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Center for Information on Security Trade Control

Opinion on the Republic of Korea's Draft of Revised "Notice on the Export and Import of Strategic items"

Attn. Ministry of Trade, Industry and Energy, Republic of Korea

From: Center for Information on Security Trade Control (CISTEC)

[Supporting Organizations]:
Japan Machinery Center for Trade and Investment (JMC)
Japan Chemical Exporters and Importers Association (JCEIA)
Japan Chemical Industry Association (JCIA)
Japan Electronics and Information Technology Industries Association (JEITA)
Japan Business Machine and Information System Industries Association (JBMIA)
Communications and Information Network Association of Japan (CIAJ)

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In the 30 years since our 1989 founding as a specialized non-profit organization (NPO) dealing with security trade controls in Japan, CISTEC has engaged in a variety of activities to support the implementation of self-controls in the industrial sectors and for universities and research institutions.

As part of these efforts, we have also continued to conduct surveys regarding the implementation of export control systems both in Japan and abroad. In the case of the systems implemented in the Republic of Korea (ROK), we have introduced and explain them in detail in our annual "Export Control Guidance: Foreign Export Control Legal Systems." Beyond this, since 2012 we have issued our "Guidance on Security Trade Controls for Overseas Offices: Republic of Korea Edition" and both made Japan's industrial sector aware of these and supported them with legal compliance.

Furthermore, for many years we have also engaged in exchanges with the ROK such as through our participation in international conferences hosted by the Korea Strategic Trade Institute (KOSTI), etc.

From this standpoint, we are deeply worried about the fact that confusion regarding current export controls between Japan and the ROK continues. CISTEC is not in a position to understand the specific background and reasons underlying

the revision to their export control implementation with respect to the ROK that the Japanese government announced on July 4. However, we strongly feel that major misunderstandings about the implementation of the Japanese export control system and about the facts of the case are the root cause when it comes to the confusion that has lasted to the present moment since that announcement. Thus, we have prepared explanatory materials that would help clear the misunderstandings and posted them on the following our website.

http://www.cistec.or.jp/service/kankoku.html

From the position of getting license to export to the ROK, for Japanese exporting companies who strictly implement controls independently, there would essentially be hardly any practical impact or any impact on supply chains by the revision to the export control implementation from the outset.

However, due to the misunderstandings that continue to be amplified regarding how the export control system would be implemented in media reports in Japan and elsewhere, we perceive that an atmosphere in the ROK of the sort where "countermeasures" will escalate represents an extremely unfortunate situation for both Japan and the ROK as well as people involved in business in other countries.

If these major misunderstandings can be resolved, we are certain that the confusion can be rectified and are hopeful that this will be the case.

This brief is being submitted as our public comment in opposition of the draft of the revised the "Notice on the Export and Import of Strategic Items" released on August 12, and this is based on the need to correct the aforementioned misunderstandings. To do so, we will first explain what we CISTEC believe the misunderstandings to be, and then based on that present our opinion about the Revised Draft Notice.

1. The Major Misunderstandings Behind the Confusion between Japan and the ROK

Currently, it is believed that the perception from the Korean side is as follows.

[Regarding the Changeover to Individual Licenses for the Three Items]

- Japan has targeted three items that are indispensable to semiconductor manufacturing, which is a key industry for the ROK. Their controls are being changed to Individual Licenses, thus in essence restricting their export.
- If they are changed to Individual Licenses, it will be necessary to obtain license for each shipment, and that the government's review for the license requires more than 90 days. Under these circumstances stocks will be depleted and the semiconductor industry will come to a halt. As a consequence, the international supply chain for semiconductors will be severed.

[Regarding Removal of ROK from the "White Country" List]

- With the removal from the list of "white countries" that receive preferential treatment, using Bulk Licenses will no longer be possible and exports of thousands of items will be subject to Individual Licenses. This in essence is an export restriction.
- Due to the application of catch-all controls, at the discretion of the Ministry of Economy, Trade, and Industry (METI) it will become possible to demand Individual Licenses for items other than the three items using reasons of "concerns that they will be diverted for military use."

However, we believe that the foregoing perceptions are based on a complete misunderstanding regarding how the Japanese export control system is implemented.

