

Historical Background
of
Export Control Development
in
Selected Countries and Regions

U.S., EU, U.K., Germany, France, Hungary, Russia, Ukraine,
Japan, South Korea, China, India and ASEAN

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INTRODUCTION

Export control is political, multilateral, and event-driven.

In other words, export control in each country is ever changing along with the changes in the security situation of the country, its region, and the world. This means that the export control system of each country has its own historical background. Indeed, a country like the U.S. has been implementing export controls as a means to achieving strategic objectives throughout its history.

Therefore, it is much more interesting and important for us to know a country's export control system from a historical perspective than just to know the present status. Doing so helps one to understand the system of a particular country more firmly, deeply and vividly. It is a pleasure to trace its development from the very beginning, relating each stage to the historical setting of the country at that time, and then grasp the idea what export control is all about.

This document covers eleven countries and two regions: the U.S., the EU, the U.K., Germany, France, Hungary, Russia, Ukraine, Japan, South Korea, China, India, and ASEAN. The reason why I selected these countries and regions is that export control system of each country or region had a certain unique historical background. Another reason is that the relevant information was mostly available on the Internet. Note, therefore, that this has been written based, in large part, on publicly available information obtained on the Internet.

I would be more than happy if this could make the subject of export controls more interesting and enjoyable for readers.

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EXPORT CONTROL CHRONOLOGY

1914		The World War I broke out (ended in 1918)
1917	U.S.	The Trading with the Enemy Act (TWEA) was enacted
1935	U.S.	The Neutrality Act was enacted
1939		The World War II broke out (ended in 1945)
1939	U.K.	The Import, Export and Customs Power (Defense) Act was enacted
	France	The Decree-Law of April 18, 1939 related to military export controls was enacted
1940	U.S.	The Export Control Act 1940 was enacted
1949		The North Atlantic Treaty Organization (NATO) was established
	U.S.	The Export Control 1949 was enacted
	Japan	The Foreign Exchange and Foreign Trade Control Act was enacted
	China	The People's Republic of China (PRC) was born
1950		The Coordination Committee for Multilateral Export Controls (COCM) was established
	Korea	The Korean War started (ended in 1953)
1952	Japan	Japan joined COCOM
1955	Germany	West Germany joined COCOM
1957		The International Atomic Energy Agency (IAEA) was founded
1958	EU	The European Economic Community (EEC) was established
1960	Vietnam	The Vietnam War started (ended in 1975)
1961	Germany	The War Weapons Control Act (KWKG) and the Foreign Trade Payment Act (AWG) were enacted
1969	U.S.	The Export Administration Act (EAA) was enacted
1974	India	India conducted the first nuclear test
1976	U.S.	The Arms Export Control Act (AECA) was enacted
1977	U.S.	The International Emergency Economic Powers Act (IEEPA) was enacted
1978		The Nuclear Suppliers Group (NSG) was founded
1979	Iran	The Iranian Revolution took place, after which the relations between the U.S. and Iran turned openly hostile
	U.S.	The Iranian Assets Control Regulations were enacted
		The new EAA was enacted
1980	Iraq	The Iran - Iraq War broke out (ended in 1988)
1984	U.S.	The U.S. designated Iran as a State Sponsor of Terrorism
1985		The Australia Group (AG) was founded
1987		The Missile Technology Control Regime (MTCR) was founded
	U.S.	The Iranian Transaction Regulations (ITR) were enacted

1987	Japan	The Toshiba Machinery Incident took place
	S. Korea	The Foreign Trade Act was amended to include provisions related to export controls
1989	China	The Tiananmen Square Incident took place
1990	Iraq	The Gulf War broke out (ended in 1991)
1991	S. Union	The Soviet Union collapsed
1992	Hungary	Hungary was removed from the COCOM list of proscribed countries
1994	China	The Foreign Trade Law was enacted
	EU	EU's first set of common export control regulations was established (Council Regulation (EC) No. 388/94 and Decision 94/943/CFSP)
		COCOM was dissolved
1996		The Wassenaar Arrangement (WA) was founded
	U.S.	The Iran Sanction Act (ISA) was enacted
	Ukraine	The Law 9-1 "On the Export Control of Arms, Military Hardware, and Dual-Use Goods" was signed into law
1999	Russia	The Federal Law No. 183 "On Export Control" was introduced
2000	EU	The Council Regulation (EC) No. 1334/2000 was enforced
2001	U.S.	The 9/11 terrorist attack took place
2002	U.S.	BXA (Bureau of Export Administration) was renamed to BIS (Bureau of Industry and Security)
2003	Singapore	The Strategic Goods (Control) Act (SGCA) was enacted
2004	UN	UNSCR 1540 was adopted
2009	U.S.	The export control reform project was started
	EU	The Council Regulation (EC) No. 428/2009 was enforced
2010	Malaysia	The Strategic Trade Act 2010 was enacted
	France	The Service des Biens a Dual Usage (SBDU) was established
	U.S.	The Comprehensive Iran Sanctions and Divestment Act (CISADA) was enacted
2012	EU	The Council Regulation (EU) No. 267/2012 related to Iran sanctions was enforced
2014	Russia	Russia militarily annexed the district of Crimea of Ukraine
2015		The JCPOA was reached between Iran and the P5+1 nations
	Thailand	The Ministerial Notification on Dual-Use Items and Related Items Export Measures was issued
	Philippines	The Strategic Trade Management Act was signed into law
2016		The UN, EU, and the U.S. lifted nuclear-related Iran sanctions

HISTORICAL BACKGROUND OF EXPORT CONTROL DEVELOPMENT

I. The United States

The export control system of the United States has been evolving dynamically since early days reflecting the country's strategic interests which are changing from Administration to Administration as time goes by. In addition, the U.S., since decades ago, has been playing a decisive role in other countries' export control developments. The role is played sometimes in the form of a donation of a computerized licensing system, sometimes of a technical or financial assistance and cooperation, and sometimes of a heavy pressure. Also, whether it is big or small, the U.S. "re-export control" and "economic sanctions" are a common concern among non-U.S. persons doing business worldwide. Like it or not, the United States is such an awful power.

(Time of the American Revolution)

1775 - Establishment of the first U.S. export controls

On September 5, 1774, in reaction to the British Parliament's enactment of the Coercive Acts, the First Continental Congress convened in Carpenter's Hall in Philadelphia, and the following December declared that the importation of British goods to be illegal. A year later in 1775, when the American Revolution began, Congress outlawed the export of goods to Great Britain, thus establishing the first United States export controls. Since then, the U.S. has been imposing export controls for a variety of reasons enacting one law after another, such as the Embargo Act, the Trading with the Enemy Act, the Neutrality Act, the Export Control Act, and the Export Administration Act, which are all covered here.

(Thomas Jefferson Administration)

1807 - The Embargo Act

On December 22, 1807, when the Napoleonic Wars were under way, the Embargo Act was signed into law by President Jefferson. This was a consequence of the incident on June 22, 1807, in which a British ship, the H.M.S. Leopard, bombarded and forcibly boarded the U.S.S. Chesapeake off the Norfolk, Virginia in search of British navy deserters. The law was enacted to punish the Great Britain and France and force them to end their molestation of American shipping, to respect U.S. neutrality, and to cease the policy of impressment. However, the embargo turned out to be a failure both diplomatically and economically as it was actually hurting the United States itself as much as Britain or France. In fact, the embargo was extremely unpopular in New England, where the economy was heavily dependent on trade with Britain.

(Woodrow Wilson Administration)

1917 - The Trading with the Enemy Act

In October 1917, Congress passed the Trading with the Enemy Act (TWEA) to restrict trade with countries hostile to the United States. The act empowered the President to severely limit such economic activities as exports, imports, financial transactions and investments with designated enemy countries or with nationals of such countries. Further, in 1933, the act was amended by the Emergency Banking Relief Act, which extended President's power to impose the restrictions on trade not only with designated enemies but also with all nations. Today, Cuba is the only country restricted under the TWEA. Note, however, that the U.S. government is now under the process of historic shift in its policy towards the country.

(Franklin D. Roosevelt Administration)

1935 - The Neutrality Act

The U.S. arms export control regime was first established in August 1935, when American public and policymakers were leaning towards isolationism after the Great Depression and tragic losses in World War I. At that time, Congress, fearing that the country could be dragged into war by other belligerent nations, passed the Neutrality Act in which stated the terms of U.S. neutrality. It gave the President a legal basis for controlling the export of arms. Specifically, it established the National Munitions Control Board under the chairmanship of the Secretary of State, which was the forerunner of today's export licensing system.

In 1939 when World War II broke out, the United States was under the spell of isolationist sentiments as the spectrum of views represented by those determined to keep the country out of war was enormous. It ranged from pacifists to pro-communists to pro-fascists, from those sympathetic to Germany to those who believed French and British resistance hopeless. It is said that fewer than 3 percent supported the United States entering the war at once on the side of France and Britain, whereas 30 percent were against even trade with any warring country. The isolationist sentiments were reflected in a series of Neutrality Acts enacted in the 1930s, which were designed to keep the country from becoming entangled with belligerents on one side or the other. For example, the legislation in August 1935 instituted an embargo on trading in arms and other war materials. The following year Congress added a ban on loans or credits to countries at war, reflecting the finding of the Commission led by Senator Gerald P. Nye, who reported that American bankers and arms manufacturers had pushed the nation into World War I.

1940 - The Export Control Act

On July 5, 1940, Congress passed the Export Control Act, prohibiting the exports of aircraft parts, chemicals and minerals without license. The act was one in a series of legislative efforts of Roosevelt Administration to accomplish two tasks: to avoid scarcity of critical commodities in a likely pre-war environment and, more notably, to forbid the exports of the said items to pre-World War II Imperial Japan, who was occupying the Indo-Chinese coast. Following America's entry into World War II, the coverage was extended in 1942 to all commodities to a broader range of destinations. The act remained effective with amendments through 1948.

(Harry S. Truman Administration)

1949 - The Export Control Act of 1949, NATO, and COCOM

In late 1947, George Kennan, a distinguished U.S. diplomat, published his famous Foreign Affairs X article, "The Sources of Soviet Conduct," in which he argued for an active and coordinated policy of "containment" of Soviet imperialistic ambition. And by late the following year, the United States had begun to impose licensing requirements on exports to the Soviet bloc countries, which resulted in the re-enactment of the aforementioned law as the Export Control Act of 1949. It was the first United States peacetime export control law, enacted with a formal recognition of the new security threat and of the need for an extensive peacetime export control system. For the first time, it identified three reasons for imposing export controls: national security, foreign policy and short supply. Also, this Act delegated the power to regulate exports to the executive branch. Actually, it gave the Commerce Department's Bureau of Export Administration (BXA) primary responsibility for administering and enforcing controls on dual-use items. This act was subsequently extended several times, in most cases without amendment, through 1965.

At the same time in April 1949, the North Atlantic Treaty Organization (NATO), a multilateral system of collective security against the Soviet Union, was established, joined initially by 12 nations: Belgium, Canada, Denmark, France, Iceland, Italy, Luxemburg, the Netherlands, Norway, Portugal, the U.K., and the U.S. The organization constitutes a system of collective defense whereby the member nations are bound to come to one another's aid if attacked by others. Today it has 28 member nations in total.

