

Strategic Trade Management Japan's Perspective

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【Outline of the Contents】

1. **Japan's Export Control System**
 - **Outline of the Control System by FEFTA**
 - **Industry's Efforts**

2. **Current and Future Efforts**
 - **Reform of the Law and Regulation**
 - **Intangible Technology Transfer (ITT)**
 - **International Outreach Cooperation**

Importance of Strategic Trade Management

Against the threat of the proliferation of WMD and their means of delivery, and destabilizing flows of advanced conventional weapons.

<Carbon Fiber>



Golf shaft



Structural material
for fighter

<Power Semiconductor>



Power amplifier



Rader for naval ship

Nuclear Suppliers Group (NSG) since 1978

Australia Group (AG) since 1985

Missile Technology Control Regime (MTCR) since 1987

Wassenaar Arrangement (WA) since 1996

United Nations Security Council Resolutions 1540 in 2004

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Foreign Exchange and Foreign Trade ACT (FEFTA)

Regulation of goods export

Regulation of technology transfer

Provide the framework

Act
(FEFTA)

specify list control items

Cabinet order
(Export Trade Control Order)

Cabinet Order
(Foreign Exchange Order)

specify more detail

Ministerial Order

Legal framework for Security Export Control 1

Legal Structure

(1) Law

Foreign Exchange and Foreign Trade Act (FEFTA)

- Basic framework

(2) Cabinet Orders

Export Control Order

- List of goods

Foreign Exchange Order

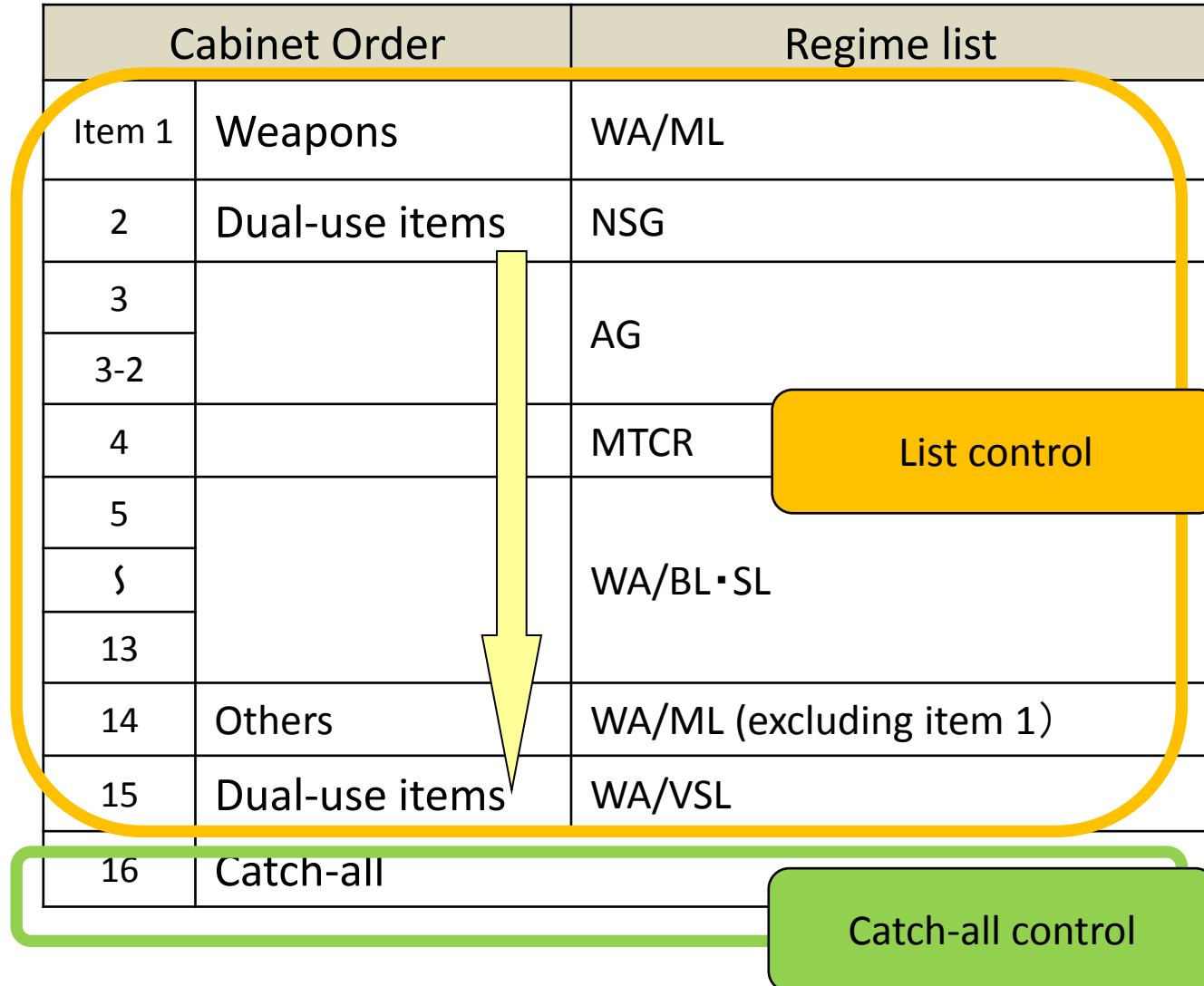
- List of technologies

(3) Ministerial Orders

- Details (specifications and interpretations of listed items)

Control List Structure

Cabinet Order		Regime list
Item 1	Weapons	WA/ML
2	Dual-use items	NSG
3		AG
3-2		
4		MTCR
5		WA/BL • SL
5		
13		
14	Others	WA/ML (excluding item 1)
15	Dual-use items	WA/VSL
16	Catch-all	



Legal framework for Security Export Control 2

FEFTA also sets forth catch-all control for items which could contribute to WMD related or military end-use activities.

