

Comment
Security Trade Control in Japan

Hideaki Shiroyama
Graduate School of Law and Politics
The University of Tokyo

Administrative Arrangement

- Monopolized regulatory control by METI
cf. US – Defense, State, Commerce
- Policy Coordination to some extent
Ministry of Foreign Affairs
Ministry of Finance – Customs
Defense Agency?
- Weak Basis of intelligent service
Need to rely on trans-governmental network and
monitoring of private transactions by private actors

Legal Arrangement

- Foreign Exchange and Foreign Trade Control law

Article 1: General principle of free trade この法律は、外国為替、外国貿易その他の対外取引が自由に行われることを基本とし、対外取引に対し必要最小限の管理又は調整を行うことにより、対外取引の正常な発展並びに我が国又は国際社会の平和及び安全の維持を期し、もつて国際収支の均衡及び通貨の安定を図るとともに我が国経済の健全な発展に寄与することを目的とする。

Article 48: Licensing of trade of goods because of “International peace and security” concerns 国際的な平和及び安全の維持を妨げることとなると認められるものとして政令で定める特定の地域を仕向地とする特定の種類の貨物の輸出をしようとする者は、政令で定めるところにより、経済産業大臣の許可を受けなければならない。

Article 25: Licensing of trade of services because of “International peace and security” concerns 居住者は、非居住者との間で次に掲げる取引を行おうとするときは、政令で定めるところにより、当該取引について、経済産業大臣の許可を受けなければならない。一 国際的な平和及び安全の維持を妨げることとなると認められるものとして政令で定める特定の種類の貨物の設計、製造又は使用に係る技術(以下「特定技術」という。)を特定の地域において提供することを目的とする取引 二 国際的な平和及び安全の維持を妨げることとなると認められるものとして政令で定める外国相互間の貨物の移動を伴う貨物の売買に関する取引

- Foreign Trade Government Decree Table1 (輸出貿易管理令)
- Foreign Exchange Government Decree Table (外国為替令)
- Ministerial Decree based on Foreign Trade Government Decree Table1 and Foreign Exchange Government Decree Table

List Control

- Foreign Trade Government Decree Table1 and Foreign Exchange Government Decree Table
Weapons (WA)
Nuclear (NSG)
Chemical/ Biological (-2) (AG)
Missile (MTCR)
 - Conventional weapons (WA)
- Detailed specifications: Ministerial Decree based on Foreign Trade Government Decree Table1 and Foreign Exchange Government Decree Table

Catch All Control – End Use Regulation

- 1996 Complementally Export Regulation on spec down items
- 2004.4 Catch All Regulation
introduced as Foreign Trade Government Decree Table1
and Foreign Exchange Government Decree Table
All except food and woods, etc.
- Objective condition
End use and end users checked by exporters based on
Guideline
Provision of “Risk Information” by METI (– listing of
users) and Pre -Consultation (事前相談)

Organizational Arrangement (2004)

- Trade Control Department of Trade and Economic Cooperation Bureau of METI – about 100 officials? (80 officials and regional offices) - Expansion in the era of Administrative Reform
- Security Export Control Policy Division
25/6 officials including International Affairs Section dealing with various international regimes
- Security Export Licensing Division
27 officials – 8000 pre-consultation/ year
- Security Export Inspectors Office
More than 20 officials in charge of CP
- Support by part-time Security Export Control Researchers – 70 from private and academic sectors?

CISTEC (Center for Information on Security Trade Control)

- Established in 1989.4 in response to Toshiba Machine case
- 230 Member companies – controlling 80% of related export? cf. Status of subsidiaries of foreign firms in Japan?
- Functions
 - Support to enterprises – CP, Self-examination registration, Examination of STC capacity,
 - Research and Policy recommendation from the viewpoints of enterprises – mainly deregulations?
 - Information provision on foreign affairs – end- users information
 - Export Control Seminars in Asia Countries
- Coordinating function? – employment of ex. Defense agency official

Voluntary Control Program at Enterprise Level

- About 900 enterprises submitted CP (compliance program) at METI (2004)
- Model CP by CISTEC
- Disclosure names of enterprises undertaking self-examinations – 225 (Beginning of 2004)
- Rationale for Voluntary Control for Enterprises
Legal Compliance, Reputation- Risk Management, CSR (Corporate Social Responsibility)?
- Relative Positions of STC units is different depending on enterprises

Various Practices of Voluntary Control

- Role of Export Control Department
- Relative Roles - full time / dual function
- Role of marketing division especially on end users
- Level compared to legal requirements
- Own end users list
- Role of audit by third party
- Relative roles of regional offices – depending of different forms of transaction (ex. relative weight trade between third countries)
- Difficulties of intangible trade control – possibility of partial implementation

Evaluation and Agenda for the Future

- Incentives of voluntary control – need for discriminatory advantages?
cf. US- ACE (Automated Commercial Environment),
CTPAT (Counter Terrorism Partnership against
Terrorism)
- Effectiveness of Public Private Partnership
Success? – how to measure effectiveness?
Traditional PPP is attacked by administrative reform
Transparency and communication improved
- Administrative Capacity – use of part-time experts
- Deemed experts – issues of trade control for universities
and research institutes