To ensure the effectiveness of NATO and other regional alliances, the United States transferred military technology, mostly in the form of hardware, directly to its allies. And because the recovering West European countries (and later Japan) were also becoming potential sources of advanced military technology, President Truman sent Secretary of Commerce Averell Harriman to Europe to secure allied cooperation in denying the Soviet Union and its allies' access to such

strategic technology. This led to the establishment of the Coordinating Committee for Multilateral Export Controls (COCOM) in Paris in 1949 to coordinate an explicit strategy of denial to the Soviet bloc countries. From the start, however, the items on which the United States imposed controls differed from those controlled by COCOM; the U.S. controlled many items unilaterally, especially those in which it held a virtual monopoly.

1951 - The Mutual Defense Assistance Control Act

In 1951, Congress passed the Mutual Defense Assistance Control Act, also known as the Battle Act, which allowed the U.S. to prohibit shipments of arms, ammunition, implements of war, nuclear materials, and other strategic items to nations that posed a potential threat to U.S. national security. Also, it banned U.S. economic assistance to countries doing business with the Soviet Union.

By the early 1950s, U.S. and NATO strategy was firmly based on the need to contain Soviet (and China as stated below) expansionist ambitions and to maintain the political and territorial integrity of the West (which, by this time, included Japan). And soon after, the NATO alliance became opposed formally by the Warsaw Pact which was signed on May 14, 1955.

1952 - Establishment of ChinCom

In 1952, the United States and its allies created a separate committee, ChinCom, to multilaterally control exports to communist China. Export controls by ChinCom were considerably more restrictive than controls by COCOM, which became known as the "China Differential." In 1957, however, the U.S. allies formally incorporated ChinCom into COCOM, thereby abandoning the "China Differential." But the U.S. nevertheless maintained the embargo policy against China into the 1970s.

The shift in the United States attitude towards China came as a result of the Chinese Civil War and the subsequent birth of the PRC in 1949. This Communist Revolution prompted the U.S. to first apply COCOM export controls, and subsequently ChinCom controls, to the PRC. The U.S. was justified to do it because Chairman Mao had unequivocally announced Communist China's leaning to one side - the Soviet Union. China's military intervention with the Korean War which broke out in 1950 further aggravated the Sino - American relationship.

(Richard M. Nixon Administration)

1969 - The Export Administration Act

With the onset of the U.S. - Soviet "détente" era in the late 1960s, however, the first serious

reexamination and revision were given to the U.S. export control system. At this time, the growing importance of promoting trade to the U.S. economy began to exert significant political pressure for liberalization of export controls. And this led to the enactment of the Export Administration Act (EAA) of 1969 to replace the Export Control Act of 1949, which had had near-embargo characteristics.

In the EAA, Congress sought for the first time to establish a balance between the need to protect technology essential to U.S. national security and the desire to promote U.S. trade. This change was designed, in part, to engage the Soviets in an expanded set of trade relationships and, in part, to acknowledge the growing importance of U.S. export trade to overall national economic well-being. The change in emphasis was reflected in the very name of the act itself, in which the word, "administration," was substituted for the word, "control." The EAA of 1969 was the first of many subsequent legislative attempts to limit the number of items subject to control, and also marked for the first time that Congress recommended that foreign availability of controlled items be taken into account explicitly in the licensing process.

(Gerald R. Ford Administration)

1976 - The Arms Export Control Act

On June 30, 1976, Congress enacted the International Security Assistance and Arms Export Control Act (AECA), which was signed into law the next day by President Ford. While the act empowered the President to control the import and export of defense articles (arms, munitions, and implements of war) and defense services, it directed the President to submit quarterly reports and certifications detailing individual government-to-government military sales (foreign military sales). Also, the law requires governments that receive weapons from the U.S. to use them only for legitimate self-defense purpose.

The AECA came into being under a different title, the Foreign Military Sales Act of 1968 (FMSA). Before 1968, foreign military sales were conducted under the authority of the Foreign Assistance Act of 1961 (FAA). The International Security Assistance and Arms Export Control Act of 1976 changed the title of FMSA to the current AECA. Besides the foreign military sales, direct commercial sales of military items by defense companies are controlled under the International Trade in Arms Regulations (ITAR) administered by the Directorate of Defense Trade Controls (DDTC) of the State Department.

(Jimmy Carter Administration)

1977 - The International Emergency Economic Powers Act

On October 28, 1977, Congress enacted the International Emergency Economic Powers Act (IEEPA), which authorized the President to declare a national emergency with respect to an unusual and extraordinary threat to the national security, foreign policy, or economy of the United States that originates in whole or in substantial part outside the country. The President may, under such regulations, bloc transactions with, and freeze assets of, the individuals or entities causing the threat. The IEEPA was in fact enacted by Congress to curtail the emergency powers given to the President under the TWEA of 1917. The IEEPA powers were first invoked by President Carter in response to the Iran Hostage Crisis which took place in 1979.

Today, the IEEPA power as such is invoked by Presidents mostly to impose economic sanctions against targeted countries, entities, or individuals issuing Executive Orders.

1979 - The Export Administration Act of 1979

After the revisions in 1974 and 1977, the EAA was comprehensively rewritten in 1979, which forms the basis of the U.S. export controls today. The EAA of 1979 authorized the control of exports of commercial goods and technologies that would make a significant contribution to U.S. military adversaries. It also authorized the continuation of controls to achieve U.S. foreign policy objectives and reaffirmed continuing concerns about the short supply of strategic materials.

From the standpoint of export controls, the period of "détente" ended in 1979 with the Soviet invasion of Afghanistan and the mounting evidence that the Soviets had used Western dual-use technology, obtained both legally and illegally as a result of relaxed trade controls, to modernize its conventional and strategic forces. As a result, President Carter acted under the provisions of the EAA to restrict the sale of U.S. grain and to deny all pending and future validated export licenses for technology exports to the Soviet Union.

The EAA, after going through a few major amendments, lapsed on August 20, 1994. Since then the export control authority has been effectuated under IEEPA provisions pursuant to Executive Orders issued periodically. Actually, Congress has not been able to agree on legislative measures to reform the EAA that regularly have been introduced since the 101st Congress (1989-1991).

(Ronald Reagan Administration)

1988 - The Omnibus Trade and Competitiveness Act: Relaxation of the controls, introduction of "de-minimis rule," and sanctions against foreign companies

The Omnibus Trade and Competitiveness Act of 1988 (the 1988 Trade Act) came out of the 'stagflation' in the 1970s and the 1980s, when the United States experienced persistent trade and budget deficits and when Japan was rising as an economic force. Thus the act significantly amended the Export Administration Act of 1979 to reduce restrictions on exports. Before the passage of the act, the U.S. unilaterally controlled virtually all proprietary technical data for exports to the Eastern Europe and the Soviet Union, even if it related to decontrolled goods. The act mandated that unilateral U.S. national security controls on commodities and technology be eliminated. As a result, much proprietary technical data, previously controlled, were allowed to be exported from the U.S. to Soviet bloc countries without license.

In addition, the 1988 Trade Act also mandated that the executive branch decontrol all national discretion items, except those for which continued control was explicitly agreed to by COCOM. The act also decontrolled most medical instruments and equipment, and eliminated re-export controls on foreign-produced products containing 25 percent or fewer U.S. controlled content of parts and components (de-minimis rule).

Further, sections 2441 to 2446 of the 1988 Trade Act covered sanctions against Toshiba Machine Company of Japan and Kongsberg Trading Company of Norway who had allegedly diverted advanced milling machinery to the Soviet Union. Saying that it was a COCOM violation, the U.S. government imposed, for 3 years, a prohibition on contracting with and procurement of products and services from both companies, and also imposed, for the same period, a prohibition on the importation into the United States of all products produced by them. Note that the sanctions were also extended to their parent companies: similarly, the U.S. government imposed, for 3 years, a prohibition on contracting with, and procurement of products and services from, them.

(George H. W. Bush Administration)

1990 - Launch of the EPCI

In December 1990, the U.S. government launched the Enhanced Proliferation Control Initiative (EPCI) which led to the implementation in the EAR of chemical, biological, and missile-related end-use and end-user-based controls that were similar to the nuclear end-use and end-user-based "catch-all" control already in effect. This took place in consequence of the collapse of the Soviet Union, after which a renewed attention was put on the threat posed by the proliferation of WMD technologies from the former Soviet-bloc countries. The EPCI started as a unilateral control, but with U.S. leadership, allied countries later incorporated the catch-all controls in their export control systems. For example, the EU introduced the controls in 1994 and Japan in 1996.

1991 - Collapse of the Soviet Union

In December 1991, the Cold War ended when the Soviet Union ceased to exist, dissolving into twelve newly independent nations. After that those new-born countries, as well as other former communist bloc countries, not only promised to be responsible actors in the international community, but also sought a larger framework for inclusion in the West.

(Bill Clinton Administration)

1994/1996 - Dissolution of COCOM and establishment of WA

This dramatic change in the external threats led the U.S. and its allies to view that the COCOM arrangement had now outlived and could no longer be sustained. And finally, the 17-nation organization dissolved on March 31, 1994, and was then replaced in 1996 by a new, much larger but looser framework called the Wassenaar Arrangement (WA) which started with 33 founding members including Russia.

1994 - Nonproliferation and Export Control Cooperation, and the EXBS Program

In 1994, BXA established the Nonproliferation and Export Control Cooperation (NEC) team to coordinate its activities in support of U.S. export control cooperation program with Russia, Ukraine, Kazakhstan, Belarus, and newly emerging Central Asian, Caucasus, Baltic and Central European countries. In late 1995, the NEC team, together with representatives from the Department of State, Defense and Energy, and the U.S. Customs Service, started annual activities of cooperative exchange with such countries. This program, which is called the Export Control and Related Border Security (EXBS) Program, significantly contributed to their establishment of national export control systems. Countries like Poland and Bulgaria, for example, are still using Tracker Export Control System deployed by the U.S. government.

1995 - Relaxation of computer controls

In October 1995, President Clinton ordered a major relaxation of the export controls on high performance computer systems (HPC) including super computers, urged by computer manufacturers, who were eyeing the emerging markets like India, China and Russia. This led to a categorization of destination countries into Tier-1, Tier-2, Tier-3 and Tier-4, with progressively increasing the levels of controls.

1996 – Simplification of the EAR

On March 25, 1996 in the Federal Register 61 FR 12714, the BXA published an interim rule simplifying the EAR, which was the first comprehensive rewrite and restructure of the regulations in over 40 years. This interim rule, which became effective on April 24, 1996, clarified the language used in the EAR, simplified their applications and generally made the export control regulatory regime more user-friendly. This measure was taken following the report of the Trade Promotion Coordinating Committee (TPCC) entitled, “Toward a National Export Strategy” issued on September 30, 1993.

In undertaking the comprehensive review of the EAR, the BXA in February 1994 raised the following eleven questions for public comments.