FEFTA	Cabinet Order	List Control	Catch-all control of WMD	Catch-all control of Conventional Weapons
Article 48	Export Control Order	category 1-15 <div style="border: 1px solid black; background-color: #e6f2ff; padding: 2px;">List of Goods</div>	category 16 <div style="border: 1px solid black; background-color: #e6f2ff; padding: 2px;">List of Goods</div>	
Article 25	Foreign Exchange Order	category 1-15 <div style="border: 1px solid black; background-color: #e6f2ff; padding: 2px;">List of Technologies</div>	category 16 <div style="border: 1px solid black; background-color: #e6f2ff; padding: 2px;">List of Technologies</div>	
		<u>Regulated Items</u> •weapons •listed dual use items related to WMD and conventional weapons	<u>Regulated Items</u> All items or technologies that could contribute to WMD related or military end-use activities	
		<u>Regulated Destination</u> All countries	<u>Regulated Destination</u> All countries except for White countries	

Country Chart for list and catch all control

- White Countries : 27 countries which have strict export control systems**
- UN arms embargo countries**
- Other Countries**

In case there are concerns that the goods or technologies in question could contribute to WMD proliferation program, exporters have to apply for an export license.

Region

All regions except for white countries

Items

Any Items which are not on the list (except for food, etc.)

The Commodity Watch List [40 +12* items]

(*only for Syria, as from 15 April. 2015)

Conditions

(1) Exporter's Initiative = The "Know" Condition

- In case exporters have come to know that the items will be used for the development, manufacture, use, storage etc. of WMD
- In case exporters have come to know that the end user is/was involved in WMD-related program through relevant documents such as Foreign End User List, except for the case the item in question will be apparently used for a purpose other than the WMD-related activities

(2) METI's Initiative = The "Informed" Condition

- The "inform" is given when METI considers that the items in question are/may be intended for WMD.

Catch-all Control of Conventional Arms

In case there are concerns that the goods or technologies in question could contribute to military end-use, exporters have to apply for an export license.

As from 15 April 2015

Region

Countries under UN arms embargo

Non-white Countries except for UN Arms embargo countries

Items

Any Items which are not on the list (except for food, etc.)

The Commodity Watch List [34 items]

Conditions

(1) Exporter's Initiative

= The "Know" Condition

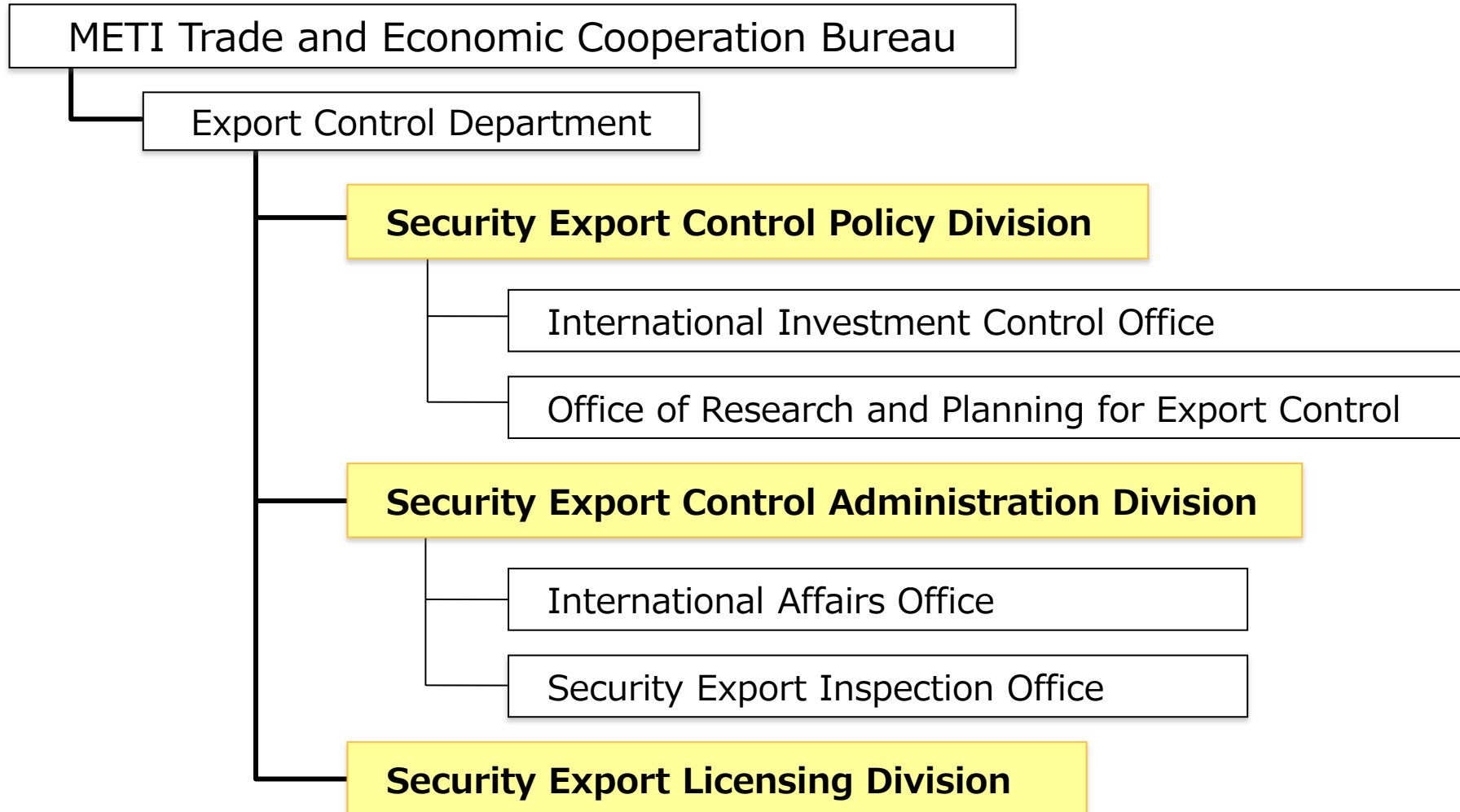
In case exporters have come to know that the items will be used for the development, manufacture or use of conventional arms **in UN embargo Countries**

