

Overview of Japanese Export Control Legal Framework (Latest Update)

November, 2010

CISTEC (Center for Information on Security Trade Control)
JAPAN

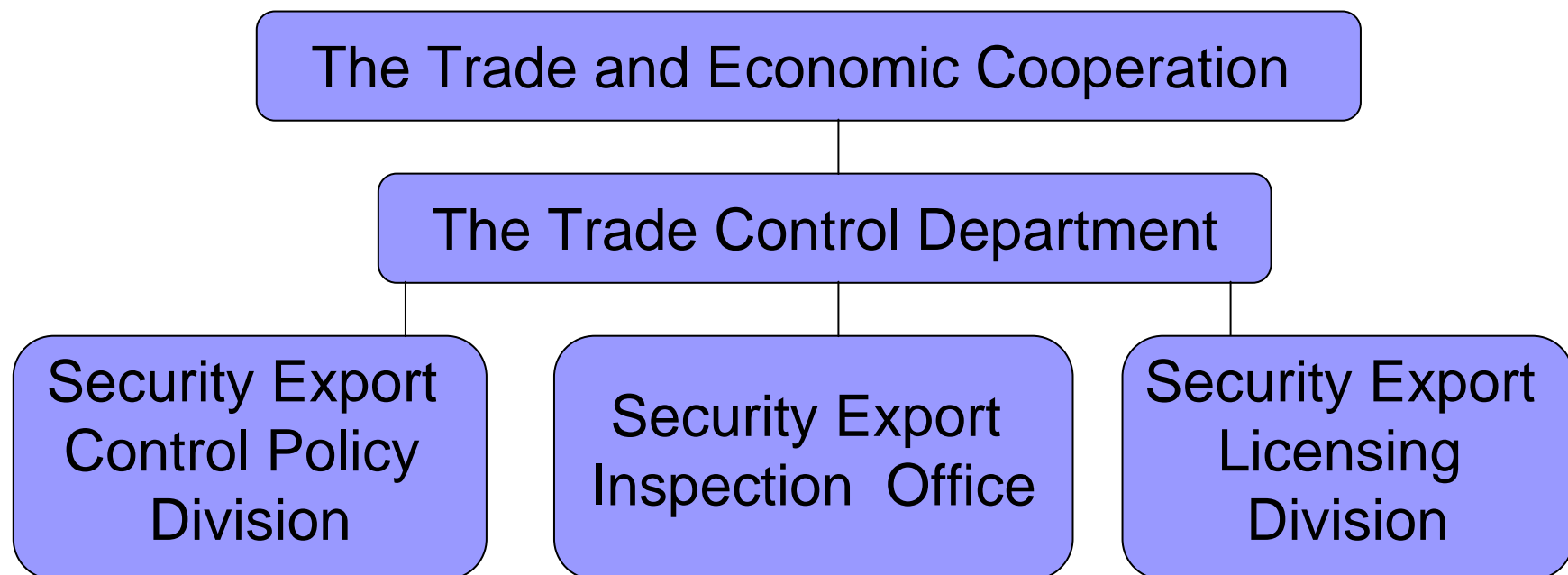


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1. Administrative Authority & Policy
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4. The End-Use Control (The Catch-All Control)
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8. Challenge

Section 1-1 Administrative Authority of Japanese Security Trade Control

- The Ministry of Economy, Trade and Industry (METI)





Section1-2 Feature of Japanese Export Control

- In Japan, for the purpose of maintaining peace and security of Japan and the international community, a license is required, based on the Foreign Exchange and Foreign Trade Act, from the Minister of Economy, Trade and Industry before exporting/transferring specific kinds of goods/technologies.