We sense that these misunderstandings in many cases arise from the significant differences in the Japanese and the ROK export control systems on such matters as the meaning and effects of the "white country" list and the details of Bulk Licenses and their scope of application.

For major Japanese exporting companies, based on a correct understanding of Japan's export control system and its implementation, our reaction is that there will be hardly any practical impact from this revision to the operation of export controls with respect to the ROK by Japanese government.

We believe the following points to clearly be misunderstandings.

NOTE: "White countries" is now referred to as "Group A" countries, but for convenience's sake here we will use "White countries".

[Misunderstandings Regarding the Changeover to Individual Licenses for the Three Items]

- There is a misunderstanding that the three items are all subject to needing the license regardless of their specifications, but in fact it is limited to only list controlled items with specifications that have been agreed upon in international export control regimes.
- There is a misunderstanding that 90 days will be required uniformly before a license is granted, but in fact it will not take that long.
- There is a misunderstanding that licenses will be required for each shipment and each load, but in fact it is based on each contract. The licensing period also in principle will be for 6 months, and in some cases it may be longer.

[Misunderstandings Regarding Removal of ROK from the "White Country" List]

- There is a misunderstanding that when a country is removed from the "white countries" list, all items will require Individual Licenses. However, in fact, only "general bulk export licenses" for items bound only to a "white

country" will no longer be usable but "Special general bulk export licenses" can continue to be used.

- There is a misunderstanding that METI can use catch-all controls to designate nearly all items as subject to Individual Licenses when a country is removed from the "white country" list, but the Individual License is limited to those instances in which there are specific concerns regarding individual cases.

Below we will explain each.

(1) Regarding the Three Items Being Subject to Individual Licensing

1) Misunderstanding that the three items are all subject to licensing regardless of their specifications

It was announced that three items—photoresists, fluorinated polyimide, and hydrogen fluoride—would be subject to Individual Licenses. However, this to the end is limited to items subject to list control items as agreed under the international export control regime.

According to "Statistics on Japan's Semiconductor Material Export Regulations" released July 2 by the Korea International Trade Association (KITA), the degrees of dependence for Japanese exports of photoresists, hydrogen fluoride, and fluorinated polyimide from January to May stood at 91.9%, 43.9%, and 93.7%, respectively. There is a misunderstanding that all HS code items listed therein are subject to Individual Licensing, but this is not the case.

- Regarding photoresists, only those items intended for extreme ultraviolet (EUV) uses are subject to Individual Licensing. The photoresists used in the mass production of semiconductors are not controlled items and are not subject to this licensing. It is extremely small amount at the volume base.
- When we look at the HS codes, the items that the KITA describe as "fluorinated polyimide" are polyimide films of all types. This is misleading. Fluorinated polyimide film is nothing more than a small portion of such items. The polyimide films that are widely used for OLED panels, etc. that are mass-produced today are not controlled items, so those films are not subject to this licensing. Fluorinated polyimide film is understood to be a material that is put toward new uses such as next-generation flexible displays, etc.

* Nearly the entire amount of highly pure hydrogen fluoride intended for semiconductor use is subject to the licensing.

In fact, our understanding is that when it comes to the photoresists and polyimides used in semiconductor manufacturing and OLED panels, etc. for

mass-produced items, since they are not controlled items, their export has continued uninterrupted since July 4.

2) Misunderstanding that it will uniformly take 90 days before license is granted

There is a misunderstanding that when it comes to Individual Licenses it will uniformly take 90 days for their license. However, the "90 days" referred to is the processing time routinely stipulated under the Administrative Procedure Act. This has been set down as a common provision in all Japanese licensing laws and regulations in order to prevent arbitrary delays in licensing by the authorities, and carries the nuance of "maximum time for review."

METI does not release statistics on the actual average length of time for processing license applications. However, in those industrial sectors that receive licenses, the general understanding is that if the needed documents have been pulled together and are accepted, so long as there are no concerns (e.g., concerns over diversion for use in the development of weapons of mass destruction or for military use, or concerns that the items will be transferred to a third country), on the whole the license is granted in approx. 30 days.

