

**On the Update of the Application of Export Controls to the Republic of Korea
Basic Interpretation Regarding the Implementation of Japan's System of Export Controls
(Ver. 2)**

August 7, 2019

Center for Information on Security Trade Control
(CISTEC)

On July 1, 2019, Ministry of Economy, Trade, and Industry (METI) announced an update of its application of export controls to the Republic of Korea (ROK). (c.f. METI's [News Release in English](#) and [News Release in Japanese](#) dated July 1.)

Furthermore, on August 2, Cabinet approved partial amendments to the export trade control order which removes ROK from "White Countries" (n), which will be effective on August 28. (c.f. [METI's News Release in English](#) and [News Release in Japanese](#) dated August 2.)

The above-cited METI's News Release dated August 2 explains points of amendments of the Guidelines for Handling Bulk Export Licenses which will be published on August 7.

Misunderstandings regarding the measures discussed there are being amplified through the mass media and other channels in both Japan and the ROK. It is necessary that we avoid a situation in which day-to-day business activities are impeded as a consequence of this.

Below, we have compiled those points that we CISTEC regard as the keys toward gaining a basic understanding of Japan's security export controls.

(n)Regarding so-called "White Countries" mentioned below, they will be referred to as "Group A".

(1) The present matter ultimately is a security export control issue. It is being implemented based on multilateral export control regimes and U.N. Security Council resolutions meant to prevent the proliferation of weapons of mass destruction and the diversion of exported items for military use.

- Security export controls are joint multilateral initiatives that are based on four multilateral export control regimes to which the world's major nations have been members as well as Security Council Resolution 1540(2004). These initiatives "control" exports to prevent the proliferation of weapons of mass destruction and prevent the diversion of exported items for military use.
- These multilateral initiatives themselves fall under the Article XXI of GATT on Security Exceptions of the World Trade Organization's (WTO's) General Agreement on Tariffs and Trade. So long as no concerns can be identified, exports would be allowed as a matter of course. Accordingly, trade issues of the sort that would become problematic for the WTO such as trade embargoes, quantitative restrictions, "gap in status" matters, and the like are matters of a different order.

* U.N. Security Council Resolution 1540(2004): To prevent the proliferation of weapons of mass destruction and to prevent terrorist activities, member states have the legal obligation to implement effective domestic control measures that includes controls on exports (2004).

(2) "White countries" refers to those nations that, in Japan's case for example, are exempted from the application of catch-all controls. Whether or not a bulk export license is applicable even if they are not in the category of white countries is a separate

issue.

- For Japan, “white countries” are those nations that are exempted from the application of catch-all controls related to weapons of mass destruction and conventional arms. If a country does not fall under that category, the catch-all controls apply.
- The question of whether or not a bulk export license is applicable is a different matter, and the view that “If a country is no longer a white country, then bulk export licenses can no longer be used and all of the exports will require individual licenses” is a major misunderstanding (please refer to (3) below).
*Please refer to (5) below for the details of “Catch-all Controls.”
- The ROK, too, has a list of “white countries.” However, this has no connection with application of the catch-all controls. For the ROK, even in case of a country which is on that list, that does not mean the catch-all controls are not applied. That list is meant to determine the applicable scope of bulk export licenses and individual licenses.

(3) Even if a country is removed from the list of “white countries,” a special general bulk export license can still be used, and an individual license will not necessarily be required.

- Broadly speaking, Japan’s bulk export licenses come in three types.
 - [1] General bulk export license (“white bulk license”): Usable only in case of exports to white countries, granted even to exporters who implement comparatively simple controls on their own.
 - [2] Special general bulk export license (“special general bulk license”): Usable in case of exports to countries that are participants in the multilateral export control regimes, granted to exporters who implement strict controls on their own.
 - [3] Special bulk export license: Granted to exporters who export to users with whom they have an ongoing business relationship, and implement strict controls on their own..
- * Additionally, there is a bulk export license system in place for dealing with subsidiaries and that for dealing in defense-related equipment.
- Only general bulk export licenses ([1] above) can no longer be used in case of a country being removed from the list of white countries. Special general bulk export licenses ([2] above) and special bulk export licenses ([3] above) granted to exporters who implement the strict controls and can continue to be used under the above-mentioned conditions. All of the exports of list-controlled items would not necessarily require an individual license.
*This point is re-clarified by the above-cited METI’s News Release dated August 2.
- In the case of a major corporation engaged in international operations, one would expect that it has acquired a special general bulk export license or special bulk export license so it would still be able to use that same license even if the destination country is no longer a “white country.”
However, conditions are imposed on the exporter such that they must strictly check as the foundations of export controls whether or not there are any concerns about the end uses or end users as well as about any transfers to a third country. (This is same for shipment to white countries.) In some cases, the end user as well will be called upon to submit documents and written pledges relevant to this point, too (in particular, with respect to items related to weapons of mass destruction).
* The bulk export licenses in the ROK include “user bulk export licenses” and “item bulk export licenses.” Whatever the case, they are applicable in those cases in which the purchaser, consignee, or end user has been designated. This type if expressed in terms of Japan’s system of bulk export licenses is something close to that of the “special bulk export license” ([3] above).

(4) In addition to any inspections carried out by the exporter, the difference between having a bulk export license and having an individual export license comes down to whether or not the relevant government authorities themselves also carry out their own inspection.