Section 2-1 Legal Framework of Export Control Regulation

Foreign Exchange and Foreign Trade Act	Act	Government order	List Control	Catch-All Control
	<div style="border: 1px solid red; border-radius: 50%; padding: 2px; display: inline-block;">Goods</div>	<div style="border: 1px solid yellow; padding: 5px; display: inline-block;"> Export Control Order </div>	<div style="border: 1px solid blue; background-color: #d9e1f2; padding: 5px; display: inline-block;">Attachment List No.1</div>	
			Category. 1 ~ 15	Category.16
	<div style="border: 1px solid green; border-radius: 50%; padding: 2px; display: inline-block;">Tech.</div>	<div style="border: 1px solid yellow; padding: 5px; display: inline-block;"> Foreign Exchange Order </div>	<div style="border: 1px solid blue; background-color: #d9e1f2; padding: 5px; display: inline-block;">Attachment List</div>	
			Category. 1 ~ 15	Category.16
		Subject to Control	<ul style="list-style-type: none"> ▪ Arms ▪ Dual use items Highly possible to be used for Military purpose 	<ul style="list-style-type: none"> ▪ Other than Listed Items and possible to be used for the development of W.M.D. & Conventional Arms
		Controlled Area	<ul style="list-style-type: none"> ▪ All destinations 	<ul style="list-style-type: none"> ▪ All destinations except for certain 26 countries

Note) Goods : Machine, Parts, Raw Materials
Technologies : Tech. for Design, Manufacturing and Usage (inc. Software)



Section 2-2 List of Regulation

- Foreign Exchange and Foreign Trade Act
 - Basic Act
- Export Trade Control Order
 - Listing goods to be controlled
- Foreign Exchange Order
 - Listing technologies to be controlled
- Ministerial ordinance stipulating goods, technologies and software pursuant to provisions of the Attachment List No1 to the Export Trade Control Order and the Attachment List to the Foreign Exchange Order.
- Notifications or Guidance

Section 3-1 The List Control (Goods and Technologies)

Foreign Exchange and Foreign Trade Act Article 48

Export of Goods

Exporter needs to obtain export license when he exports specific kinds of goods to specified regions

Export Trade Control Order

Specific kinds of goods are listed in the **Attachment List No.1**

Foreign Exchange and Foreign Trade Act Article 25

Service Transactions, etc.

- 1) Resident needs to obtain export license when he provide specific kinds of technology to non-resident in the specific region.
- 2) Anyone needs to obtain export license when he bring out specific Kinds of technology over Japan border to the specific region.

Foreign Exchange Order

Specific kinds of technology are listed in the **Attachment list.**

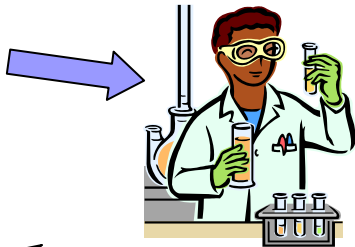
Section 3-2 Difference between Export and Technology Transfer

— Japan —



Shipment

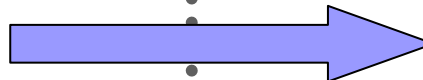
Training



Accepting Trainee

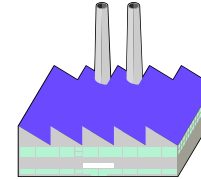
Caution

Technical transfer can be taken place even in Japan



Export Goods

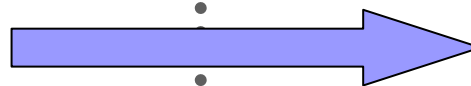
— Overseas —



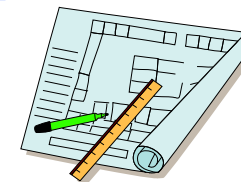
Factory Facility



Sale



Transfer Technologies
(Data transfer and Training)