On August 8, licensing was granted for the export of photoresists that had been applied for after July 4. The review period was slightly more than 30 days, and was largely the same as the average review period up to this point. Also, according to a Korean media report, Individual License is applied for a Korean semiconductor company applied in mid-June for an Individual License to exports of hydrogen fluoride from Japan to a Korean semiconductor company's local factory in China as its final destination for its use, and the license was granted around August 5 (Yonhap News Agency, August 8, 2019). This also falls with the average review period. In addition, it is reported that Individual License to exports of hydrogen fluoride from Japan to ROK, which was applied for around July 4, 2019, was granted on August 29 (Various mass media reports of August 30).

Applying for an Individual License for the first time may take some time to receive the license due to the initial preparation of the needed documents, but once granted, the process will proceed more smoothly in subsequent applications.

3) Misunderstanding regarding licensing for each shipment and each load

There is a misunderstanding that licensing will be required for each shipment and each load. However, the fact that it is per each contract is similar to the case of Individual Licenses in the ROK. Also, regarding Individual License lengths, in accordance with government ordinance, in principle they are valid for 6 months and the ordinance stipulates that it is also possible to get longer periods. This is the same as the stipulation that prescribes for a validity of 1 year in the ROK. In practice, licenses are frequently granted for contract periods longer than 6 months according to the contract period.

(2) Regarding removal of ROK from the "white country" list

1) Regarding the misunderstanding that when a country is removed from the "white countries" list, exports of all items require Individual Licenses

In Japan, a "white country" means a country that is exempt from the application of catch-all controls. Also, even if a country is removed from the list of white countries, that does not necessarily mean that Bulk Licenses cannot be used whatsoever. It will no longer be possible to use general bulk export licenses, which is granted to only to exports to white countries by companies that implement comparatively simple self-controls. However, it will remain possible to use the special general bulk export licenses that are granted to exporters who strictly implement self-controls. The scope of those items is also approximately the same as with general bulk export licenses. In the case of exporting companies that do business globally, one would imagine that most acquire special general bulk export licenses.

Bulk Licenses in the ROK comprise "User Bulk Licenses" that specify the purchaser, the destination country, the ultimate consignee, and the item, and "Item Bulk Licenses" that specify the purchaser, the final destination country, the ultimate consignee, the end user, and the end use. In either case, these are understood as specifying the relevant persons involved at the export destination. "General Bulk Licenses" and "Special General Bulk Licenses" in Japan on the other hand do not specify the relevant persons involved at the export destination like the ROK's Bulk Licenses do. Aside from certain very sensitive items, they can be used for exporting a wide variety of items.

When we look at the details of the revisions to the "Guidelines for Handling Bulk Export Licenses" associated with the removal of ROK from the white country list that METI published on August 7, no items other than the above-mentioned three items will be changed to Individual Licenses, and it continues to be possible to use the Special General Bulk License that have previously been used for export to the ROK. Also, even in those cases where only Individual Licenses could be used for exporting to other countries that participate in the international export control regime, there are quite a few items where it will become possible to use Special Bulk Export Licenses (Bulk Export Licenses for exports to specific end users) for export to the ROK. In that sense, it is our understanding at CISTEC that among non-white countries the ROK is most preferred.

Accordingly, our understanding is that even if the ROK is removed from the white country list, if exporters use a Special General Bulk Export License or a Special Bulk Export License in essence by meeting the requirements it will be possible to smoothly continue to export to the ROK as they had in the past.

Additionally, even in the case of an exporting company that does not have a Special General Bulk Export License applying for an Individual License, it

will be possible to smoothly export as explained in the above-explained (1). In fact, hydrogen fluoride exports to Taiwan and China require Individual Licenses, but such exports are being handled smoothly with no problems.

Based on the foregoing, we cannot conceive of circumstances being produced of the sort that would have a major impact on international supply chains connected to the three items.

NOTE: There have been some media reports that Japan has made exports of hydrogen fluoride bound for Taiwan subject to Bulk Licenses, but this is a factual mistake. Only small volume shipments of 20 kg or less are subject to the Special General Bulk License. Large hydrogen fluoride for industrial use is subject to Individual Licenses.