- (1) Can some license obligations be replaced with pre-shipment or post-shipment notifications?
- (2) Should the general license provisions of the EAR be revised?
- (3) Should re-export controls be modified? Continued?
- (4) How can the structure of the Commerce Control List (CCL) be improved?
- (5) Are there alternatives to the “Country Group” approach currently used in the EAR?
- (6) How should the EAR deal with controls on products of technical data, written assurance requirements, and part and components controls?
- (7) How should documentation requirements, such as Import Certificates and Destination Control Statements, be modified?
- (8) Should the EAR provide for “License Free” zones?
- (9) What revisions should be made to the Special Licensing Procedures (Distribution License, Project License, Service Supply Procedure, etc.)?
- (10) How should the EAR apply to unique situations such as the electronic transmittal of technology and software, international movement of aircraft and vessels, etc.?
- (11) Are there new enforcement programs, practices or policies that could enhance the government’s ability to detect and prevent violations of the EAR, while negatively impacting as little as possible on law-abiding exporters?

1996 – Encryption items transfer from USML to CCL

On December 30, 1996, in the Federal Register 61 FR 68572, the BXA published an interim rule to transfer all encryption items controlled on the USML to the CCL which is administered by the Commerce Department, but except for those specifically designed, developed, configured, adapted or modified for military applications, which still remain in the USML.

This rule implemented the Clinton Administration's plan to promote a worldwide key management infrastructure with the use of key escrow and key recovery encryption items, thus promote the growth of electronic commerce and secure communication worldwide while protecting the public safety and national security.

1998 - Satellites transfer from CCL to USML

On the contrary, under the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, all commercial satellites and related items were transferred from the CCL to the USML which is administered by the State Department. This action was taken as a result of the Cox Report that detailed unauthorized transfers of technical data related to both satellites and launch vehicles to China through a series of launch failures in late 1990s, involving U.S. satellites that were being launched by Chinese Long March rockets. It was reported that sensitive technologies were leaked to China by way of the U.S. assistance for the failure investigations and analyses. The report in this regard named two U.S. satellite companies: Loral Space and Communication Corp. and Hughes Electronics Corp. Both companies were prosecuted by the federal government for violations of U.S. export control law, resulting in the two largest fines in history of the AECA. Loral paid a \$14 million fine in 2002 and Hughes a \$32 million fine in 2003.

(George W. Bush Administration)

2002 - BXA changes to BIS

In April 2002, less than one year after the 9.11 terrorists attack which shook the world, the Bureau of Export Administration (BXA) of the Commerce Department announced that it had changed its name to the Bureau of Industry and Security (BIS). The change was made to reflect the breadth of the bureau's renewed activities in the sphere of national, homeland, economic and cyber security.

2006 - Boeing is charged with violations of AECA/ITAR

In April, 2006, Boeing paid a \$15 million fine for violations of AECA and ITAR. Between 2000 and 2003, according to the Charging Letter of the State Department, Boeing shipped overseas without license 94 commercial jets with the BEI QRS-11 quartz rate sensors, or gyro-chips, embedded in the flight boxes, including 19 to China. In July 1993 the Directorate of Defense Trade Controls (DDTC) of the State Department issued a Commodity Jurisdiction (CJ) determination to BEI Technology Inc., the manufacturer of the device, ruling that the QRS-11 is a defense article controlled under the ITAR, being used in the guidance system of the Maverick missile.

(Barack Obama Administration)

2009 – President Obama launches the Export Control Reform Initiative

In August 2009, President Obama directed a broad-based interagency review of the U.S. export control system, with the goal of strengthening national security and the competitiveness of key U.S. manufacturing and technology sectors by focusing on current threats, as well as adapting to the changing economic and technological landscape. This review determined that the current export control system is overly complicated, contains too many redundancies, and, in trying to protect too much, diminishes U.S. ability to focus its efforts on the most critical national security priorities.

As a result, the Administration launched the Export Control Reform Initiative, which will fundamentally reform the U.S. export control system. The initiative, with the four pillars as stated below, is designed to enhance U.S. national security and strengthen the country's ability to counter threats such as WMD proliferations.

The four pillars of the reform initiative are as follows:

- (1) Development of a single control list
- (2) Establishment of a coordinated export control enforcement center
- (3) Establishment of a single licensing agency
- (4) Creation of a single IT system for license processing

The President's instruction was initially inspired by the recommendations of the National Research Council report titled, "Beyond Fortress of America," which stated that U.S. export control system is "fundamentally broken" and is still rooted in what it labels a Cold War "Fortress America" mentality. The growing reliance of U.S. military on dual-use technologies, as well as evolution at the multilateral, industrial, and technological level, have brought to light the need to rethink the very nature of export controls in the post-Cold War era.

Unfortunately, it seems that the reform objectives of (1) and (3) above will not be realized under the Obama Administration which will end in January 2017. What the authority is trying to do instead is to carry out an in-depth review of both the ITAR and the EAR, and make "a common set of regulations that would be administered by DDTC and BIS." In any case, this task will have to be carried on to the next Administration.

2010 – Encryption export control reform

On June 25, 2010, BIS made significant changes to export controls on encryption items to enhance national security by better focusing controls and by streamlining the collection of information on

encryption products. This encryption export control reform is one of the first steps in the President's overall export control reform initiative. The new rule:

- (1) de-controlled items that had been previously covered by the "ancillary cryptography" provisions of the License Exception ENC,
- (2) removed the technical review requirement for the exports of most "mass market" items and those previously eligible for export under License Exception ENC "unrestricted," subject to new encryption registration and annual self-classification reporting requirement,
- (3) released most encryption items from semi-annual reporting requirement, and
- (4) extended the scope of the License Exception ENC to authorize more encryption technology exports, subject to encryption registration and classification review requirement.

2011 - "We can't eliminate the U.S. re-export controls," says Kevin Wolf

On November 11, 2011, a CISTEC delegation visited BIS in Washington D.C. as part of its annual activity of international exchange. Kevin Wolf, assistant secretary of Commerce for Export Administration, clearly responded to the request made by the delegation that BIS cannot eliminate the U.S. re-export controls because they must amend two laws, the AECA and EAA, to eliminate the rule, which will never be approved by Congress.

2013 - Satellites re-transfer from USML back to CCL

In January 2013, the National Defense Authorization Act (NDAA) for Fiscal Year 2013 was signed into law. The NDAA 2013 authorized re-transfer of all commercial satellites and related items from the USML back to the CCL. This is part of the Export Control Reform Initiative. It was officially announced by Federal Registers of 13 May 2014, 79 FR 27180 and 79 FR 27417, which amended the ITAR and EAR respectively.

2013 - Mega revision of the EAR

On April 16, 2013, the BIS issued Federal Register, 78 FR 22660, which extensively revised the EAR as the initial implementation of the Export Control Reform. In this revision new control provisions that shall apply to the exports of the 600-series items transferred from the USML to the CCL were added to the EAR, which have now become more voluminous and complicated as a result. The revised regulations came to effect on October 16, 2013.

The essence of the ongoing U.S. Export Control Reform Initiative is to transfer certain USML items, mostly parts and components, to the CCL of the EAR so that exporters of those items can enjoy more flexible export control treatments than those under the ITAR, to which DDTC cannot make

necessary revisions by itself, according to its Director, though they are still categorized as 600-series “military” items.

2014 – Publication of Iran General License D-1

On February 7, 2014, the Office of Foreign Assets Control (OFAC) of the Treasury Department issued Iran General License D-1 (GL D-1), revising the original General License D (GL-D) issued on May 30, 2013. GL-D was issued to facilitate communications by the Iranian people, authorizing the export, re-export, or provision to Iran of certain personal communication software, hardware, and related services subject to the EAR – but only by U.S. person or from the U.S. The GL-D1 did expand the scope of the authorization to non-U.S. persons, as well. This is quite remarkable that the action was taken in response to the request made by the CISTEC delegation visiting the Office of Sanctions Policy and Implementation of the State Department in Washington, D.C. in January 2014.

2015 – Relaxation of export restrictions against Cuba

On December 17, 2014, President Obama announced a historic new approach in U.S. policy toward Cuba, recognizing that increased engagement and commerce benefits both the American and Cuban peoples. After that on May 29, 2015, the Secretary of State rescinded the designation of Cuba as a State Sponsor of Terrorism. Further on 20th of July, the U.S. and Cuba re-established diplomatic relations, opening embassies in each other’s capitals, which was for the first time since 1961 when both countries had severed ties. And President Obama put a final touch on his initiative by making a historic state visit to Cuba in March 2016. As a result, since January 2015 when BIS created a new License Exception SCP (Support for Cuban People), the export restrictions against Cuba have gradually been relaxed.

2016 – Iran-related Sanctions Relief

On January 16, 2016 (Implementation Day), the U.S. Government, together with the UN and the EU, lifted nuclear-related sanctions against Iran (mainly secondary sanctions on non-U.S. persons). This action was taken according to the Joint Comprehensive Plan of Action (JCPOA), a historic agreement reached on July 14, 2015 between Iran and the P5+1 nations (the U.S., the U.K., France, Russia, China, and Germany) after years of negotiations. With the JCPOA, the U.S. has won the Iran that is shut off from its nuclear pathways. On the other hand, Iran has won the lifting of economic sanctions imposed by the U.S., the EU and other countries which had seriously damaged its economy, and consequently brought Iran to the table of negotiations. Note, however, that the export controls against the country under the EAR remain the same.

II. The European Union

The European Union (EU) is a political and economic union – currently of 28 member nations, and currently facing fundamental problems that could rock its very existence. It operates a single market in which goods, services, capital, and people move freely between the nations. The individual countries within the EU are independent, but they conduct foreign trades under certain common rules established in accordance with the agreement made between themselves. As such, the 28 member nations have given up part of their sovereignty to the EU institutions, where many decisions are made at the European level, and the common EU Regulation on dual-use export controls is no exception as it came into being through such mechanism.

1. The background

1-1. Articles 113 and 223 of the Treaty of Rome

The necessity of establishing a Community-level export control system was recognized by Member States in the 1990s when the idea to create the European Common Market was finally materialized. Especially, the 1991 Persian Gulf War prompted the move because the war revealed a disturbing fact that such major countries as the U.K., Germany and France were making destabilizing exports to the region. Member States therefore aimed initially at setting up common policies on arms exports. However, while their efforts resulted at the end of 1994 in the issuance of the common Regulation on the exports of dual-use goods and technologies, those on arms exports ended up only with the establishment in 1998 of the non-binding Code of Conduct on Arms Exports which contained eight export control criteria.

The reason for the difference in outcome between dual-use items and military items lay in the difference of the articles of the Treaty of Rome that were applied in each decision. As to export controls on dual-use items, Member States agreed that they were within the scope of “common commercial policy” stipulated in Article 113, thus gave up the competence to the EU. As to arms export controls, on the other hand, they argued to the last that the matter directly related to each country’s national security interests and therefore Article 223 be applied, thus never relinquished national competence.

[Article 113]

1. After the transitional period has ended, the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.

[Article 223]

1. The provisions of this Treaty shall not preclude the application of the following rules:

(a) No Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) Any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purpose.

1-2. Dual-use items

The underlying issue concerning the establishment of the centralized export control regime for dual-use items was Member States' concern that if goods move freely within the Community, sensitive items will easily go out from countries implementing weaker controls, unless common Regulation is established. Such a concern pushed them to hold discussions multilaterally, which started in 1991 and continued through June 1994 when an agreement was finally reached. And in the following December were the Regulation and the Control List officially published. Since then the EU dual-use export control system has been evolving in three phases as follows.