Design Plan



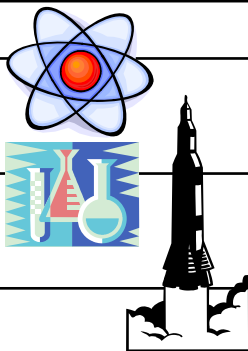
Technical Guidance



Section 3-3 Technology or Software Transfer

- 1) Technology (or Software) transfer from Japan to a foreign country
Any person, resident or non-resident, shall obtain a license when transferring listed technology from Japan to a foreign country.
 - 2) Technology (or Software) transfer within Japan
Any resident shall obtain a license when transferring listed technology in Japan to a non-resident.
 - 3) Technology (or Software) transfer within a foreign country
Any resident shall obtain a license when transferring listed technology in any foreign country. License is not required, however, when the technology was sourced in a foreign country and the transaction is completed only in a foreign country.
- A technology or software transfer by intangible means like oral, e-mail or facsimile is also subject to the control.
 - A non-resident generally means a foreign national, but a foreign national who is working for a Japanese or foreign company in Japan, or who has been staying in Japan for more than six months is regarded legally as a resident.
 - Whereas, a Japanese national who is working for a Japanese or foreign company in a foreign country, or who leaves for a foreign country intending to reside there for more than two years is regarded legally as a non-resident.

Section 3-4 Relationship between International Regimes and Japanese Regulation

Category		International Control Regimes		Controlled Items in Japanese System		
1	Arms	Wassenaar Arrangement (WA)				
2	Dual Use Items	Weapons of Mass Destruction		NSG Part 1	Exclusive for Nuclear Items	
3				NSG Part 2		
3-2				AG	Equipment and Materials for Chemical Weapons	
4				MTCR	Equipment and Materials for Biological Weapons	
5		Conventional Arms	WA	Equipment for Missile		
6				Category 1	Advanced Materials	
7				Category 2	Material Processing	
8				Category 3	Electronics	
9				Category 4	Computers	
10				Category 5	Communications/Information Security	
11	Category 6			Sensors and Lasers		
12	Category 7			Navigation and Avionics		
13	Category 8			Marine		
14	Category 9			Aerospace and Propulsion		
15	Munition List	(Except for Sec. 1)				
15	Very Sensitive Item					
16		W.M.D.& Conventional Arms		Catch All Item		

Section 4-1 The WMD Catch-All Control

Even if the exporting items are not on the control lists, Export license is also required in the following **3 cases**

- ① Exporting items may contribute to the proliferation of WMD.
- ② Exporter is aware that the end-user of the items is related to the development of WMD.
- ③ Exporter is informed by the government (METI) to apply for E/L.

Subject Area

All areas (Except for 26 certain countries)

Subject Item

All items except for Food and Timbers.

Examples of **40 items** with high risk of diversion for development of WMD.

Conditions

(1) Judgment by Exporter

① End Use condition

- Whether the items will be used in the development of WMD.

② End User condition

- Whether the end user is/was involved for the development of WMD.
- Whether the end user is listed on the **End-User List** or not.

(2) Judgment by METI=Inform Condition

- In case the Exporter is informed by METI to apply for a license.

Reference

The Commodity Watch List

40 items with high risk of diversion for the development of WMD or their delivery

■ Examples of suspicious Goods & Application of concern (N=Nuclear weapons, M =Missiles, B=Biological weapons, C=Chemical weapons)