Reference: Ministry of Economy, Trade, and Industry explanatory materials (August 2, 2019)

Export License Procedures（after amendment to Cabinet order)

The following chart may not be applicable for some exports or transactions of certain items to specific destination.

Sensitivity

Export control system and implementation

Item / Category of Destination	Catch-all control	List control	
Group A (countries and regions listed in the Appended Table III of the Export Trade Control Order)	No	General Bulk EL*, Special General Bulk EL**	Individual EL
Group B (countries and regions participating in export control regimes and satisfying certain conditions)	Yes	Special General Bulk EL (except for exports of the 3 iems to ROK)	Individual EL
Group C (Other than Groups A, B and D)	Yes	Special General Bulk EL	Individual EL
Group D (countries of concern)	Yes	Individual EL	

* General Bulk EL(Export License): Companies that have acquired one do not have to acquire individual licenses. An exporter can obtain this license without establishing its own Internal Compliance Program (ICP).

** Special General Bulk EL(Export License): Companies that have acquired one do not have to acquire individual licenses. Establishing ICP, etc. is required

for application of this bulk EL.

*The Republic of Korea is included in Group B.

2) Misunderstanding that METI can designate nearly all items as subject to Individual Licenses by using catch-all controls

Catch-all controls are a system that applies to items other than those on the control list when there are specific concerns (e.g., concerns about an item being diverted for use in the development of weapons of mass destruction or for military use, or that the items will be diverted to a third country) about individual specific exports. In such cases, when the exporting company knows of this or receives a notification from METI that license should be obtained, the exporter is required to submit a license application. These are stipulated based on agreements under the international export control regimes. In a sense, it is a safeguard system to handle unusual cases. The ROK's "Conditional License" system is equivalent to this.

The system is limited to those cases in which there are such specific concerns. It is not at all the case that exports of all items excluding foodstuffs and lumber, etc. will uniformly require license applications. The cases in which there are concerns are extremely limited, and licenses are unnecessary in most cases.

Regarding the above-mentioned points, there is the misunderstanding that, regardless of a lack of any specific concern, METI can prescribe certain items in a control list-fashion and compel the need for a license application on the exports of these items regardless of who the exporter may be. However, such action is not legally conceivable at all.

We believe that the ROK's export control authorities are well acquainted with the fact that ROK's Conditional License system equivalent to Japan's catch-all controls cannot be arbitrarily applied as described above.

(3) Summary

Based on the foregoing explanation, we believe that it can be understood that:

1. It is inconceivable that the international supply chain for semiconductors and OLED displays will be hindered just because the exports of above-mentioned three items to ROK have changed to Individual Licensing; and
2. Just because removal of ROK from the list of white countries has occurred, it does not at all mean that it will no longer be possible to use Bulk Licenses to say nothing of the fact that it does not at all mean that the list of items requiring Individual Licenses can be arbitrarily expanded.

In light of the fact that it would be difficult to imagine that there will be a substantial impact on the ROK coming with METI's revision to the

implementation of its export controls with respect to the ROK, we cannot help but to say that it would be truly alarming if there was an escalation of "countermeasures" based on major misunderstandings such as "the international supply chain for semiconductors will be severed" and "Japan's Ministry of Economy, Trade, and Industry can add items to the Individual Licensing list at its own discretion by using catch-all controls."

2. Regarding the Removal of Japan from the ROK's White Country List (i.e. Area 'Ka' Country List)

Next, with regard to the removal of Japan from the ROK's list of white countries, which is the issue itself for which public comments were sought, we will discuss the possibilities that reason for it is based on a factual misunderstanding and our concerns that it will interfere with businesses, and shall submit our views in opposition to the removal.

(1) Regarding the reason of removal from the "white country" list

The ROK's Ministry of Trade, Industry, and Energy (MOTIE) explains in its announcement the reason for removing Japan from the ROK's white countries list as follows:

> "With respect to a country that either implements a system that infringes upon the basic principles of international export control system or in which instances of inappropriate practices repeatedly occur, since close international collaboration with such a country is difficult, it is necessary to put into operation an export control system that takes this under consideration."

However, regarding this matter of "implements a system that infringes upon the basic principles of the international export control system," if this includes matters that are based on the significant misunderstandings about the implementation of Japan's systems as explained in Chapter 1 above, we ask that it be understood that such is not the case.