(2) METI's Initiative = The "Informed" Condition

The "inform" is given when METI considers that the items in question are/may be intended for a military end-use.

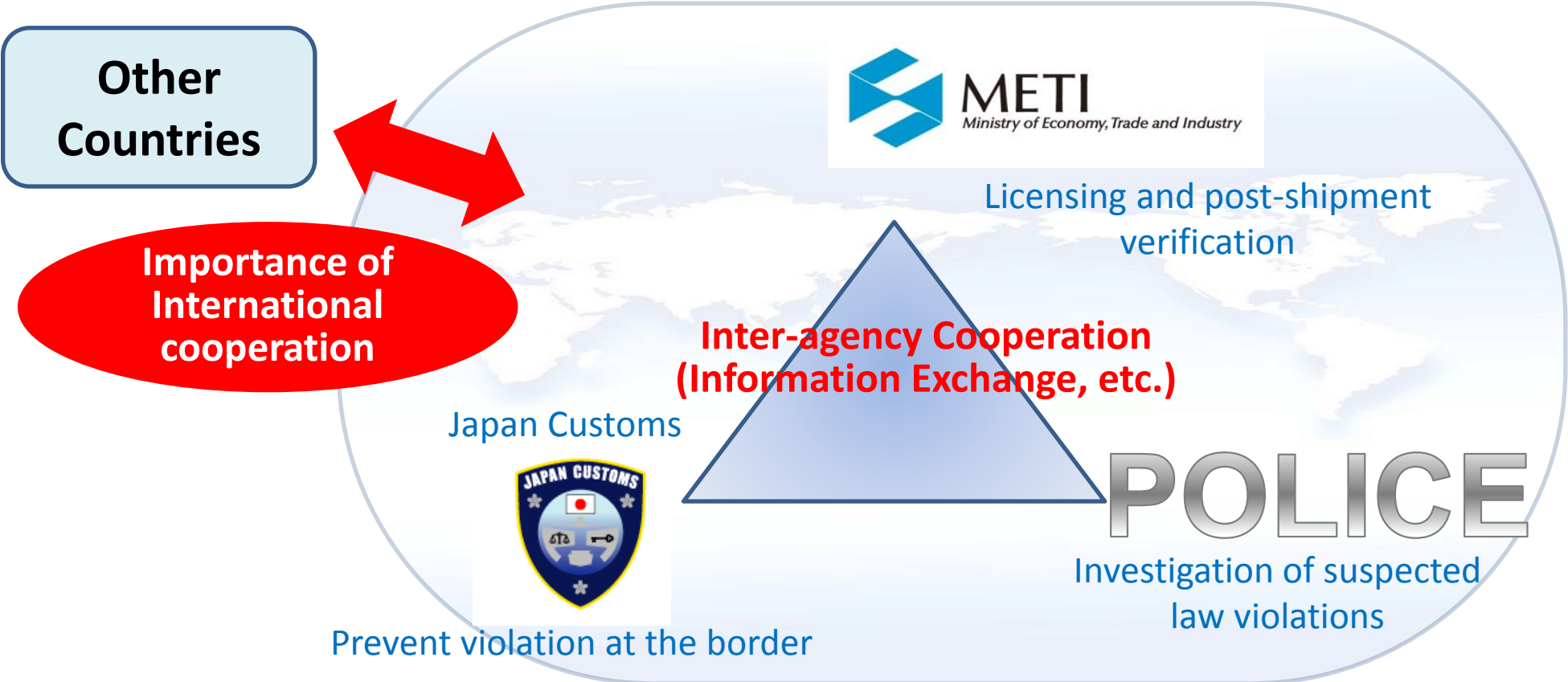
Organization for Security Export Control in METI

- METI is in charge of export control with about 100 staff concerning the security field.
- An export license is issued only by METI under FEFTA.
- METI expanded their function from June 2016.