[The 1st phase]

(1) Council Regulation (EC) No 3381/94 of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods (Regulation)

(2) Council Decision 94/942/CFSP of 19 December 1994 on the Joint Action adopted by the Council on the basis of Article J.3 of the Treaty Union concerning the control of dual-use goods (Control List)

At this time, the Control List was established separately in the form of Joint Action because the Member States wished to retain the right to determine what items to control.

[The 2nd phase]

(1) Council Regulation (EC) 1334/2000 of 22 June 2000 setting up a Community regime for the control of dual-use items and technology

(2) Council Joint Action 2000/401/CFSP of 22 June 2000 concerning the control of technical assistance related to certain military end-use

At this time, the Control List was created as Annex I to the Regulation. Other changes made this time from the initial phase were as listed below. Also, a Joint Action concerning technical assistance related to military end-use was published separately at the same time.

- (a) The system of Community general export authorization was introduced.
- (b) The items that require a license for intra-community transfer were limited only to the Annex IV items.
- (c) Military end-use catch-all control was added.
- (d) Intangible technology transfer control was introduced.

[The 3rd phase]

- (1) Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items
- (2) Regulation (EU) No 1232/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items
- (3) Regulation (EU) No 388/2012 of the European Parliament and of the Council of 19 April 2012 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items

The above are the current set of the EU Regulation. The Regulation (EU) No 1232/2011 was issued to amend the Council Regulation (EC) No 428/2009, which was introduced by comprehensively rewriting the old one. And the Regulation (EU) No 338/2012 was issued to amend the Control List. Major changes made this time were as follows.

- (a) Both brokering control and transit control were introduced in accordance with the UNSCR 1540 adopted in 2004.
- (b) Five types of the Union General Export Authorization (UGEA) were introduced under the Regulation (EU) No 1232/2011.

1-3. Military items

It was on 8 June 1998 when the eight criteria on arms export controls were adopted by Member States under the title of the EU Code of Conduct on Arms Exports. The Code of Conduct was further transformed into a Common Position at the end of 2008. The EU Code is a politically binding (but not legally) instrument which is designed to create common standards for all EU Member States to use when making licensing decisions for arms exports and to promote transparency and responsibility by Member States in arms transfers to third countries.

Today, each Member State is exporting military items complying with the common EU policies adopted as listed below. Actually, each country is implementing the policies under national laws and regulations which are established based on such EU agreements.

(1) Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment

This covers EU common rules on arms exports. Its main part is Article 2, where the eight criteria of the Code of Conduct are stipulated. In addition, Article 12 refers to the Common Military List separately established as mentioned below.

(2) Common Military List of the European Union

This list was initially adopted on June 13, 2000 and has been revised from time to time. The latest version was published on April 6, 2016 on the site of the EU Official Journal. The EU common policy on arms export controls is made up by the pair of this List and the above Common Position.

(3) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying the terms and conditions of transfers of defense-related products within the Community.

Literally, this calls for the measures of simplifying the terms and conditions of transfers of defense-related products within the Community. Each Member State was required to make national legislation for the measure by June 30, 2011 and enforce it from June 2012.

(4) Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering

This covers EU common policy of arms brokering services.

2. The EU's common export control system for dual-use items

2-1. EU competence and EU Regulation

The EU export control system for dual-use items is, as mentioned above, within the scope of "common commercial policy," thus comes under the EU's exclusive competence. Therefore, it is governed by a "Regulation" that is legally binding by itself. In other words, the EU Regulation is a supranational existence, thus the EU citizens must comply with it at the instance when it comes to effect. For reference, there are six policy areas that come under the EU competence, and common commercial policy is one of them.

2-2. EU Regulation and national legislation

That said, it is never true that the EU export control system is totally dependent on the EU

competence. The truth is that the EU export control system is dependent on “the principle of subsidiarity,” which is the principle whereby the Union does not take action (except in the areas that fall within its exclusive competence) unless it is more effective than action taken at national, regional, or local level. In other words, the EU export control system for dual-use items is built based on “shared competence” in which both the EU and its Member States may adopt legally binding acts in the areas concerned.

First, it must be noted that the Council Regulation (EC) No 428/2009 (the EU Regulation) merely states the EU’s common policy on, or framework of, dual-use export controls. The essence of the Regulation is only as follows.

- (1) Common control list (Articles 3 and 15(1))
- (2) Exports that require authorization (Articles 3 (controlled items) and 4 (non-controlled items))
- (3) Brokering service control (Article 5)
- (4) Transit control (Article 6)
- (5) Intra-community transfer control (Article 22)
- (6) Licensing (Article 9)

Second, each Member State, under its own competence, issues national export control laws and regulations to complement the EU Regulation. Actually, the rest of the above – the administrative authority, licensing system, penalties, and other regulatory procedures – are all covered by national legislation. In addition, as described below, each Member State may adopt own export control provisions unilaterally, which are also covered by the same.

- (1) Each Member State may adopt any optional clause in the EU Regulation at its discretion.
- (2) Each Member State may establish own control list in addition to Annex I to the EU Regulation.
- (3) Each Member State may adopt unique control provisions in addition to the EU Regulation.
- (4) Each Member State may adopt the system of National General Authorization.

What usually happens under the system of shared competence is a tension between the EU competence and the national competence. In particular, each country’s policy of national security (national defense) is nothing but a matter of national competence, though there is a framework of the EU’s Common Foreign and Security Policy. Accordingly, some countries like the U.K. and Germany are implementing additional controls set forth based on their national policies. In addition, interpretation and implementation of the EU Regulation itself actually differ from country to country, according to the differences in their policies.

Now, we can say that each Member State’s export control system for dual-use items is built on both

the EU Regulation and national legislation concerned, which are complementary each other. Despite the existence of the EU Regulation, the export controls system throughout the EU is not completely harmonized but is actually different between Member States. Moreover, export controls in the EU are implemented independently by each country, which issues licenses and enforces the law on its own. Indeed, there are 28 different export control systems effective in the EU. Or we could even say: There are 28 different lawyers in the EU, as stated by the head of BAFA in Germany.

2-3. Problems in the current EU export control system

As a result, there exist various problems in the current EU export control system as described below. Generally, the competitive field within the EU is not leveled but rather unlevelled, and this creates a problem not only of competition but also of international security.

(1) Besides the problem that the interpretation of the EU Regulation varies from country to country, there exists another problem that the implementation of the regulations are not the same among Member States because although the Regulation sets out the principles it leaves considerable degree of discretion to each Member State to decide how such principles should be implemented in practice.

(2) What makes the issue more complicated is the fact that some Member States implement export control provisions that are additional to the EU Regulation. For example, Germany and the U.K. are implementing additional provisions of catch-all control; France, Germany, UK, Italy and Latvia are controlling items that are additional to Annex I; and Austria, Bulgaria, Denmark, Hungary, Finland, and Poland make it mandatory for exporters to establish an ICP when using any General Authorizations or when applying for an Individual License.

(3) Some Member States – Austria, France, Germany, Greece, Italy, the Netherlands, Sweden, and the U.K. – have National General Authorizations (like OGEL of the U.K.) and the others do not. Even the conditions (type of the authorizations, scope of eligible destinations and items, etc.) of such authorizations themselves differ from country to country.

(4) Also, licensing conditions are not the same among Member States. And information sharing by Member States concerning denial is not sufficient. Because of this problem, it actually happens that while country 'A' denies a license application for an export of a product to a customer, country 'B' would later issue a license for an export of the same product to the same customer.

2-4. The EU export control reform project

To solve such problems the EU Commission is now undertaking a reform project as part of the 3-year review required by Article 25 of the EU Regulation. As the initial step the Commission issued in 2011 a Green Paper through which collected public comments from competent authorities, industries, research institutions and academia. Now, in the wake of the 2014 publication of its report (Communication) titled, "The Review of export control policy: ensuring security and competitiveness in a changing world," the Commission is at the stage of the Impact Assessment, which is undertaken by the Stockholm International Peace Research Institute (SIPRI) in cooperation with ECORYS, another research company who conducts a data collection project. What will come after that is a proposal of revised EU Regulation. It is envisaged that the new Regulation would be enacted earliest in 2017, or in 2018 if it takes longer time. The controls under the new Regulation are expected to become more EU-wide, reducing the elements of national discretion, and adding some new control concepts.

III. The United Kingdom

The start of the U.K.'s export controls dates back to January 1, 1939, when the Import, Export and Customs Powers (Defence) Act was enforced. This was an emergency legislation passed at the outbreak of World War II, making it a criminal offence to export specific goods to enemy countries. In particular, Section 1 of the Act provided the Secretary of State with an extended power to apply import and export controls on specific items issuing regulations without Parliament scrutiny.

Although the War ended in 1945, this emergency legislation had remained in force ever since due to the provision of Section 9(3), though the 1939 Act was amended by the Import and Export Control Act 1990 that repealed this specific section.

The last decade of the 20th century was a critical period for the U.K.'s export control system for modernization. At the beginning of the 1990s the so-called "Arms-to-Iraq affair" was surfaced. In the 1980s British companies like Matrix Churchill sold arms and dual-use goods to Iraq under the government's endorsement. This disturbing fact raised harsh voices of criticism about the flaws in the British export control system.

In 1992, following the disclosure, the government set up an independent inquiry body led by Lord Justice Scott. The inquiry's thorough investigations resulted in the Scott Report which was published in February 1996. The report identified a number of limitations of the 1939 Act, including the lack of Parliamentary scrutiny of secondary legislation and the absence of any indication of the

control purposes. Based on the finding, it also recommended that the government “publishes a Consultation Paper with proposals both for new empowering legislation in place of the 1939 Act and for an export licensing system suitable for the peacetime requirements of a nation in the post-Cold War era.”

Following a statement to the House in February 1996, the government published Green Paper, a consultative document, on strategic export controls in July the same year. Further, following the change of government in May 1997, a White Paper on Strategic Export Controls was published in July 1998. It contained proposals for a new legislative framework for strategic export controls, for new controls on electronic transfers of controlled technology and on brokering, and for improvements in licensing procedures.

After that, in March 2001, the government, taking into account the recommendations made in the Scott Report, issued draft Export Control and Non-Proliferation Bill as part of a consultation document, which was followed by the introduction in June of the Export Control Bill in the House of Commons. This bill finally received Royal Assent in July 2002 under the title of the Export Control Act 2002, which was brought into force in May 2004, replacing the export control provisions of the 1939 Act.

The Export Control Act 2002 is now the main U.K. legislation on export controls for military and dual-use items. Achieved in the new Act are mainly: a greater transparency of export control legal framework and an extended Parliamentary accountability.

Following the introduction of the new Act, the UK government set a scope of secondary legislation as follows:

- (1) The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (Main Order)
- (2) The Trade in Goods (Control) Order 2003
- (3) The Trade in Controlled Goods (Embargoed Destinations) Order 2004
- (4) Technical Assistance Control Regulations 2006

These Orders were then consolidated into a single Order – the Export Control Order 2008 which was enforced in 2009. The 2008 Order is now the principal export control regulation in the U.K., controlling the export of strategic goods, transfers of related technologies, technical assistance and trades (trafficking and brokering).

According to the report titled, *National Security Strategy and Strategic Defence and Security Review 2015*, the U.K. authority will review the structure for strategic assessment within the central government,

and will establish in 2016 new policy-making and delivery Joint Units, including an Export Control Unit, hosted by the Department for Business, Innovation and Skills (BIS), to provide coordinated cross-government operation of export controls.