As for the matter of "instances of inappropriate practices repeatedly occur," does this mean that it is not only a problem of exporting companies on the ROK side but also a management problem on the side of Japanese companies? If that is the case, we would like to ask the ROK to provide the specific examples without disclosing the names of the companies, as we need information for strengthening self-controls.

It has been reported that members of the ROK's government party have held a press conference in which they said "a United Nations report shows that there have been more than 30 instances of strategic items such as unmanned cameras and radar diverting from Japan" and pointing out that based on this "Japan's export controls are insufficient so it is only natural to exclude it from the white country list" (TV Asahi, August 13, 2019).

If this is the sort of perception that the ROK government has, it is a factual misunderstanding and so we will explain as follows..

Incidents of illegal export from Japan are announced by the National Police Agency (NPA) when they are uncovered and also when the incident has been drawn to a close. In addition, the NPA releases an annual summary of such incidents in two different types of white paper. In this summary, the names of illegal exporters are made public, and a list of the past incidents is also provided.

(1) “Public Safety Review and Outlook”
https://www.npa.go.jp/bureau/security/publications/

(2) “Police White Paper”
https://www.npa.go.jp/publications/whitepaper/index_keisatsu.html

We CISTEC also compile a summary based on documents released by the NPA and METI and has published it to our website.
http://www.cistec.or.jp/export/ihanjirei/index.html

According to the 2018 edition of “Public Safety Review and Outlook,” there were 14 arrests made in instances of illegal exports (excluding those bound for the Democratic People’s Republic of Korea [DPRK]) related to weapons of mass destruction over the preceding decade (dating back to 2009), 6 of which had been made since 2015.

With regard to the DPRK, all exports to that country have been banned since 2007. Even so, there were 30 arrests made for unapproved exports in the past ten years, of which 5 had been made since 2015. The commodities in the unapproved shipments included such items as foodstuffs, clothing, daily necessities, used computers, used bicycles, used tires, and so on, and there was no sensitive cargo. Additionally, the majority of these illegal exporters were companies and people with connections to the DPRK in Japan.

Furthermore, the cameras and radars (for fishing vessel use) that were included in the report issued by the U.N. Security Council’s DPRK Sanctions Committee are commercially available products which are not on controlled items list, and It may be surmised that these items that made their way to the DPRK are ones that are widely available around the world. The same could also occur with products from the ROK. If these items that are not controlled items are regarded as “strategic items” and treated as though they are controlled items, and if they are thought to have been intentionally exported to the DPRK from Japan, this is completely a factual misunderstanding.

Furthermore, even with respect to these commercially available products which are non-controlled items, Japanese companies use the serial numbers to trace as much as possible to which country/region the products they export have been distributed.

(2) Possibility of interference with business associated with removal from the white country list

There is a significant difference in the nuance and effects when comparing the

ROK's withdrawal of Japan from the white country list and Japan's withdrawal of ROK from the white country list. Accordingly, we have concerns and are deeply worried that these differences will harm the business environment and business models that have enabled the Japanese and Korean industrial sectors to stably collaborate and develop.

Below, we will explain the specific impacts that concern us.

○Constraints on business developed due to the fact that a Bulk Export License system corresponding to Japan's Special General Bulk Export License does not exist

As explained in Chapter 1. (2) 1), the ROK's Bulk Licenses are of two types: the User Bulk License and the Item Bulk License. In both cases, they specify the relevant persons involved at the export destination such as the purchaser, the ultimate consignee, destination, etc.

The Japanese Bulk License that is similar to this is the "Special Bulk Export License", which is granted for exports that are continually made to a specific end user. However, Japan also has a "Special General Bulk Export License", which is granted to exporting companies that carry out strict export controls and does not specify the purchaser, the recipient, the end user, or the items. This makes it possible to export to non-white country destinations as well as white country ones, excluding certain highly sensitive items. In the case of items bound for the ROK, these products would be same as those subject to the above-mentioned General Bulk License.

For that reason, under the Japanese system, even if the ROK's white country status is withdrawn, the possibility that exports to the ROK would be hindered is extremely low owing to the use of the Special General Bulk License and Special Bulk License.

