible for export control**
 2. Proper **internal export control system** (duty/responsibility)
 3. Proper **procedures for classification**
 4. Proper **procedures for transaction screening**, Establishing procedures for enhanced reliability of information necessary for end-use/end-user screening
 5. Proper **shipment control**
 6. Proper **procedures for auditing**
 7. Proper **training for all staff engaged in export control**
 8. Establishing internal structure and procedures for issuing instructions and advice to subsidiaries and checking their operations
 9. **Keeping export control documents**
 10. **Immediate report** to METI in case of violations
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- ✓ For 6. to 9. there is a requirement to make all reasonable efforts to comply.
 - ✓ Red text is for contents revised on Nov. 18, 2021 in order to enhance the Standards for Exporters. (Became effective on May 1, 2022)

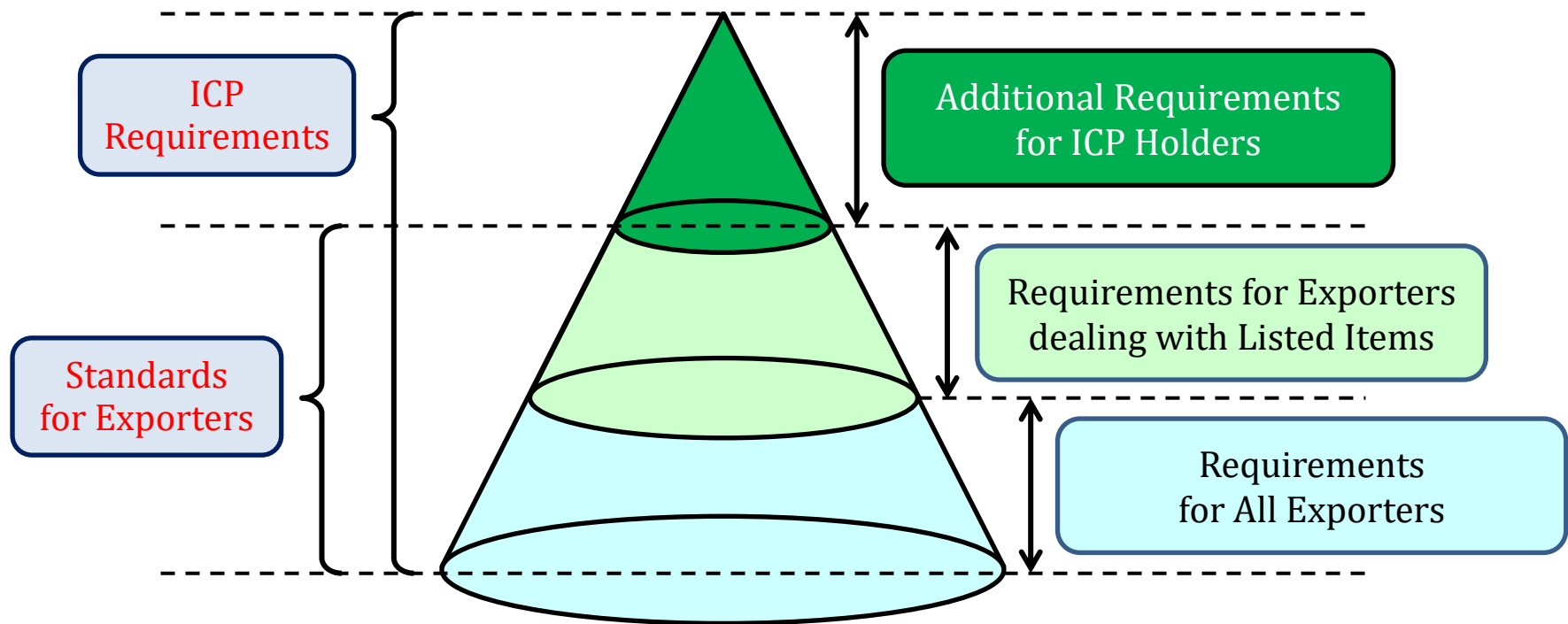
- **ICP (Internal Compliance Program)** is an **exporter's internal policy** governing compliance with the export control law and regulations.
- While ICP is **not mandatory for exporters**, METI has been encouraging exporters in Japan to establish their own ICP.

【Notification system to METI】

- If an exporter notifies METI of its ICP and METI determines that the details of its export control practices are appropriate, the exporter will **benefit from the following advantages**:
 - Can obtain a **bulk license**
 - **Receive emails from METI** regarding system revisions and other information
 - **Publicly named on METI's website** as a company that has well established export control system (on request only)

ICP requirements and “Standards for Exporters”

- **Auditing, training, record-keeping and proper instruction** to subsidiaries and affiliated companies are required to be included in an ICP.