IV. Germany

Since the end of World War II until 1955, the war-torn Germany (West Germany) was under the control of the triple powers of the U.S., Britain and France, and was prohibited from having both defense forces and defense industry.

The situation drastically changed, however, with the end of the Korean War in 1953 and the start of the Cold War. On 5 May 1955, the three powers formally ended their military occupation, and Germany became an independent country. And just four days later the country also became a member of NATO and thus joined the Western World, re-building new national defense forces.

Such a dramatic change allowed the country to establish a defense industry too. The political goal of the new German defense industry was to contribute to NATO as well as to German national forces by providing defense products and technologies.

The reestablishment of the defense industry in Germany was resulted thanks largely to its participation in inter-governmental defense cooperation, which also worked in an effective way to avoid giving the impression among neighbor states that that German defense industry would come back again.

In 1961, as a result of this strategic reorientation of the Western/German foreign and security policy, the German Parliament approved the new legislation related to export controls, introducing the following acts.

- (1) The War Weapons List (KWL) of 20 April 1961 (which became a part of the War Weapons Control Act),
- (2) The War Weapons Control Act (KWKG) of 1 June 1961, and
- (3) The Foreign Trade and Payments Act (AWG) of 28 April 1961

After that in 1986, the AWG was amended by the Foreign Trade and Payments Regulation (AWV) which entered into force on January 1, 1987. The AWV implements the AWG, regulating the exports of military as well as dual-use items.

The German strategic export control system was significantly strengthened twice – once in 1990 and again in 1992 – after experiencing disturbing cases of illicit exports. It was discovered that in the late 1980s and early 1990s several German companies made illegal exports of sensitive items to such countries as Iraq and Libya. Under the internal as well as external criticism for its poorly enforced control system, the government dramatically tightened the controls: the penalties for violations were drastically increased and the scope of the controls was widely expanded. Most of the German-specific control provisions that still exist today were established during this period before the start of the EU Regulation. Under the new laws German companies are now required to build stringent internal compliance system, and the top management is now legally responsible for the corporate export controls.

In the spring of 2013, the 50-year old AWG was further amended – but this time to streamline itself and make it more practical and up-to-date, adapting and updating the wording to the EU Regulation. Further, the amendment provides for a tighter and clearer penalty provisions. For intentional breaches of certain export control provisions, company representatives may face tighter criminal sanctions, whereas negligent conduct is now generally viewed as a regulatory offence which would only lead to fines. Also, the amended Act now opens the opportunity for companies for voluntary disclosure of negligent breaches of the regulations.

Actually, the above reform was made in accordance with the coalition agreement of 2009 between CDU/CSU and FDP, which contained the following statement: “The Foreign Trade Act (AWG) and the Foreign Trade Ordinance (AWV) will be streamlined and made easier to understand. Provisions which put German exporters at a disadvantage compared to their European competitors will be deleted. The implementation of foreign trade law needs to reflect the situation of international competition more clearly. A level-playing field will be created.” The reform of the Foreign Trade Act became necessary due to very complex legal texts which resulted from the multiple amendments that have been made one after another since 1962.

Germany, like Japan, is a country who rose from the ashes of 1945 into an industrialized economic power. But unlike Japan where commercial-base arms exports have been denied up until now, Germany is now in the group of third largest arms exporters in the world, after the U.S. and Russia.

V. France

The export controls of France started back in 1939, when the World War II broke out, with the introduction of military export controls. A salient feature of the French export controls is that encryption items are controlled still under a separate system which is administered by the Service

de la Securite des Systemes d'Information (SCSSI) placed under the authority of the Secretary General for National Defence (SGDN) which directly lead to the President. France is well known as a country which maintains strict and comprehensive encryption controls, though considerably relaxed recently.

1. Military Items

Military export controls of France date back to 1939, when the government adopted the Decree-Law of April 18, 1939 on war equipment, weapons and munitions. Similar to the case of the U.K., this was a legislation promulgated to address issues arose at the outbreak of World War II, prohibiting exports of military equipment, arms and munitions without a specific license. During the Cold War era, however, the French government viewed arms exports as contributing to the independence of the recipient countries from the super power hegemonies of the United States and the Soviet Union, and considered arms transfers as an instrument of French foreign policy implementation, placing the country itself independent of such powers. French arms export controls, after the end of the Cold War, have been changing influenced by the trend of the geopolitical situation and the economy.

While various modifications were made by relevant decrees and ordinances, the Decree-Law-based controls continued until 2005, when they were integrated into CoD, the Code of Defense 2004, which was adopted by the Ordinance No. 2004-1374 of 20 December 2004 and ratified by the Law No. 2005-1550 of 12 December 2005. The CoD is now referred to as the main text of national regulatory framework on military export controls in France. The relevant provisions of the CoD, which are almost similar to those of the Decree-Law, are set forth in Part 2, Book III, Title III.

During the course of such developments, France took into account the rules created at the European level. The country adapted its control regime to comply with the EU Code of Conduct for Arms Exports of 8 June 1996 and with the Letter of Intent (LoI) concerning "Measures to Facilitate the Restructuring of European Defense Industry" which was signed on 6 July 1998 by the Defense Ministers of France, Germany, Italy, Spain, Sweden and the U.K. The LoI resulted in the signature of a Framework Agreement on 27 July 2000. Since then, as stated above, the political, industrial and military landscape in Europe has changed significantly, and the defense industrial base has become increasingly globalized.

2. Encryption Items

(1) The 1939 Decree-Law

After the War, encryption items in France were controlled under the above-said Decree-Law of 1939 as they were regarded as weapons, or instruments of war. Therefore, the same strict controls were applied to the sale or use of encryption items as those applied to weapons. In fact, encryption products in this period were owned and used solely by intelligence and diplomatic agencies.

(2) The Law No. 90-1170 of December 29, 1990

The increasing needs of encryption products for the use in commercial sectors required of the French government to legalize their use or export. Thus it introduced the first encryption law No. 90-1170 of December 29, 1990, under which the use as well as export of any encryption products required a prior authorization by the Prime Minister.

(3) The Telecommunication Law of July 20, 1996

The first shift in French encryption control policy came with the introduction of the telecommunication law of July 20, 1996. Under the law, the use, supply, import, or export of any encryption products using a key of less than 40bits no more required a prior authorization.

(4) The 1999 Watershed

The French encryption policy was dramatically changed in 1999 by President Jospin's announcement of liberalization in January. After that in March 1999, the government introduced one law and two decrees No. 99/199 and No. 99/200. The new legislation abolished the country's complex licensing scheme for cryptographic imports and domestic use, mandatory key registration requirements for the domestic use of encryption, and a system of government approved trusted third parties (TTPs). In addition, the threshold of the key length for the permission was more than tripled from 40bits to 128bits. Cryptology thus went to public.

(5) A New Development in 2016: Cryptology vs. Law Enforcement

The deadly terrorist attacks happened in Paris in 2015 and in Belgium the following year have led to a new development in France. It is reported in March 2016 that the French government considers a law that would outlaw strong encryption. The report actually says that the French Parliament is considering an anti-encryption amendment to its massive "Digital Republic" bill to provide easy access for police and intelligence agencies to encrypted communications. It would require hardware manufacturers to configure their systems so that law enforcement could always access the data in question.

3. Dual-Use Items

The base of French dual-use export control regime was established back in 1944 by the Decree of 30 November 1944 defining the conditions for the imports of foreign goods into France and its overseas territories and the exports and re-exports of goods from France and its overseas territories to foreign countries. The Decree was further expanded to accommodate the rules set forth by COCOM which was established in 1949 joined initially by the United States, France, the UK, Italy, the Netherlands and Luxembourg. Since 1995 until now, however, the regime has been based on the European law, as updated by the Council Regulation (EC) No. 428/2009. In France the EU Regulation is complemented by the Decree No. 2001-1192 of 13 December 2001 concerning the control of exports, imports, and transfers of dual-use goods and technology.

In March 2010, after years of de-centralized controls, the French government established an organization called the Service des Biens a Double Usage (SBDU) in the Ministry of Economy, Industry and Employment with 16 experts from different agencies. It is the first-ever centralized authority that administers export controls on dual-use items. “Nobody is supposed to ignore the law” is a remark made a decade ago by a government official in charge of export controls. That remark, to some extent, reflects the French control status at that time. After the establishment of SBDU, however, the French export control system became much more clear and transparent, with various related information now appearing on its website.

VI. Hungary

Hungary, more than a century ago, was a big country, but lost two thirds of its lands and peoples through a series of treaties that followed the two World Wars. “Hungary is surrounded by itself” is what an export control authority said to a CISTEC delegation a decade ago. Yet this once-a-big-power mindset still exists today in Hungarian high officials, according to an article of a Japanese newspaper.

A 2008 report, *Export Control of Dual-Use Items during the Cold War and in Hungary Today*, written by Noemi Mintal says that even though COCOM never officially published a list of its “target countries,” they were undoubtedly at one time or another: Afghanistan, Albania, Bulgaria, Cambodia, the PRC, Cuba, Czechoslovakia, East Germany, Hungary, Laos, Mongolia, North Korea, Poland, Romania, the Soviet Union, Yugoslavia, and Vietnam.

In 1989, in the midst of the political changes taking place in the Communist bloc countries, the Central European states including Hungary began to approach COCOM and started negotiations

for the removal of COCOM restrictions. In 1990, for that purpose, Hungary, Czechoslovakia and Poland began to create their own export control systems. Initially, such systems did not practically operate as export controls, but as import and re-export controls with the aim to provide guarantee, or safeguard, for the COCOM member states, especially for the U.S., that the controlled goods imported will not be re-exported into a third country or used for conventional weapons.

After the 1990 elections, Hungary's Antall government hurried the negotiation with COCOM, and announced in June that the national legal system required by COCOM would be ready before the end of 1990. Thus Hungary, together with the other two countries, received COCOM's preferential consideration in December that year. It meant in practice that most exports of controlled items from COCOM member states to those countries were automatically licensed. As a consequence, Hungary was delisted in February 1992, two years before COCOM was dissolved.

To assume international and bilateral obligations, the Hungarian government established the Export Control Office in 1990 in the Ministry of International Economic Relations. Further in 1994, when COCOM was dissolved, the country, wishing its Europeanization, applied for the accession to the EU, which was realized ten years later in 2004. That year, Hungary further intensified its export controls by adopting two Government Decrees: No. 50/2004 on Licensing of International Trade of Dual-Use Goods and Technologies to implement the Council Regulation (EC) No. 1334/2000, and No. 16/2004 on Licensing of Export, Import, Transfer and Transit of Military Equipment and Services to implement arms export controls.

It should be noted in this regard that not only the pressure from, but also the cooperation extended by the U.S. government played a vital role in Hungary's, as well as other CEE countries', export control developments. It is interesting to read the statement made on May 1, 1992 by the U.S. Press Secretary Fitzwater on relaxation of restrictions on Exports to Hungary, which is as follows.