Inter Agency Cooperation for Effective Enforcement

- Recently, there are many cases where countries of concern attempt to procure sensitive items by circumventing trade.
- METI is strengthening inter-agency cooperation with customs and police authorities for more effective enforcement.
- Furthermore, in order to strengthen countermeasures against circumvention, international cooperation is of great importance.



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- **Industry's Efforts**

2. Current and Future Efforts

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History of Japan's Export Control System

- **1949** The Foreign Exchange and Foreign Trade Control Act (FEFTA) was established.
- **1952** Japan acceded to COCOM
(Coordinating Committee for Multilateral Export Controls)



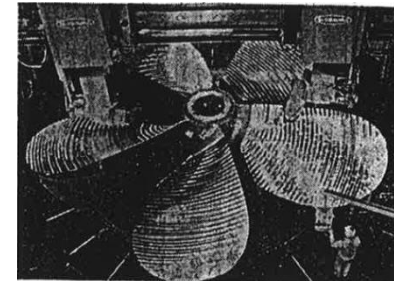
Implementation of export control based on FEFTA



- **1987 Toshiba Machine Company Incident**
(Export of machine tools from Japan to the Soviet Union)

Strong anti-Japan feeling in the US

- **Loss of Japan's credibility**
- **Replacement of the executives of the firm which exported machine tool**
- **Shareholder lawsuit**



(1987 Mainichi Shimbun, Evening paper)

- ✓ **Lose international credibility by only single incident.**

Implementing strict export control promotes foreign direct investments and lead to economic development

- ✓ **A system is not enough, actual implementation is necessary.**

- ✓ **Human resource development is a key to implement export control (e.g. raising experts through effective trainings)**

Lack of effective implementation is equivalent to lack of the system.

- ✓ **International cooperation is necessary to treat newly evolved concerns**

Internal Compliance Programs (ICPs)

- An ICP is an **exporter's internal policy** to comply with the export control laws and regulations.
- Having an ICP is **not mandatory**, but METI has been encouraging exporters in Japan to establish an ICP.
- METI has been encouraging exporters to develop their ICPs voluntarily, and has **registered them since 1987**.
- METI has also been encouraging overseas subsidiaries to develop ICPs since 2005.
- Currently number of the companies which registered their ICPs to METI are about 1500.

Importance of ICPs

Exporters



Can clarify their internal procedures and responsibilities.



Can minimize the risk of mistake by effective checks.



Can appeal to the public as a excellent exporter.



Can apply for a bulk export license.

Governments



Can reduce the risk of inadvertent illegal exports.

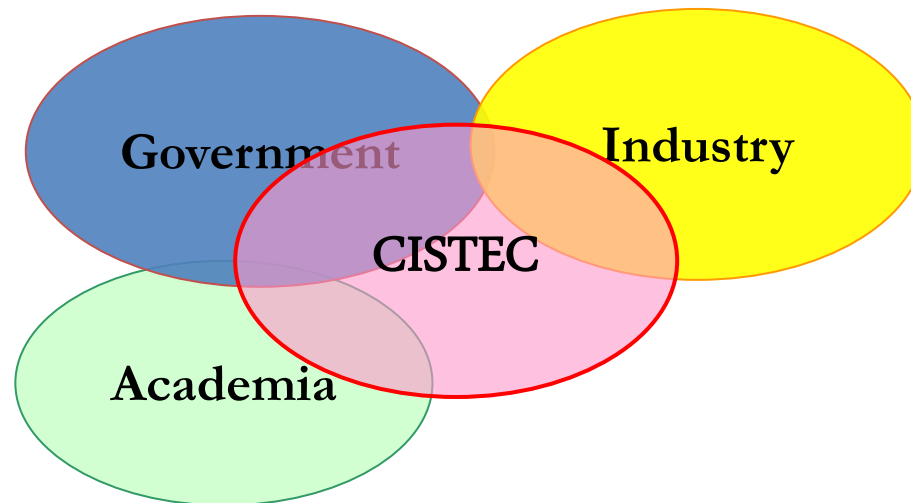


Can concentrate human resources on crucial matters.

Beneficial for both exporters and governments.

- Center for Information on Security Trade Control (CISTEC) is the only non-profit and non-governmental organization specializing security export control in Japan.
- It was founded in 1989. Currently, the number of associated members are 422 including major exporting companies in Japan and operated by the fund from industry.
- Their major mission is Serving as a **LINKAGE CHANNEL** among Industry, Government and Academia to pursue rationality and effectiveness of security export control.