- 1.Tributyl Phosphate (TBP) (N)
- 2.Carbon fibre·Glass fibre·Aramid fibre(N, M)
- 3.Titanium alloy (N, M)
- 4.Marageing steel (N, M)
- 5.Aluminum tubes of an inside diameter of 75mm or larger (N)
- 6.Spin-forming Machine (N, M)
- 7.Numerically-controlled machine tool (N, M)
- 8.Isostatic Press (N, M)
- 9.Filament-winding apparatus (N, M)
- 10.Frequency converter (N)
- 11.Mass spectrometer or ionization source (N)
- 12.Vibration test facility (N, M)
- 13.Centrifugal balancing machine (N, M)
- 14.Corrosion-resistant manometer; pressure sensor (N, M)
- 15.Large-size nondestructive inspection system (N, M)
- 16.High-frequency oscilloscope and wave form memory device (N)
- 17.Direct current-electric power unit for current or voltage with low variation (N)
- 18.Large-size generator (N)
- 19.Large-size vacuum pump (N)
- 20.Radiation-proof robot (N)
- 21.TIG welding machine, electron beam welding machine (N, M)
- 22.Radiation meter (N)
- 23.Micro-powder producing grinding machine (M)
- 24.Moisture content measurer (Carl Fisher-method) (M)
- 25.Prepreg production device (M)
- 26.Artificial graphite (N, M)
- 27.Gyroscope (M)
- 28.Rotary encoder (M)
- 29.Large-size trucks (incl. tractors, trailers, dump-trucks) (M)
- 30.Crane equipped vehicle (M)
- 31.Closed system-fermenter (B)
- 32.Centrifuge (B)
- 33.Freeze-dryer (B)
- 34.Corrosion-resistant reactor vessel (C)
- 35.Corrosion-resistant agitator(C)
- 36.Corrosion-resistant heat exchanger OR condenser (C)
- 37.Corrosion-resistant distillation OR absorption column/tower (C)
- 38.Corrosion-resistant filling machine (C)
- 39.Unmanned Aerial Vehicles(UAV) designed to mount sprayers, excluding leisure or sports use (M, B, C)
- 40.Sprayer designed to be mounted on UAV (M, B, C)

Reference

The End-User List (September 2010 Version)

• The Ministry of Economy, Trade and Industry (METI) has issued the “End User List” providing exporters with information on foreign companies/organizations for which concerns over the development, etc. of weapons of mass destruction, etc. remain, with the aim of strengthening the effectiveness of catch-all control on weapons of mass destruction-related cargos, etc. METI usually updates the “End User List” once a year or more.

• Exporters are required to check “end-use” carefully before exporting any items to the enteritis on the list.

Country	No.
Israel	2
Iran	145
India	19
North Korea	106
Syria	11
Taiwan	2
China	15
Pakistan	29
Afghanistan	2
Total	331

Extract of the List

No.	国名、地域名 Country or Region	企業名、組織名 Company or Organization	別名 Also Known As	懸念区分 Type of WMD
1	イスラエル Israel	Ben-Gurion University (of the Negev)		核 N
2	イスラエル Israel	Nuclear Research Center Negev (NRCN)		核 N
3	イラン Iran	7th of Tir	<ul style="list-style-type: none"> 7th of Tir Industries Complex Mojtamea Sanate Haftome Tir Sanaye Haftome Tir 7th of Tir Industries of Isfahan/Esfahan 7th of Tir Complex Esfahan/ Isfahan Haftome Tir Industries 	核 N
4	イラン Iran	Abzar Boresh Kaveh Co.	•BK Co.	核 N
5	イラン Iran	Aerospace Industries Organisation (AIO)	<ul style="list-style-type: none"> Aerospace Industries Organization Sazemane Sanaye Hava and Faza (SSHF) Bazargani Hava and Faza 	ミサイル M
6	イラン Iran	AMA Industrial Co.		核 N
7	イラン Iran	Amin Industrial Complex	<ul style="list-style-type: none"> Amin Industrial Compound Amin Industrial Company 	生物、化学、ミ サイル、核 B,C,M,N
8	イラン Iran	Amirkabir University of Technology		ミサイル、核 M,N
9	イラン Iran	Ammunition and Metallurgy Industries Group (AMIG)	<ul style="list-style-type: none"> Ammunition Industries Group Ammunition and Metallurgy Industry Group Sanaye Mohematsazi Ammunition Group Ammunition and Metallurgy Industries 	核 N
10	イラン Iran	Arfa Paint Company		ミサイル、核 M,N
11	イラン Iran	Arfeh Company		ミサイル、核 M,N
12	イラン Iran	Armament Industries Group (AIG)	•AIG-Armament Industries Group	ミサイル、核 M,N
13	イラン Iran	Armed Forces Geographical Organisation		ミサイル M
14	イラン Iran	Arya Niroo Nik		核 N
15	イラン Iran	Atomic Energy Organization of Iran (AEOI)	<ul style="list-style-type: none"> Sazeman-e Energy Atomī AEOI 	生物、化学、ミ サイル、核 B,C,M,N
16	イラン Iran	Azarab Industries	•Azar AB Industries Company	核 N