"We welcome the decision by the Coordinating Committee of Multilateral Export Controls (COCOM) to remove Hungary from the list of proscribed destinations, effective today. COCOM's action is part of the ongoing efforts to liberalize COCOM controls in light of our dramatically changed world. Hungary is the first country ever to be removed from the COCOM list. This is a tribute to Hungary's democratic transition and its adoption of safeguards on the use or transfer of controlled technology. The U.S. cooperated closely with Hungary in the design and implementation of its export control safeguard system. As a consequence of COCOM decision, Hungary will have access to more sophisticated levels of Western technology that are important to its economic modernization. U.S. exporters will benefit from the relaxation of these licensing restrictions on exports to Hungary."

VII. Russia

Russia was once the central power of the Soviet-bloc countries which faced with the blockade of technology transfers from the Western-bloc countries led by the United States. But that Russia, after the breakup of the former Soviet Union in 1991, is now a member of the international nonproliferation communities. Since its beginning, the country has continuously developed and built national export control system, trying in various stages to fulfill national interests, and sometimes under external pressures, mainly from America.

1973

The State Technical Commission was created in the former Soviet Union as an interagency body responsible for the protection of state secrets and official information, for preventing its loss through technical channels, and for counteracting foreign technical intelligence services on operations in the country. (December 18, 1973)

1991

(1) The former Soviet Union collapsed and disintegrated into twelve independent states (December 1991). The breakup of the once military superpower raised certain security problems as follows:

- (a) The control of strategic nuclear forces.
- (b) The threat resulting from the WMD proliferation.
- (c) The possible dissemination of sensitive technology through brain drain, illicit sales and so forth.
- (d) The participation of all former republics in international nonproliferation arrangements.

(2) Russia, under the above circumstances, began to create its export control system by issuing the Presidential Decree No. 213 "On Liberalization of Foreign Economic Activity in Russian Territory" (November 15, 1991).

1992

(1) Introduction of the Presidential Decree No. 388, "On Measures for Creating an Export Control System in Russia" which provided initial legal basis for creating a system of nonproliferation export controls in Russian Federation (April 11, 1992).

(2) The interagency Export Control Commission was established under the above decree, which was responsible for coordinating state nonproliferation export control policies.

(3) Also, the Federal Service for Currency and Export Control (VEK) was set up as a working body of the Commission. VEK, together with the Commission, played primary roles in the Russian export control system, issuing export permissions.

(4) The VEK established five lists of controlled items covering COCOM-listed items, nuclear related items, chemical items, biological items and missile related items.

(5) The heads of the governments of the CIS signed an agreement on the coordination of activities, equipment, technologies, and services that could be used for the development of WMD (June 26, 1992).

(6) The first ever military export license was issued by the Russian government (August 6, 1992).

1995

The Russian Federation, Belarus and Kazakhstan concluded a joint Customs Union.

1996

(1) Introduction of the Federal Law No. 63-FZ, "Criminal Code of Russian Federation" which contains a number of articles addressing export control violations and the illegal handling of nuclear and radioactive materials (June 13, 1996).

(2) The U.S started export control cooperation program (EXBS) with Russia.

1997

Washington began pressing Moscow to stop the flow of missile know-how and technology to Iran that had been continuing since 1994-1995. Officials of the two governments met numerous times to discuss the issue, while the U.S. Administration imposed tough sanctions against a number of Russian companies in 1998 and 1999.

1998

(1) Introduction of the Federal Law No. 114-FZ, "On Military-Technical Cooperation of Russia and Foreign States" which is the primary law governing trade in military items (July 19, 1998).

(2) President Clinton and President Yeltsin agreed at a summit meeting to expand cooperation on export controls to stop the spread of WMD. The two presidents agreed to regularize and develop a series of interagency subgroups to enhance export control cooperation in seven principal areas: missile technology, nuclear weapons and materials, implementation of "catch-all" legislation, conventional arms transfers, law enforcement, customs and licensing (September 1998).

1999

(1) Prime Minister Primakov stated: Russia observes all international norms relating to export controls and does everything necessary to exclude any leaks that would help the proliferation of weapons of mass destruction. It has been and remains our policy (March 1999).

(2) Introduction of the Federal Law No. 183, "On Export Control" which provides the primary legal basis for the current Russian dual-use export control system (July 18, 1999).

2000

VEK was eliminated as part of President Putin's restructuring of the Russian government. It was

replaced by a newly created Export Control Department in the new Ministry of Economic Development and Trade (May 2000).

2004

(1) The State Technical Commission was changed into the newly established Federal Service for Technical & Export Control (FSTEC) which has extensive powers including technical protection of confidential information and accreditation, and export control licensing.

(2) Introduction of the Presidential Decree No. 314, "On System and Structure of the Federal Organs of Executive Power" which transferred the export control function from the Export Control Department of the Ministry for Economic Development and Commerce to the FSTEC operating as part of the Ministry of Defense (March 9, 2004).

(3) Introduction of the Presidential Decree No. 1085, "On Issues of the Federal Service for Technology & Export Control" which officially defined FSTEC's functions (August 16, 2004).

2009

The EurAsEC Interstate Council (EIC) signed an agreement on the licensing of the imports and the exports of specific items to and from the Customs Union. Pursuant to the agreement, several lists of items controlled for the imports from, and the exports to, the Customs Union were created, including a list of encryption items (June 9, 2009).

2010

The FSTEC carried out scheduled inspections for export control compliance on 230 entities in total. Of those, 102 were found to have committed a combined total of 413 violations. Based on the findings, seven administrative offence inquiries were conducted and 33 notices requesting improvements were issued, and the fines collected from violators amounted to a total of 212,000 rubles.

VIII. Ukraine

The dissolution of the Soviet Union in 1991 into twelve independent states not only ended the Cold War, but also triggered a shift of Western-bloc security concern over the region from containment to nonproliferation. After the independence, Ukraine, as well as other CIS countries, was considered potentially a country of proliferation concern, lacking the system of export controls. The major problems identified at that time were as follows.

(1) The country had no export control system.

(2) It inherited huge amounts of the Soviet nuclear weapons, nuclear research infrastructure, highly

enriched uranium, uranium mines, as well as a large scale of military-industrial complex. It is said that this military-industrial complex consisted of more than 1,800 enterprises, while Ukrainian R&D centers were involved in 17 out of 21 “critical military technologies” developed in the Soviet Union. To be more specific, Ukraine was left with approximately 1,900 strategic nuclear warheads and 2,500 tactical nuclear weapons, together with 130 SS-19 and 46 SS-24 intercontinental ballistic missiles, which was the third largest nuclear stockpile in the world after the Russian Federation and the United States, according to a report.

(3) The absence of a large domestic market as well as of the government’s defense orders pressed the large number of defense-related enterprises to sell their products on foreign markets.

(4) The reduction of the government funds to research institutes caused increasing possibilities of the transfers of critical technologies from Ukraine to foreign countries.

It was under these circumstances that Ukraine started the development of national export control system. As indicated above there were no export control laws and regulations nor specific export control organization at that time, and defense exports were administered only under the Act on Foreign Economic Activity which was adopted just after the independence in 1991 by the Verkhovna Rada, the Parliament, to govern cross-border economic transactions. In fact, at this stage, the Commercial Center placed under the Ministry of Defense was freely selling redundant weapons inherited from Soviet to foreign countries.

Consequently, in later years, a number of illicit exports of defense items to such sensitive countries as China, Iraq, Libya, Syria and Yemen were reported from outside. In addition, at the end of 1996, a high-ranking Ukrainian official of the Ministry of Foreign Economic Relations and Trade was arrested for taking bribes issuing licenses for the export of sensitive items. Moreover, an Ad Hoc Investigative Committee created in the Rada even reported that during the period of 1992–1996, the sale of defense articles from Ukraine went on unchecked. Another report by the Committee said that during the period of 1994–1997, the SSECUC (described later) granted 6,500 licenses to 114 organizations for the exports of arms and related equipment. The exports were to 40 countries around the world, amounting to \$760 million, with sales often at less than fair market value.

Thus the Ukrainian government was in an urgent need to start reforming its export control system. After reshuffling existing organizations engaged in export controls, the State Service of Export Control of Ukraine (SSECUC) was created in 1993 as an executive body specially authorized to deal with the state export control issues. And in June 1996 the Law No. 9-1 “On the Export Control of Arms, Military Hardware, and Dual-Use Goods” was signed into law. Also in 1996 a company called Ukrspetsexport was founded by the government for exports and imports of arms and related products and services. After that all the domestic military-related enterprises were placed under the control of the state company. Further in 1999, the Commission on Export Control Policy and

Military and Technical Cooperation of Ukraine with Foreign States was created. This organization was re-named in 2000 to the Committee on Policy of Military and Technical Cooperation and Export Control, and was further replaced in 2007 by a new body named the Interdepartmental Commission for Military and Technical Cooperation and Export Control, which is now placed above the SSECU.

The course Ukraine took during these periods was to become a non-nuclear weapons state by denuclearizing itself. It was back in 1990 when the Rada adopted the Declaration of Sovereignty, which proclaimed the three non-nuclear principles: not to maintain, produce or acquire nuclear weapons. After the independence, however, the country's move in that direction made little progress until 1994, when it was agreed between Ukraine, Russia, and the U.S. that all nuclear weapons on the territory of Ukraine shall be transferred to Russia for dismantlement and that the U.S. provides financial assistance to Ukraine to support that action. It was in May 1996 when the final lot of nuclear warheads was removed from the land of Ukraine.

Meanwhile, Ukraine had started joining nonproliferation communities in the world. After some twists and turns related to security guarantees provided for to the country by Russia, the U.S. and the U.K., Ukraine first acceded to NPT and to BWC in 1994, then to CWC in 1998, and to CTBT in 2000. Ukraine is the first country among CIS states that takes part in all the international export control regimes. It joined WA and NSG in 1996, MTCR in 1998, and AG in 2005.

Finally, it should be noted that the professional and financial support from the U.S. government played a significant role in the improvement of Ukrainian export control system. The U.S. focused on stopping the leakage of weapons of mass destruction from former Soviet countries including Ukraine, and under the Export Control and Border Security (EXBS) Program helped the country strengthen its export control system in building electronic licensing system, establishing strong enforcement system, and drafting a new, comprehensive export control law covering both military items and dual-use items. After the repetition for years of writing and re-writing a bill, the Ukrainian government finally promulgated in February 2003 the Law of Ukraine "On the State Control of International Transfers of the Military and Dual-Use Goods." It is currently the principal export control law in Ukraine which is administered by the SSECU.

IX. Japan

Japan's export control system was founded back in 1949 when the country was still in the post-World War II aftermath under the Allied Occupation (1945-1952). Stepping forward into reconstruction and economic recovery, the Japanese government introduced that year the Foreign Exchange and Foreign Trade Control Act to strictly control foreign exchange and foreign trade

transactions for the purpose of normalizing trade activities and maintaining Japan's balance of payments. Since then, Japan has been implementing export controls under the act (the basic law).

Three years later in 1952, Japan joined COCOM, the Coordination Committee for Multilateral Export Controls, and started implementing export controls within the framework of the multilateral export control regime that was started in 1949 and ended in 1994 after the end of the Cold War.

Much later in 1987, the basis of Japan's present day export control system was established. This development was in fact a consequence of the so-called Toshiba Machine Incident, which involved exports of state-of-the-art machine tools from Japan to the Soviet Union. The disclosure of these exports created an international uproar, especially in Washington, D.C., that this transfer of technology, a violation of national as well as COCOM regulations, seriously undermined Western-bloc security.