- Even if they are not so common when viewed in terms of the whole, exports that are subject to the list controls (including dealings that involve the transfer of technology) still comprise hundreds of thousands or even millions of Japan's total. Changing all of those to individual licensing would, in fact, put a stop to the transactions of all items.
For that reason, the participating countries have created a system of bulk export licenses, and they have approved its use based on the degree of a product's sensitivity, the issue of whether the country of destination is a participant in the multilateral export control regimes or not and their implementation of the systems, and the level of self-management of the exporter.
- Japan's "white bulk export license" standard makes it possible for even a corporation with a relatively basic self-management system to obtain permission. At minimum, it calls for those corporations to carry out an inspection as to whether the end use has a military purpose or not. The special general bulk export status is granted to those exporters cleared by METI as having satisfied certain stricter self-management standards and also requires detailed checking of various concerns.
- In addition to the sort of careful checks that exporters who are to engage in these sorts of strict self-management controls are expected to carry out, individual licenses also entail double checks performed by the relevant units of METI. Items that are related to weapons of mass destruction or have potential military application, along with those items that require careful checking owing to the relevant circumstances are subject to the individual license system.
- The use of an individual license or of a bulk export license is determined by each country's government based on their conditions and discretion.

(5) Catch-all controls would apply and require the individual license if it is determined that there is actually some concern with an individual dealing even if the item to export is not subject to the list controls. It is not at all the case that those exports for which there are no concerns will uniformly subject to licenses.

- Catch-all controls are basic to the security export control system as same as the list controls.
- When there are individual exports of items outside of the list control items, they are subject to license requirements in the cases that (1) the exporter knows that there are concerns that they may be used toward the development of weapons of mass destruction or of conventional arms, or (2) the exporter has been informed of the need of license from the relevant sections of METI.
- The instances in which such concerns exist are limited. Therefore, this does not mean the export of all items (aside from foodstuffs, lumber, and the like) are uniformly subject to license application requirements. In fact, it seems there are not many cases where individual license is required due to Catch-all controls

(6) Individual licenses are handled on a contract-by-contract basis (not on shipment-by-shipment basis). They are granted on a case-by-case basis, based on the length of contract, export destination, etc. They are granted relatively quickly so long as it can be confirmed that there are no matters of concern.

- Contract-by-contract basis (not shipment-by-shipment basis, not export by export basis)

- Bulk export licenses are valid for three years at maximum. However, even individual licenses can be granted for a period that corresponds based on the length of the contract.
- Review of the application will begin once the documents required for submission have been actually submitted and received. It will be granted relatively quickly so long as the end use and the end user are confirmed as not presenting any concerns.
- The “90-day review period” is the standard amount of time for processing that has been determined based on the Administrative Procedure Act. Normally, the review does not always require that much time.
- In the case that concerns about the end use or end user cannot be eliminated, the necessary certificate cannot be obtained, or the items being shipped can have applications for military uses, the review for license will be strict and may take some time.

(7) Not every item requires license based on the list-control regulations regardless of the specifications of the three materials. Those are limited to cutting-edge items based on the agreements of the multilateral export control regimes.

- Export controls are based on the agreements under the multilateral export control regimes. Only the cutting-edge items are subject to the list controls.
- With respect to the three materials that require individual licenses to export to the ROK, Japanese companies are said to have an extremely large share of the market ranging from 70% to 90%. However, with regard to fluoride polyimides and resists, only certain of these items with advanced specifications are subject to license requirements under the list controls that are based on the multilateral export control regime (Wassenaar Arrangement).
(Example) Those resists that require licensing are limited to those that, for example are for EUV use—meaning they use extremely short wavelength ultraviolet light.
- On the other hand, hydrogen fluoride is regulated under the multilateral regime related to weapons of mass destruction (Australia Group related to chemical and biological weapons). Hydrogen fluoride for use in manufacturing semiconductors is highly pure, and for the most part it is subject to the list-control.
- Whatever the case, license will be granted swiftly if it can be confirmed that there are no concerns.

(8) What is needed for an individual license

- The documents required for the application include:
 - Contracts and related materials
 - End-use certificate (i.e., items will not be used for military use, prior consent will be obtained in the event of transfer or re-export, etc.)
- Points that will require confirmation include:
 - No possibility of diversion for military use?
 - Items will be used by the end user listed in the contract, and inventory controls are being carefully implemented?
 - Items are not being re-distributed or re-exported to a third-party country?
 - The export destination is not engaged in a business of concerns, etc.?
 - There are no suspicious aspects to the distribution channel? (Items will be properly delivered? etc.)
 - There are no other questionable points? etc.

[REFERENCES]

Overviews of Japan’s systems of security export controls and their application:.

- 1) [Briefing materials for the Ministry of Economy, Trade, and Industry \(経済産業省 安全保障\)](#)

[貿易管理 説明会資料](#))

- 2) [“Overview of Japan’s Export Controls” at the CISTEC website](#) (CISTEC 日本の輸出管理概要)

The revision of a typo in (2) of the previous Version 1 in this Version 2

For the ROK, even in case of a country which is not on that list, that does not mean the catch-all controls are not applied. (Previous Version 1)

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For the ROK, even in case of a country which is on that list, that does not mean the catch-all controls are not applied. (This Version 2)