Note: Please check the latest list from METI’s Home Page



Section 4-2 The Military End-Use Control

- Introduced on Nov.1, 2008 based on the WA agreement in Dec., 2003
- Even non-listed Goods, exporter needs to apply for approval from the Minister of Economy, Trade and Industry, in case the exporter know the possibility that the cargoes will be used for Military purposes.
- The control varies depending on the security situation of countries of destination, making it efficient and effective.
- The control is not applied to export destined for the certain 26 countries.



Section 4-3 Brokering and Transshipment Control

○ UNSC Resolution 1540 (April 2004)

- Refrain from supporting the non-government organization under suspicions of W.M.D. development
- Enforce appropriate export controls on Brokering, Transit, Transshipment against W.M.D. related materials and equipment
 - ⇒ Japan started to control Brokering and Transshipment from June 2007

Section 4-4 The Brokering Control

A (Other than 26
certain countries)



Car Parts



Export Goods
(Category 1~16)

B (Other than 26
certain countries)

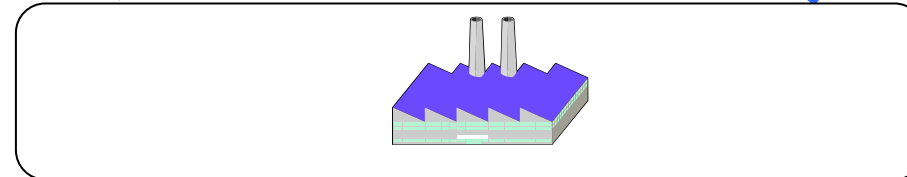


Car manufacturing

Contract



Contract



Head Office and
Branch (Domestic and Overseas)



Section 4-5 Legal Framework of The Brokering Control

- Arms: License is required in brokering any Arms.
- Other items: License is required in case a broker notices that the brokering item is going to be used for WMD proliferation or a broker is informed to apply for a license by METI.



Section 4-6 Legal Framework of The Transshipment Control

- Arms: Transshipment of arms on the Category 1 list requires a license.
- Other items: A company in Japan must obtain a license when transshipping goods if the company has been so informed by METI or the company has come to know that the items will be used for the development, manufacture or storage of WMD.



Section 5-1 Licensing Policy (Licensing Authority)

- Export license is issued from the Minister of Economy, Trade and Industry
- Exporters must submit license applications to Security Export Licensing Division of METI
- Licensing officers review the applications and check the end-use and end-user in view of security concerns
- A license will be issued if METI judge that the export will not materially contribute to the design, development or production of WMD



Section 5-2 The Individual Export License

- Exporters are required to obtain an Individual Export License unless Bulk Export License is eligible.
- The license is valid for six months after the issue date. The exporter can submit an application to extend the validity.
- In Japan, over 12,000 Individual licenses are applied for each year



Section 5-3 Condition to obtain any type of The Bulk Export License

As conditions for obtaining a bulk export license, exporters are required:

1. to establish an appropriate internal control system based on Internal Compliance Program (ICP) that must be submitted to METI.
2. to implement the control complying strictly with the ICP, and
3. to participate in specific seminars held by METI.

Section 5-4 Four types of Bulk Export License

- The System of Bulk Export License simplifies the licensing procedures by permitting an exporter to make multiple exports of controlled items under such conditions i.e. items' classification, destinations, end-use and so on.
- There are four types of bulk license:

The General Bulk Export License

The Special Bulk Export License

The Special Bulk Export License for Repair or Replacement.