In response to this incident, the government drastically enhanced controls by amending the basic law. In order to make the system more effective, the authority not only increased the penalties, but also ordered individual companies to establish an appropriate system of corporate export controls based on an internal compliance program (ICP). Shortly thereafter in 1989, the Center for Information on Security Trade Control (CISTEC) was created. As a non-government organization, CISTEC functions as a linkage between industries, academia, and the government, which is unique compared with BIS of the U.S. and KOSTI of South Korea, each functioning as a government body, not a third party.

Since then Japan's export control system has been evolving in response to year-to-year changes in the political and security situations of Japan and the world. Catch-all control related to weapons of mass destruction (WMD) was introduced in 2002 replacing the old Complementary Control (catch-some control) introduced in 1996, brokering and transit controls were introduced in 2007, and technology transfer control was enhanced in 2009.

Japan, a peace-loving nation with its post-war pacifist constitution, has been taking a very tough stance against exports of arms or anything of military significance. Such a stance first resulted in the introduction in 1967 of the guideline called the Three Principles on Arms Exports under which the government took a near-embargo policy on arms exports.

Recently, however, the Government of Japan set for a historic shift in its national security policy establishing a new strategy of "Proactive Pacifism." In December 2013, recognizing that the security environment surrounding Japan has become ever more severe as neighboring China is unilaterally attempting to change the status quo with its territorial assertion over Asian high seas,

the government established the National Security Council (NSC) and adopted the National Security Strategy (NSS). More importantly, the government, in response to such a changing situation, re-established the legal framework for national security by introducing new bills. After going through harsh debates in the Diet, the national security bills came into laws in September 2015 and took effect in March the following year.

In April 2014, along with that movement, the government reoriented its arms export control policy and set out the new Three Principles on Transfer of Defense Equipment and Technology, a less restrictive policy on arms exports, replacing the Three Principles on Arms Exports which had lasted for almost 50 years. Now, arms exports from Japan are not blindly denied, but may be permitted after strict scrutiny, if the transaction meets the conditions newly set up. As of March 2016, Japan is in the top group in the race of submarine sale to Australia, competing with Germany and France. The authority judged that it had a potential to strengthen the security tie between Australia, Japan, and the United States and advance international competitiveness of the Japanese defense industry.

Today, Japan, as a signatory to major nonproliferation treaties and a member to all the existing international export control regimes, is implementing robust export controls consistent with the international standards and norms. In addition, Japan not only commits itself to international nonproliferation goals, but also promotes its outreach activities in Asia, expanding cooperative networks in the region. In February 2016, the Ministry of Economy, Trade and Industry (METI) held the 23rd Asian Export Control Seminar in Tokyo, attended by about 170 persons from 30 countries and regions.

In the future, the Japanese authority, as the industries so wish, would have to tackle two challenges. One is the internationalization of the item classification numbering system, which is already being taken care of. The other is streamlining of the legal structure, which is currently an extremely complicated web of the law, cabinet orders, ministerial ordinances, and numerous notices, notifications, and guidance. This requires comprehensive rewrite and restructure of the law and regulations.

X. South Korea

South Korea's export control system was founded in 1987 when the country signed a Memorandum of Understanding on the Protection of Strategic Goods and Technology with the United States, which was an agreement to prohibit unauthorized exports of COCOM-controlled items from the country to communist-bloc destinations. Subsequently, the country laid a foundation for its export control regime by amending the Foreign Trade Act, which is now the basic law that governs the

country's export controls.

While Japan joined COCOM earlier in 1952, the multilateral organization in this period had little concern about exports from other countries in Asia, who were not capable enough to produce commodities which were controlled under the international regime. Especially, South Korean economy, after the 1950-1953 Korean War, was still in bad shape. Moreover, the country had no political will to trade with Communist-bloc countries, let alone with the Democratic People's Republic of Korea (DPRK).

In the 1980s, however, South Korea's economy made a rapid growth, reaching a level of technological development that allowed the country to produce high-tech products. And the country's export-oriented industries sought new markets in China, Eastern Europe, and the Soviet Union. For the United States, however, this ambitious approach was seen as a challenge to the U.S.-led efforts to contain communist-bloc countries through the multilateral export control regime of COCOM. And this led to the U.S. action to put pressure on the country, which resulted in the said agreement.

Initially, the South Korean government made a slow progress in implementing the agreement. First, it established a system of issuing COCOM-style Import Certificate and Delivery Verification (IC/DV), but started its actual operation only in 1990. After that in 1992, the government made an amendment to the Foreign Trade Act and authorized the Minister of Commerce to require permits for the exports of strategic items. But it was only in 1993 when the Government of South Korea announced a comprehensive plan to set up a legal and organizational framework for licensing authorities. South Korea's political commitment after that to nonproliferation of strategic goods and technologies led to becoming an original member of the WA in 1996. Also joining NSG in 1995, AG in 1996, and MTCR in 2001, the country is now implementing rigorous controls in conformity with the international norms.

Since then, the export control system of South Korea has been advancing considerably. Catch-all control was introduced in 2003, strategic trade information system called "Yestrade" was introduced in 2005, the Korea Strategic Trade Institute called "KOSTI" was established in 2007, and the European ECCN system for item classification was introduced in 2008.

A further amendment to the Foreign Trade Act was approved on July 30, 2013 and came into force on January 30, 2014. The amendment made several changes in legal requirements. It now obliges traders to obtain brokering license in relation to catch-all control.

Finally, in December 2015, the government enacted the Defense Technology Security Act to secure

national safety and enhance national credibility by systematically protecting defense technology and by supporting relevant agencies. This act will come into effect on 30th June 2016. Under this act the technologies which are considered significant in terms of South Korea's national security will be identified. Also, under the act, institutions who are in possession of such technologies are designated as "defense related institutions." Such institutions are obliged to establish a defense technology security system.

XI. China

It was in the 1990s when China started building up legally based system of strategic export controls. This move of the Chinese government culminated in its publication in December 2003 white paper, *China's Nonproliferation policy and Measures*, which demonstrated China's internationalization of export controls. It is no secret in this regard that continued foreign pressures, especially of the U.S., a growing international consensus on curbing the illicit exports of WMD-related products, and an increasing concern with its own reputation and standing in the international community all accelerated the improvement of the country's export control system. Yet China still remains outside of MTCR, AG, and WA, though it is a state party to NPT, BWC and CWC and a member of NSG.

1. The RAND report

According to the 2005 U.S. RAND report on Chinese export control, *Chasing the Dragon - Assessing China's System of Export Controls for WMD-Related Goods and Technologies* (http://www.rand.org/content/dam/rand/pubs/monographs/2005/RAND_MG353.pdf), the evolution of China's export control system can be divided into four stages as follows:

- (1) 1949 to 1979: Years of *de facto* export controls.
- (2) 1979 to 1995: Years of *ad hoc* export controls.
- (3) 1995 to 2002: Years of moving toward *de jure* strategic export controls.
- (4) 2002 to the present: Years of the implementation of *de jure* controls and increasing interaction with the multilateral export control regimes.

The RAND report further says that each development stage reflects both the domestic and international setting of China, and each of the periods represents a distinctive phase of China's export control development. Each of the four stages is summarized as follows.

(1) 1949 to 1979: Years of *de facto* export controls

From 1949 to 1979, transfers of sensitive WMD-related technologies from China were avoided largely by virtue of domestic political and economic constraints in place during the early decades of China. At that time, export controls were not administered in any systematic way, though ostensibly provided for by the *Provisional Rules of Foreign Trade Administration*. Instead, exports were controlled, *de facto* (in fact), by certain intrinsic elements that were characteristic of the early years of the Chinese Communist state. Strict controls on economic activity and foreign trade, combined with anemic interaction with the outside world, effectively served the functions of *de jure* (according to law) system of strategic trade controls during the first three decades of China.

In this period, China remained outside of the international nonproliferation regimes. COCOM designated China as a proscribed country by virtue of its status as a Communist power, placing the country on the receiving end of the regime's technology transfer controls. This experience doubtlessly colored China's early perception of strategic trade control as a biased and discriminatory Western institution. During this period, China regularly issued ideological rhetoric criticizing the international nonproliferation agreements, including the NPT, as imperialistic and discriminatory toward developing countries' legitimate economic interests. Yet China also publicly declared that it would prevent nuclear proliferation and that it would not provide assistance to any nuclear-weapons program, and from 1949 to 1979 this remained largely true.

(2) 1979 to 1995: Years of *ad hoc* export controls

For most of this period, China administered its export controls unevenly via *ad hoc* (done for a particular purpose only) political control and administrative regulations, undisclosed control lists, and ambitious export control procedures that were driven by cost-benefit calculations and a sense of the national interest that was often at odds with prevailing international nonproliferation norms.

In 1979, the aforementioned constraints on transfers of WMD-related technologies from China began to erode when the Chinese government instituted a policy of "reform and opening." Before Deng Xiaoping's Open Door policy, there was little need for nonproliferation trade controls because only designated, state-owned enterprises (SOEs) had the right to export, and very few of them produced dual-use goods at that time. However, economic reforms of the late 1970s and early 1980s liberalized China's centrally planned economy by opening production and trade opportunities to more entities, including private actors, thus undermining the elements that previously comprised a *de facto* system of export control. Economic reform and development became the paramount objective of the Communist Party of China during this era. As the Chinese government gradually began to implement market reforms, it placed greater burdens upon state-owned defense industries to sustain themselves with less financial buttressing from the government, inducing SOEs to look to

foreign markets for sales and to reorient production toward more marketable civilian goods. China also undertook a more proactive foreign policy beginning in the early 1980s, solidifying relations with a number of countries, primarily in the developing world, and reinforcing these relationships with assistance to a handful of countries' WMD and missile programs.

The 1980s ushered in a decade of Chinese proliferation, with most exports of sensitive goods and technologies officially or tacitly sanctioned by the Chinese government. Conventional-weapons exports flourished in the 1980s, with China's clients located in some of the most unstable regions of the world. The 1980s also saw China initiate often sensitive nuclear cooperation with a number of countries. These transfers of Chinese sensitive technologies during the 1980s and early 1990s were met with strong international criticism, as the United States and other countries began to pressure China to curb its weapons and dual-use sales and institute international-standard nonproliferation export controls.

Internationally, China cautiously and selectively began to enter the nonproliferation regime. In 1984, the country joined the IAEA, and later that year, it signed and acceded to BWC. Also, it acceded to NPT in 1992 and became a member of Zangger Committee in 1997. Further, in response to U.S. pressure and sanctions in the early 1990s, China also became an "adherent" to MTCR. Aside from such coerced cooperation, however, China by and large continued to criticize the regimes as discriminatory and for promoting double-standards.

In 1994, at the end of this period, the Chinese government adopted a general and comprehensive trade control law called, the Foreign Trade Law, which outlined, for the first time, the legal parameters of all foreign trade in China – including general export controls.

(3) 1995 to 2002: Years of moving toward *de jure* strategic export controls

It is remarkable that Chinese government in this period made a large step forward into the adoption of legally based strategic export controls. Chronologically, the government introduced the following regulations.