Key Points of Transaction Screening

(1) The certainty that goods/technology will reach the end-user

- Does the contract lead up to the end-user?
- Is there any unnatural route being requested for the transportation route?
- Is there any country of concern in the transaction path?

(2) The certainty that the end-user will use the goods/technology

- Are the goods to be exported or the technology to be transferred consistent with the business description and technology level of the end-user?
- Is the end-use of the goods consistent with the business description of the end-user?
- Is the shipping volume demanded excessively large compared to the size of the end-user's business?

(3) The certainty that goods/technology will not be used for uses of concern

- Does the end-user have any transactions with military-related companies?
- Does the end-user handle military goods?
- Is the end-user funded by the military?

(4) The certainty that goods/technology will be properly managed

- Where will the goods be placed, and have the locations of their placement and use been determined?
- Are the methods of managing goods/technology appropriate, for example, restricting the entry of outsiders? Etc.

Foreign End User List (EUL)

- The EUL is a list of foreign entities that may have some relationship to the **development, manufacture, use and/or storage of WMD and/or missiles.**
- Exporters are **required to submit export license applications** when they wish to export goods to the entities on the EUL.

Number of the Entities on EUL

Iran	222
North Korea	144
China	86
Pakistan	79
Syria	19
UAE	18
Hong Kong	10
Russia	10
Lebanon	9
Taiwan	3
India	3
Yemen	2
Egypt	2
Afghanistan	2
Israel	1
Total	610


No.	Country or Region	Company or Organization	Also Known As	Type of WMD
1	Islamic Republic of Afghanistan	Al Qa'ida/Islamic Army	<ul style="list-style-type: none"> • Al Qaeda • Islamic Salvation Foundation • The Base • The Group for the Preservation of the Holy Sites • The Islamic Army for the Liberation of Holy Places • The World Islamic Front for Jihad against Jews and Crusaders • Usama Bin Laden Network • Usama Bin Laden Organisation 	Chemical

}

610	Republic of Yemen	Al-Swari Trading and Import Co.	<ul style="list-style-type: none"> • AlswariTrading & Import Co • Al-SwariGroup for Rubber Manufacturing • Hashem Brothers for International Trading 	Missile
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Determine the Specific Categories of Residents

- The concept of the classification of specific categories is indicated in the guideline for classifying specific categories.

	<u>Not</u> under the provider's command or order	Under the provider's command or order	Common
Category 1 Category 2	Verification of information contained in documents including written contracts to be <u>generally acquired for commercial practice-based technological transfer</u>	<Upon adoption> Verification using " <u>Letter of Confirmation</u> " submitted by the receiver <During work> Verification by <u>imposing reporting obligation</u> when a specific category newly applies to the receiver	When <u>METI informs</u> the provider that there is the possibility of applying a specific category  <u>The specific category applies</u> for the receiver in principle.
Category 3	Verification of information contained in documents including written contracts to be <u>generally acquired for commercial practice-based technological transfer</u>		

Contents

1. Security Export Control system
2. Recent updates
3. Export Control practices
- 4. Outreach Activities**

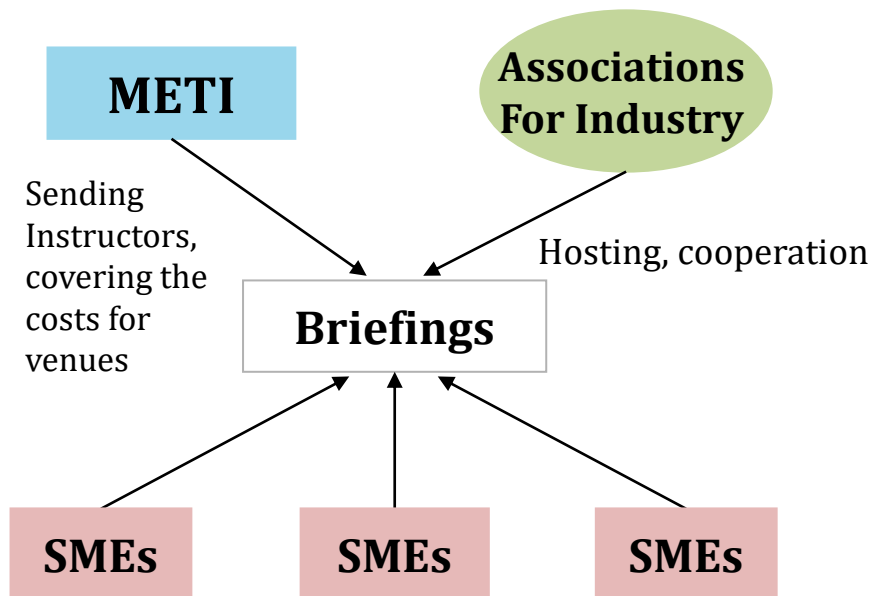
- Around **100 seminars** and around **10,000 participants** every year across the nation
- **Several types of seminars**
 - for industry overall, for specific industries, for customs brokers, and for academia
- **Various topics**
 - Basic framework of Japan's export control system
 - Examples of illicit exports and penalties
 - Keys to successful self-management
 - Standards for exporters and ICPs
 - Bulk export licenses