(Ref) <http://www.cistec.or.jp/english/index.html>



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Changes of Security Environment

[Europe]

- Terrorist attacks in Paris in Nov 2015. Truck attack in Nice in Jul 2016.
- Bombings in Brussels in Mar 2016.
- Terrorists seeking atomic materials (dirty bomb). Possible use of drones for CBW.

[North Korea]

- 4th and 5th nuclear tests in Jan and Sep 2016
- Series of ballistic missiles launches including satellite launch and SLBM. (more than 20 times in 2016)

[South East Asia]

- Bombing in Bangkok in Aug 2015.
- Bombing in Jakarta in Jan and Jul 2016.
- Attack in Dhaka in Jul 2016.

[Africa]

- Shopping mall attack in Nairobi in Sep 2013.
- Continuous terrorist attacks in Nigeria.

[Middle East]

- Conflicts in Syria and Iraq. Actual use of chemical weapon (mustard gas, chlorine gas).
- Ballistic missiles launch by Iran in Mar 2016.
- Airport attack in Istanbul in Jul 2016.

Important elements for effective STM

- Diversified procurement activities by circumventing trade, using third country, front company or falsifying information, etc.



- Rapid economic growth of Asian regions and the development of international businesses

Other Elements of Strategic Trade Management

- intangible technology transfer (ITT) - academic and research activities
- Foreign Direct Investment - direct acquisition of R&D capability

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Modification of the FEFTA on Criminal Charges

- The amendment is to **raise the amount of fines applied to illegal conducts of exports or imports** (The maximum fines are increased).
- Also, criminal charges (Imprisonment and fine) **is to be applied against violations of license conditions** such as prior consent re-export with METI (Currently, non criminal fines).

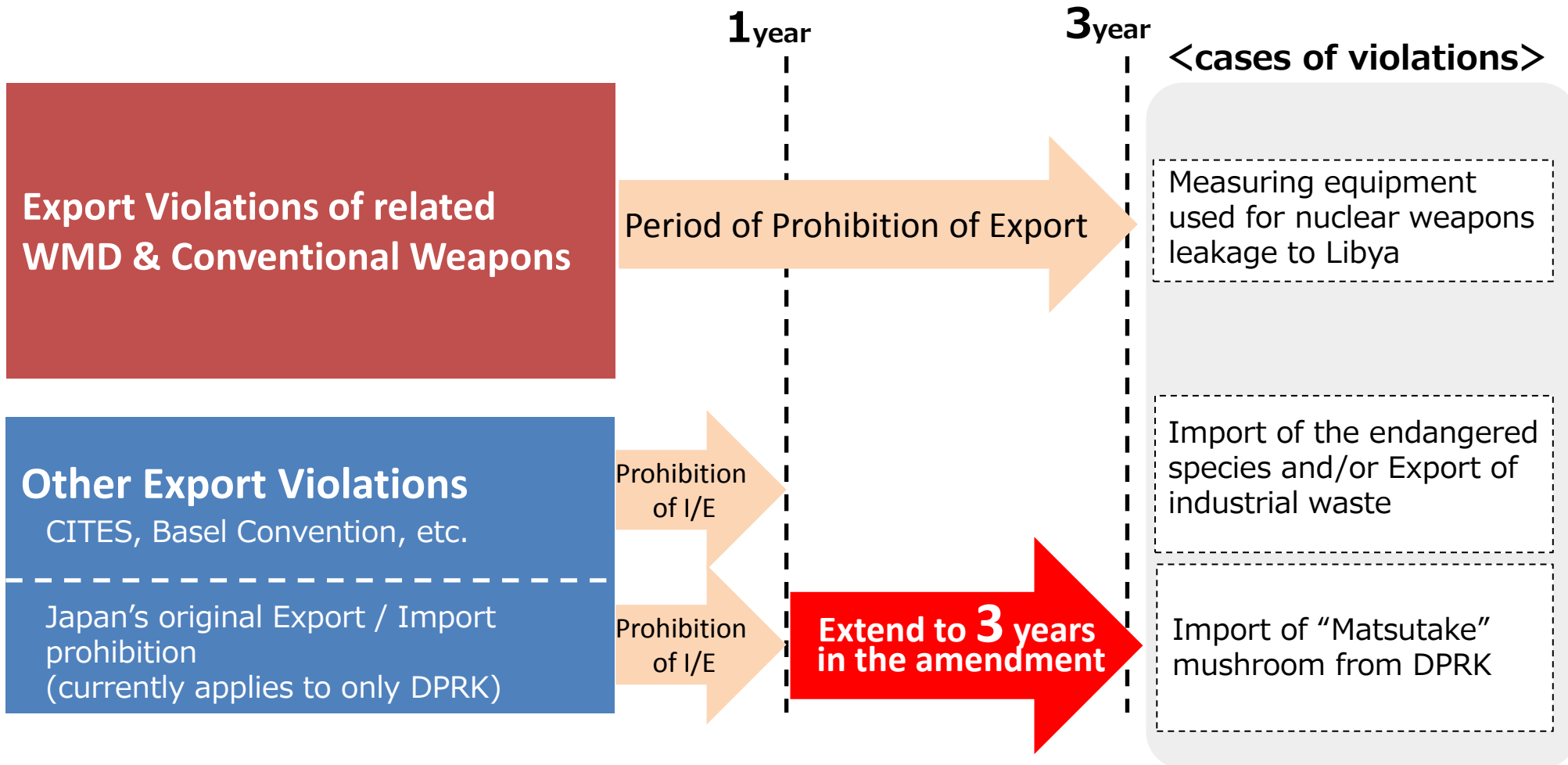
	target	illegal conduct of import/export		
		WMD	Conventional Arms	others
Present System	Individual and Company	10 million yen or 5 times of the export price	7 million yen or 5 times of the export price	5 million yen or 5 times of the export price