1995: The Regulations on Administration of Controlled Chemicals

1997: The Regulations on Nuclear Export Control

1998: The Regulations on Export Control of Nuclear Dual-Use Items and Related Technologies

1998: The Regulations on Arms Export

2002: The Regulations on Export Control of Missiles and Missile-Related Items and Technologies

2002: The Regulations on Export Control of Dual-Use Biological Agents and Related Equipment and Technologies

2002: Measures on Export Control of Certain Chemicals and Related Equipment and Technologies

The November 1995 publication by the Chinese government of a white paper, *China: Arms Control and Disarmament*, marked the first public policy declaration of China's nonproliferation strategy and indicated official recognition that the country needed a more systematic approach to controlling sensitive trade. It highlighted China's international nonproliferation commitments – including the NPT, its IAEA safeguards agreement, BWC, and CWC.

Chinese transfers of WMD-sensitive goods and technologies, as a result, greatly diminished after 1995, with exports of complete missile systems, missile production facilities, and safeguarded nuclear materials and technologies dwindling to sales of dual-use goods and technologies by the mid- to late 1990s. In 2002, China closed much of the gap between its national export controls and international regulatory standards by promulgating necessary regulations as listed above. The new regulations brought Chinese export controls into effective compliance with the guidelines and control lists of AG, NSG, and MTCR.

(4) 2002 to the present: Years of the implementation of *de jure* controls and increasing interaction with the multilateral export control regimes

The establishment of a relatively comprehensive system of *de jure* strategic trade regulations signaled the coming of age of export controls in China. Its December 2003 white paper, *China's Nonproliferation Policy and Measures*, provided additional evidence of the Chinese policy elite's internationalization of export controls, and it sought to publicize China's nonproliferation commitment to the world. The 2003 white paper, the first to specifically address Chinese nonproliferation export controls, completed a decade and a half of policy development, and represented the most comprehensive pledge yet by the PRC to adhere to international nonproliferation standards.

The white paper specifies requirements for end-user and end-use certificates, a licensing system, license examination and approval criteria, a catch-all principle, and civil and criminal liabilities associated with export control violations. Also, the policy document clearly describes the newly promulgated legal foundation for Chinese nuclear, nuclear dual-use, chemical, biological, missile, and arms export controls.

2. China's attempts to join MTCR

After introducing the missile-related Regulations in 2002, China applied for the admission to MTCR, but has yet to be formally invited. As the rotating chairperson of MTCR in 2002–2003, Mariusz

Handzlik, the ambassador of Poland, invited China to participate in the regime. In turn, Hu Xiaodi, the Chinese ambassador for disarmament affairs, sent a formal letter in 2004 to MTCR indicating that China was ready to positively consider applying for joining the regime. Several rounds of MTCR-China joint dialogues were convened to discuss the prospects of China's membership. However, a number of MTCR member states, most notably the United States, have blocked China's entry into the regime. The hesitation of some member states to admit China to MTCR stems from the continued anxiety about China's unwillingness or inability to fully implement and enforce the national export control laws.

XII. India

India is one of the nine countries known to possess nuclear arms, but is neither a signatory to NPT nor a member of AG, MTCR, NSG and WA, though it is a state party to CWC and BWC. While the country has had the ability to manufacture nuclear items since the mid-1960s and missile items since the 1980s, it was in the early 1990s when it started implementing export controls enacting a law. Note that further development of India's export control system is, in large part, characterized by its second nuclear tests in 1998 and consequent U.S. reactions against the country under its security policy.

1947

In the year of its independence, India effected the first control over exports of sensitive materials: Monazite and Thorium Nitrate. The Prime Minister Pandit Jawaharlal Nehru, at this time, set out the basis for future strategic export controls stating, "This is not merely a financial matter. It has international implications..... It is desirable for the Government of India to prohibit the export of monazite and thorium nitrate from India... This would mean that any export would be in accordance with the explicit permission of the Government of India and subject to the conditions laid down."

1962

The Atomic Energy Act was enacted.

1974

- (1) India became a State Party to BWC.
- (2) India, a non-nuclear-weapon state, conducted the first nuclear test in May.

1992

- (1) The Foreign Trade (Development and Regulation) Act, 1992 (FTDR) was enacted (amended in

2010).

(2) The Foreign Trade Policy was set forth under the FTDR.

1993

The government of India formed the “Small Group on Strategic Export Controls,” an interagency body, to initiate the process of establishing a system of strategic export controls.

1995

A list of items subject to licensing was made by the Small Group and was announced in the notification of the Export Import Policy. The list was called the “Special Materials, Equipment and Technologies” (SMET).

1996

India became a State Party to CWC.

1998

(1) The authority compiled the explanatory document on the administrative system of the Indian export controls including the relevant laws and regulations, and issued it in February under the title of “Briefing Notes on Indian Policy to Control Dual-Use Technologies.” The document was delivered to foreign representatives in India to make its policy more transparent for them.

(2) India conducted the second nuclear test in May – this time for five times. The country’s pursuit of nuclear weapons and testing of nuclear devices in 1974 and 1998 put the country at odds with U.S. nonproliferation policies, and made India a target of denial by member states of the international nonproliferation regimes.

1999

The second Small Group on Strategic Export Controls was set up to review the implementation of the existing control system and make recommendation for making it more effective.

2000

(1) The Director General of Foreign Trade (DGFT), under the Ministry of Commerce and Industry, announced a list of “Special Chemicals, Organisms, Materials, Equipment and Technologies” (SCOMET). In SCOMET the authority added CWC chemicals and biological agents, as well as items listed on the MTCR and NSG annexes, though not fully compatible with the regime lists.

(2) The U.S. President Bill Clinton visited India in March. It was the first American presidential visit to the country in more than two decades, despite the unresolved issues over India’s nuclear program.

2001

The initiative of President Clinton was followed by his successor George W. Bush, who met with Prime Minister Atal Bihari Vajpayee in the White House in November. Following the meeting the next steps of “strategic partnership” were defined, which included a dialogue on a range of nonproliferation issues including export controls. The U.S. agreed to consider expanded U.S.-India technical cooperation in the area of civil nuclear and space applications and to examine possibilities for high-technology commerce. India, on the other hand, agreed to take concrete steps to improve its export control system in response to the U.S. request.

2005

(1) The Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act (WMD Act) was enacted. Introduced under the U.S. pressure, this act criminalized unauthorized possession, export, re-export, transit, transshipment, and brokering of materials and technologies related to nuclear, biological, and chemical weapons, as well as to their delivery systems, bringing India into compliance with the UN Security Council Resolution 1540.

(2) The SCOMET’s nuclear and missile lists were fully harmonized with those of NSG and MTCR.

2008

The Nuclear Suppliers Group, after India signed the Civil Nuclear Agreement with the U.S. in 2006, granted waiver to the country allowing it to access civilian nuclear technology and fuel from other countries. After this waiver by NSG, India became the only country that is allowed to carry out nuclear commerce with other countries, in spite of the status that it possesses nuclear weapons and is not a signatory to NPT.

2010

U.S. President Barack Obama visited India in November. At the summit meeting, India committed to further strengthen its export control system, which was followed by the U.S. step to relax its export restrictions against the country, realigning it as an allied country in its dual-use export control regulations. Also at this meeting, India expressed its intention to seek membership of all the four international export control regimes so as to have greater access to high-technology products and defense items, facilitating high-technology trade between the country and foreign suppliers. For this the U.S. government expressed its commitment to fully support it.

2015

President Obama made the second visit to India in January. As a result, the U.S. government further relaxed its export restrictions against India. The U.S. has now shifted the status of India from a country of security concern to a strategic partner, which counters China, a country that is rising as a formidable power, economic and military, in the region.

XIII. ASEAN

ASEAN, the Association of Southeast Asian Nations, was established in 1967 with five founding members. But the number has now doubled to include the following ten nations: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam. Although the member nations as a whole form an economic “region,” the association is currently not as advanced in its regionalization as the European Union, where common export control standards and practices had already been established to ensure level-playing field for foreign trade activities, as well as to ensure regional security. Member nations at the embryonic stage were even skeptical about export controls implemented by advanced nations following the agreement made by the multilateral export control regimes, which, they said, were discriminatory.

Currently, however, the ASEAN nations continue to grow as an economic power, and their economic interests are now leading to each country’s motivation to create a national export control system. As part of their efforts in that direction, ASEAN nations, in fact, have been receiving substantial assistance and cooperation from the European Union, the United States, and Japan.

Yet, it is also a fact that the export control systems in ASEAN countries still need to be enhanced, harmonized, and regionalized when considered the following situation of the region.

- (1) The proliferation concerns in this region still exist.
- (2) Countries are at different stages of export control development.
- (3) There exist differences in approach to building up export control system, as well as in its potential impact on trade.
- (4) Also, there exist differences in adherence to the international export control regimes, thus differences in the extent and degree of the controls being implemented.

Under such circumstances, both Singapore and Malaysia are already in full implementation of export controls establishing national laws and regulations. They used to be regarded as major transshipment hubs, or countries of diversion concern, where sensitive goods and technologies passed through. Especially, the discovery in the early 2004 of the large-scale clandestine nuclear supply network built by a Pakistani scientist A. Q. Khan involving a number of countries around the world drove Malaysia towards the establishment of national export control system, receiving pressures, external and from within, since the network was mainly located and operated in the country. Also, Singaporean men have recently been extradited from Singapore as well as from Malaysia to the United States to stand trial in connection with a plot involving illegal exports from the U.S. to Iran of a large number of radio frequency modules, some of which found in improvised explosive devices (IEDs) in Iraq.

Of the two, Singapore, after the period of consultation and collaboration with advanced nations, first started export controls in 2003 by enforcing the Strategic Goods (Control) Act 2002 (SGCA), while Malaysia introduced the Strategic Trade Act later in 2010, which was followed by subordinate regulations and orders. Those were implemented in full force in July 2011. Currently, the Malaysian export control system is at a stage of total review, after the five years of start-up operation.

Then come the Philippines and Thailand, who are right in the midst of establishing export control legislation under the efforts of responsible government agencies already established. In the Philippines the long awaited Strategic Trade Management Act (STMA) was finally signed into law in November 2015, after years of ups and downs. The act regulates export, import, re-export, transit, transshipment, and reassignment of strategic items. But at the time of this writing, the government is still yet to fully execute the controls pending the implementing regulations.

According to a government official, the benefits the country expects from the establishment of the export control system are as follows.

- (1) Increased high value-added technology on trade and investments.
- (2) Increased direct trade of strategic goods.
- (3) Increased capacities because of technology transfers.
- (4) Increased activity in the manufacturing and production sectors.

As to Thailand, it was back in August 2004 when the government started considering to establish national export control system, following the adoption of the UNSCR 1540. But it was only in October 2015 when the new export control regulations were issued by the Ministry of Commerce under the title of the Ministerial Notification on Dual-Use Items and Related Items Export Measures. The notification regulates exports of dual-use goods from Thailand (no technology transfer is covered at this stage) and will come into force in January 2018 after a two-year grace period. The Thailand's new system is called Thai TMD System, of which TMD stands for Trade Management of Dual-Use Items. In nowhere is the word "strategic" used by the Thai government, which seems an exception in this district.

With the remaining countries being yet to establish full-scale systems, there still is a long way to go for the regionalization of ASEAN's export controls. But good news is that at the end of December 2015 ASEAN launched the ASEAN Economic Community (AEC) to integrate Southeast Asian economies by creating unified, cross-border market and production base, which would accelerate the regionalization of export controls.

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