The Special Bulk Export License_for Overseas Subsidiaries



Section 5-5 The General Bulk Export License

- Under this License, an exporter can make multiple exports of controlled but less sensitive items depending on destinations.
- The license is not eligible to any export to Iran, Iraq, North Korea and Libya. The eligible items and eligible destinations are designated in the matrix tables issued by METI as part of the regulation.
- The validity is 3 years from the issue date, which may be extended if applied for. But the license will lose its validity, If the exporter knows that the export items will be used for the development, manufacture, use or storage of WMD or for military end-use.




Section 5-6 The Special Bulk Export License

- This license allows an exporter to make exports of specific items repeatedly to a specific customer with whom he/she has been keeping a continued trade partnership.
- The validity is two years, which may be extended if applied for.
- Other conditions are basically the same with those of General Bulk Export License.



Section 5-7 The Special Bulk Export License for Repair or Replacement

- This license is issued to allow re-exports of Category 1 items (arms and related items) for a return to the country of origin for repair or replacement. The eligible destinations are limited to certain countries advanced in export controls.
- The validity is two years which may be extended if applied for.
- A person exporting under this license must submit export records to METI every three months. The report must be submitted even if no exports have been made during the three-month period.




Section 5-8 (1) The Special Bulk Export License for Overseas subsidiaries

- This license allows a manufacturer to make repeated exports of specific items it manufactured to its overseas subsidiary (Subsidiary A)--directly or via another overseas company (Subsidiary B) as an importer.
- In this case:
 - 1) Subsidiary A shall be 100% owned by the Japanese manufacturer (the exporter), or by Japanese companies, in which case the manufacturer shall be the majority shareholder.



Section 5-8 (2) The Special Bulk Export License for Overseas subsidiaries

- 2) Subsidiary B shall be 100% owned by a Japanese company--a trading firm, for example--or by Japanese companies, in which case the company shall be the majority shareholder.
- 3) The end user of the items to be exported under the license shall be Subsidiary A.
- 4) This license can be used for the export of goods and for the transfer of technology that is required for the 'use' of specific goods.



Section 5-8 (3) The Special Bulk Export License for Overseas subsidiaries

- Each of the Japanese parent companies (the majority shareholders) shall conduct audits on its subsidiary and give advice or instructions when necessary to maintain its export control compliance properly. The parent company must report the compliance status when asked by METI.
- The validity is three years which may be extended if applied for.
- This license may not be used, however, for the exports to or via Iran, Iraq, North Korea or Libya.

Section 6 Penalty for the Violation

Export of the listed goods or transfer of the listed technologies without obtaining license is subject to penalty

Criminal Penalty

- Imprisonment for up to 10 years
- **Penalty of up to J.Yen 10 Mil**
(If the 5 times amount of the subject items is more than 10 mil Yen, the maximum amount of the penalty is 5 times amount.)

Administrative Sanction

- Impose a ban on exporting and transferring technology for up to 3 years.