Amendment	Individual	30 million yen or 5 times of the export price	20 million yen or 5 times of the export price	10 million yen or 5 times of the export price
	Company	1 billion yen or 5 times of the export price	700 million yen or 5 times of the export price	500 million yen or 5 times of the export price

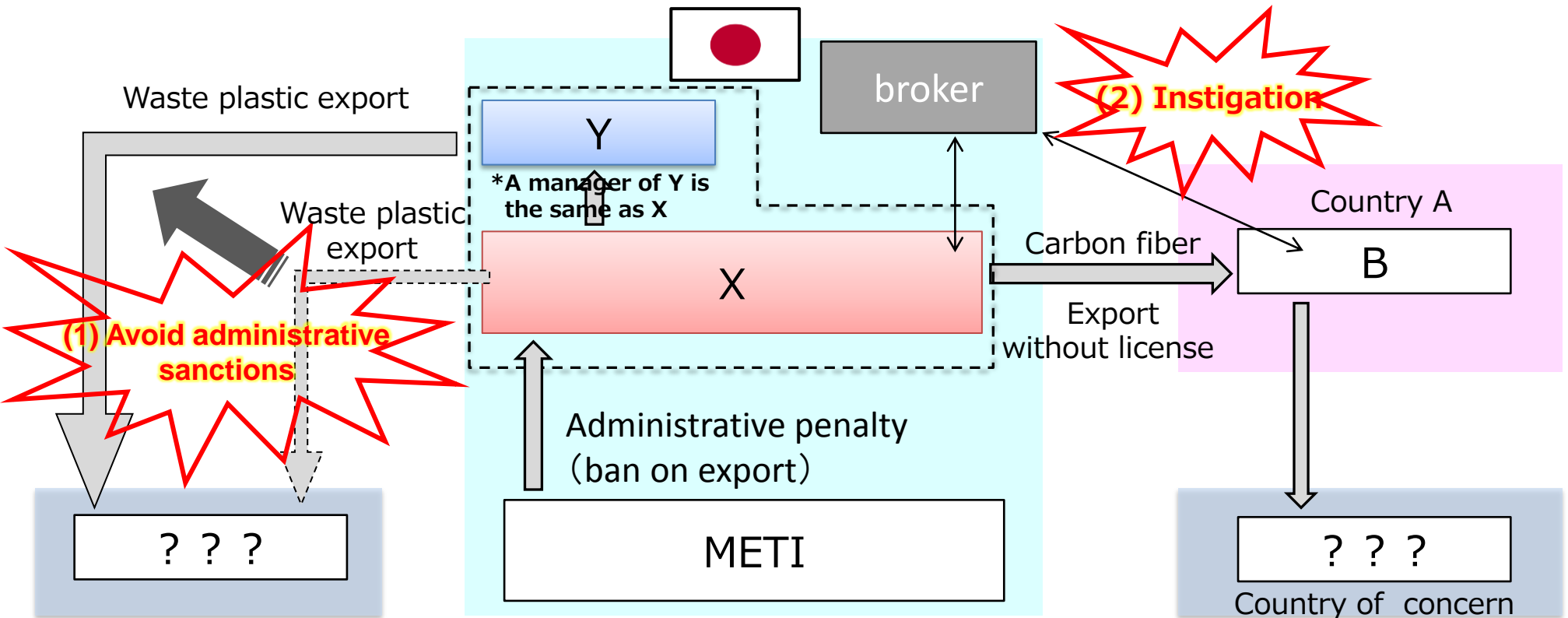
Modification of the FEFTA on Administrative Penalties

- Extension of the upper limit of the period of administrative penalties imposed on violators who received export/import bans.