Outreach to SMEs

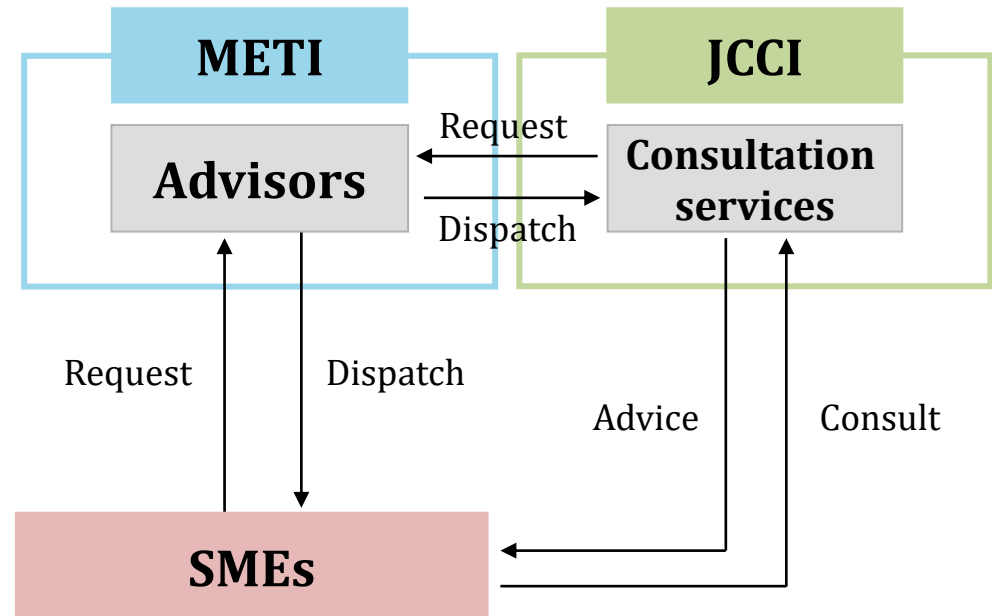
1 Briefing service for SMEs

- The government provides the briefing sessions on security export control rules in Japan including technology management for the SMEs in Japan.



2 Advisor's support for SMEs

- Dispatching Advisors to support SME's own efforts for establishing their internal export control systems
- Consultation services for SMEs through the Japan Chamber of Commerce and Industry (JCCI)



Guidance for the Control of Sensitive Technologies for Security Export for Academic and Research Institutions

- Latest version was **published in Feb. 2022** and notified to all relevant universities.
http://www.meti.go.jp/policy/anpo/law_document/tutatu/t07sonota/t07sonota_jishukanri03_eng.pdf
- Briefings (in person or online) held every year in large cities in Japan.

Content of E-learning and case studies

- **E-learning** content : Released in May 2018.
http://www.meti.go.jp/policy/anpo/daigaku/el/elindex_e.html
- “**Near-Miss Case Examples** Concerning Security Export Control at Universities and Research Institutions”: Published in May 2019.

Expert dispatch program

- **191 expert dispatches**/individual consultations for **72 universities** and research organizations in FY2020

On-site consultation

- Since FY2016, METI staff members visited universities more than **170 times** to brief executive officers, etc.

Establishment of regional networks

- Promoting the establishment of regional networks of universities on export control. A total of **13 networks in 8 regions** have been established.
- The National Research and Development Agency also established a network of export control officers in November 2018.

Key challenges

- **Collecting information** about relationship between “residents” and countries/entities of concerns
- **Engagement with universities and industries** and awareness-raising for their own precautionary efforts



Thank you for your attention