Caution

Warning by METI

Public Announcement

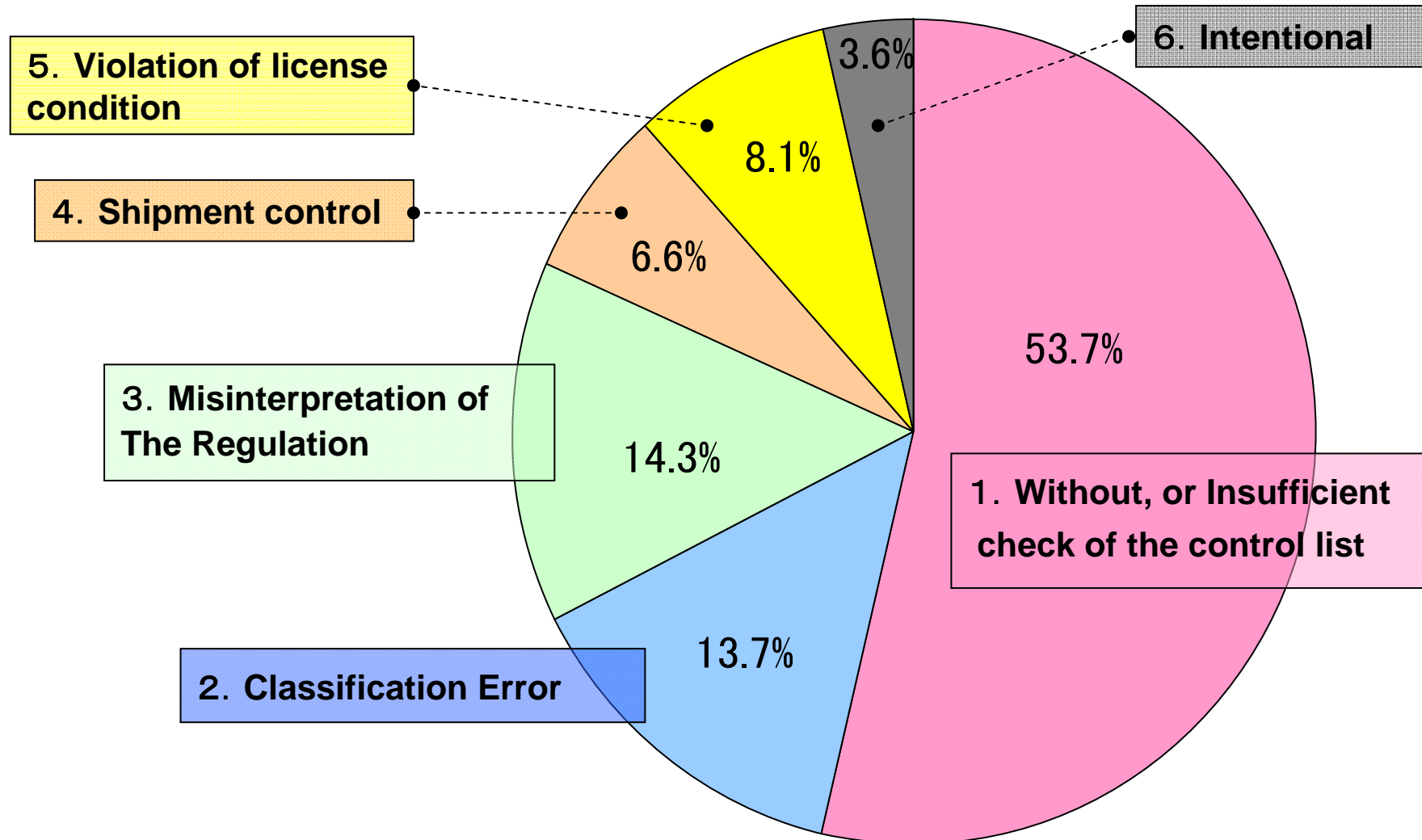
- Lose corporate reputation
- Social Sanction
- Court action by shareholder

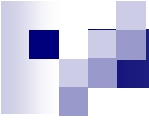


※Not only the company, Japan may get huge damage and lose her reputation in the world.

Reference

Recent Violation Case





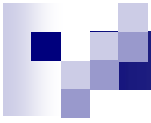
Section 7 Internal Compliance Program (ICP)

- Aim: To strictly comply with related export control act and regulations when the exporter exports goods or transfer technologies.
- Establish own internal program for export control – cover management policy, export control organization, procedure, shipment confirmation, internal audit, training, record keeping etc.
- Required for exporter's bulk license application to METI
- Registration of the program with METI.
 - Over 1,450 enterprises registered as of March, 2009
 - Required for bulk export licensing procedure



Section 8 Challenge

- New Regulations dedicated for Security Export Control
- Change of Numbering Structure of Control List into Global Standard
- Change of Bulk License for Overseas subsidiaries into Easier one to use



Thank you!