Modification of the FEFTA on Administrative Penalties

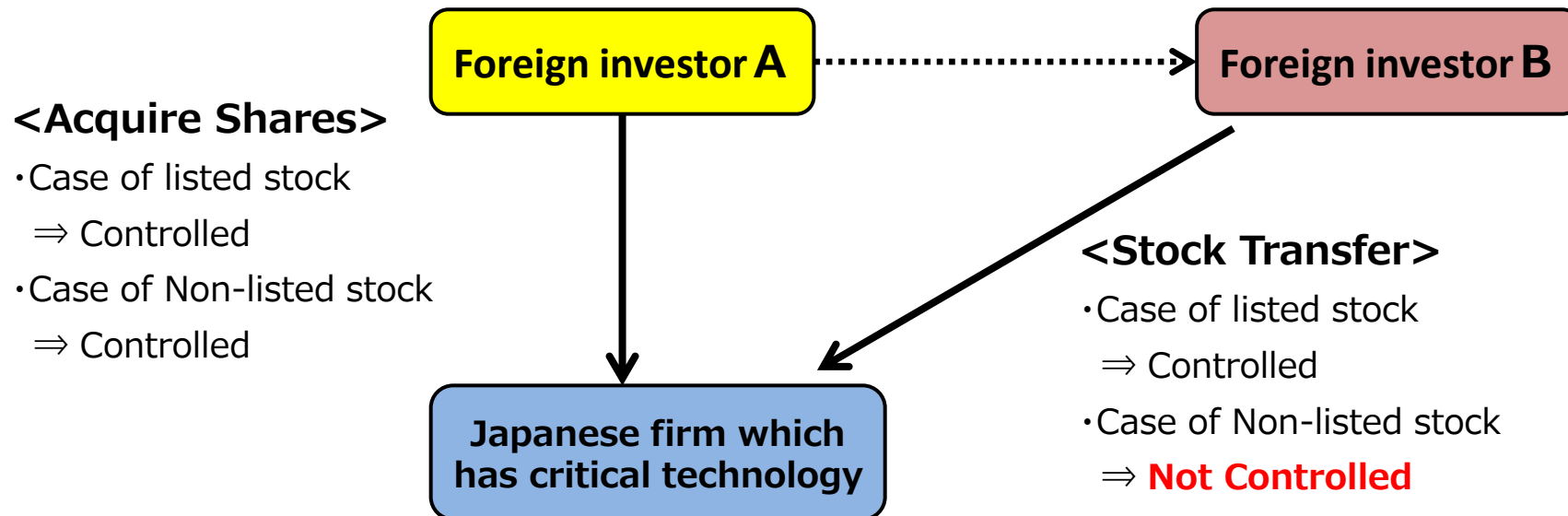
- (1) Introduction of **new regulations to persons**, who received administrative penalty, **to prohibit taking a new position in another company to keep their trades, and so on.**
- (2) **Adding brokers** related to a skeptical trade **to the subject of on-site inspections.**



Modification of the FEFTA on Inward Direct Investment

- Foreign investors who would take non-listed stocks from other foreign investors, is obliged to submit prior notification to the **GOJ**, if such deal would potentially cause threat to the national security.
- Ministries can give an order to foreign investors to take actions for mitigation measures, e.g., sell stock, stop dealing, where the investment is deemed as harming national security.

【Overview of present regulation】



Regulations on critical goods and technologies

Foreign Exchange and Foreign Trade Act (FEFTA)

Carbon fiber



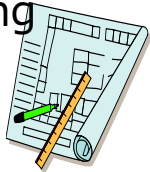
Goods
Export



Permission

Critical goods related to
international peace and security

Design
drawing



Technology
Transfer



Permission

Critical technologies related to
international peace and security

Japanese firm



Inward Direct
Investment



Prior notification to the GOJ
to receive an examination

Inward direct investments related to

- Concern of **national security**
- **Maintenance of public order**
- **Protection of public security**

(It is possible to recommend or
order for change or discontinuance)

Affect on ITT

(Future Challenge) Restructure of the Control list of FEFTA

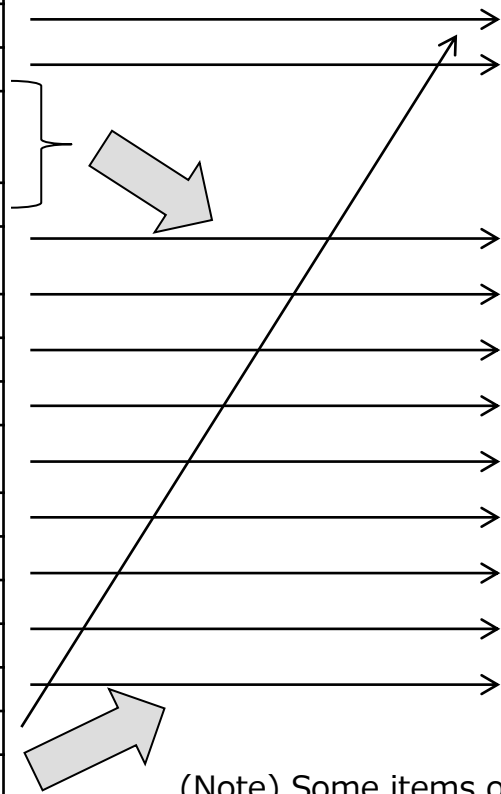
- Control list numbering system of Japan is different from other countries.
- Since an increase of the burden of business operators may hinder their compliance activity, it should be considered to reduce such burden by making it consistent with EU control list.

<Japan's control list>

Category	Item	Export Control Regime
1	Munitions	WA (ML)
2	Nuclear related items	NSG
3, 3-2	Items related to Chemical Weapons and Biological weapons	AG
4	Missile related items	MTCR
5	Special Materials and Related Equipment	WA (Cat.1)
6	Materials Processing	WA (Cat.2)
7	Electronics	WA (Cat.3)
8	Computers	WA (Cat.4)
9	Telecommunication and "Information Security"	WA (Cat.5)
10	Sensors and "Lasers"	WA (Cat.6)
11	Navigation and Avionics	WA (Cat.7)
12	Marine	WA (Cat.8)
13	Aerospace and Propulsion	WA (Cat.9)
14	Other items	WA (ML)
15	Sensitive items	WA (VSL)
16	All items except food and wood, etc.	Catch-all

<EU control list>

Category	Item
M L	Munitions
Cat. 0	Nuclear related item
Cat.1	Special Materials and Related Equipment
Cat.2	Materials Processing
Cat.3	Electronics
Cat.4	Computers
Cat.5	Telecommunication and "Information Security"
Cat.6	Sensors and "Lasers"
Cat.7	Navigation and Avionics
Cat.8	Marine
Cat.9	Aerospace and Propulsion



(Note) Some items of NSG, AG, MTCR and VSL of WA are allocated in Cat.1-9 under EU control list.

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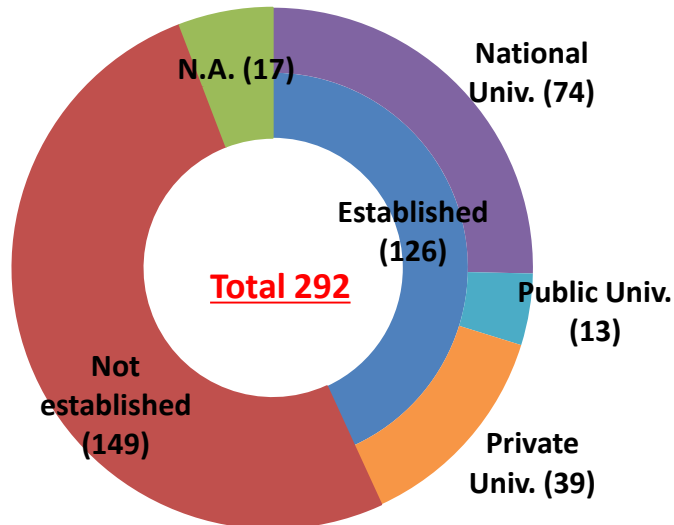
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Importance of outreach to academia

- (1) Hold export control seminars for academic institutions and industry. (100 seminars in 2016FY)
- (2) Revise the supportive documents of export control such as guidance and FAQs.
- (3) Dispatch export control advisors to academic institutions in order to support establishment of internal export control system and raising awareness of researchers. (start from 2017FY)

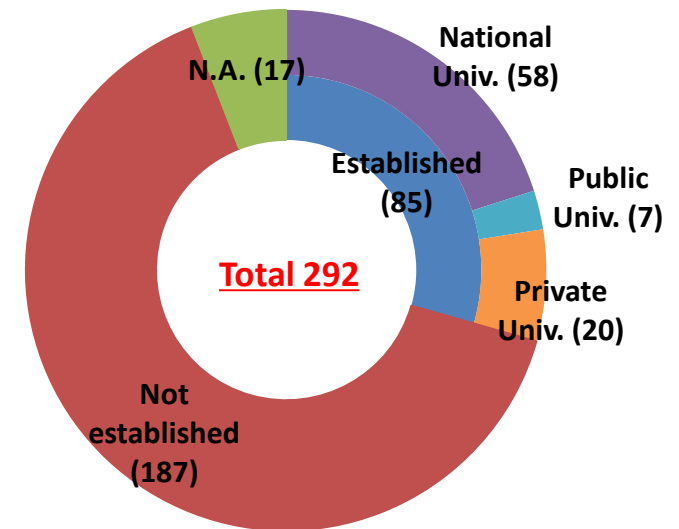
Survey to national university, public and private university which have medical and/or engineering dept.

1. Establishment of export control organization



	Established
National Univ.	86%
Public and private Univ.	25%

2. Establishment of ICP for export control



	Established
National Univ.	67%
Public and private Univ.	13%

(Ref) Survey by Ministry of Education, Culture, Sports, Science and Technology (MEXT), etc.

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The 24th Asian Export Control Seminar was held - February 21-23, 2017

- Organized by METI, MOFA, Center for Information on Security Trade Control (CISTEC)
- 32 countries and regions, 190 participants in total



✓ Asian countries and regions

Bangladesh, Cambodia, China, Hong Kong, India, Indonesia, The Republic of Korea, The Lao PDR, Malaysia, Mongolia, Myanmar, Pakistan, the Philippines, Singapore, Sri Lanka, Chinese Taipei, Thailand and Viet Nam

✓ Other countries and regions

Australia, Canada, EU, France, Germany, Kazakhstan Mexico, the Netherlands, Switzerland, Turkey, UAE, UK and USA

✓ International Organization, etc.

AG, MTCR, NSG, WA, WCO, Panel of Experts of UNSCR 1874, SIPRI, State University of New York, University of London, University of Georgia, etc.

<http://www.meti.go.jp/press/2016/03/20170302>

[004/20170302004.html](http://www.meti.go.jp/press/2016/03/20170302004.html)

http://supportoffice.jp/outreach/2016/asian_ec/

Industry Outreach Seminar

- **Increase awareness** of the importance of export control
- Pursue to conduct **effective compliance programs** in industries