In contrast, under the ROK's system, as explained by explanatory materials published on August 12 and 14, 2019 related to the request for public comments, if a country's white country status is withdrawn, only a Bulk License that is restricted to certain parties involved at the export destination can be used, but only in exceptional circumstances at that (*) and thus Individual License would be required, in principle.

＊ The Item Bulk License is granted to AAA-grade companies only. The User Bulk License is granted for repeated exports of more than three times to the same purchaser over a period of two years, or for exports based on a long-term export agreement that covers a period of two years or more.

Additionally, under the Special Grade-based Measure for Compliant Traders, Individual Licenses for exports to Japan were eligible for a special document exemption or screening exemption regardless of their grade or whether or not they are Japanese affiliated companies. However, hereafter, ROK companies that are

not Japanese affiliated companies will no longer be eligible for these exemptions, with the exception of AAA-grade companies.

For this reason, many exporting companies in the ROK will have no choice but to use the Individual License for most items on the control list, and because they will no longer be eligible for the document and screening exemptions, their business burden may increase, depending on their volume and frequency of exports to Japan. It is a concern that these factors may impede exports to Japan.

3. The need to avoid an escalation of tensions based on the amplification of misunderstandings

(1) Restrictions on exports to the ROK and interference with and severing of the international supply chain are inconceivable

As we have explained above, first of all it is difficult to imagine that there will be a substantial impact on exports to the ROK in conjunction with METI's revision to the implementation of its export controls with respect to the ROK based on the practical and general knowledge of departments responsible for export controls at Japanese exporting companies. Licenses are already starting to be issued even for the three items that were changed to Individual Licensing. We are certain that in the not-too-distant-future exports will be taking place smoothly as they had done before.

Also, even with removal from the white country list, Special General Bulk Export License can still be used just as before. Even if catch-all controls are applied, the character of the system is not at all one that would uniformly oblige license applications from all exporters of a control list sort. It is similar to the ROK's Conditional License system.

Although there is this revision to the implementation, it is one that is based on the framework of export controls under international export control regime agreements. In view of this, so long as there are no specific concerns, it is inconceivable that arbitrary export restrictions would be imposed on the ROK, and even if the Japanese government were to impose something of that order, Japan's industrial sector would not turn a blind eye to such.

Japan's exporting companies have actualized smooth supplies to the various regions around the world whether Individual Licenses or Bulk Licenses of whatever sorts are involved. We are certain that the possibility of the international supply chain for semiconductors and the like being interfered with or severed is inconceivable.

(2) Necessity of avoiding an escalation of tensions based on the amplification of misunderstandings

Under these circumstances, we are deeply worried that if tensions escalate due to gross misunderstandings of Japan's export controls by the ROK government, the possibility of the situation impeding business between Japan and the ROK as

well as global business, might become a reality.

With respect to the misunderstandings that are the root cause of the current confusion, we believe that this is due to the fact that even though the systems of Japan and the ROK may appear to be similar, they are considerably different both in nuance and effect. The meaning of “white country” and the details of such preference differ, as do the effects of removal from such a list. Furthermore, there are significant differences in the types of Bulk License and their content.

The export control system is a sophisticated specialized field, and there may be aspects that are difficult for the general public to understand, but it would be most unfortunate if inadequate understanding about each other’s system accumulates and misunderstandings are amplified and fomented by mass media reports, thereby leading to confusion and tension.

By taking this opportunity to submit public comment, Japan’s major exporting companies wish to convey that, based on a correct understanding of how Japan’s system operates, there are no reasons to be concerned about guaranteeing smooth exports to the ROK, and we sincerely hope that the Republic of Korea government responds with equanimity.

4. Other matters

At CISTEC, we have received a number of consultations from Japanese companies that export items to the ROK to the effect that they are perplexed at being requested by their counterpart ROK companies to acquire a Bulk License even though they export only items that are not on the controlled items list.

However, items not on the controlled items list do not require any sort of license to begin with, and can be freely exported.

An Individual License is required for items not on the controlled items list only in cases where catch-all controls apply, but as explained in paragraph 1. (2) 2) above, catch-all controls apply only if there are specific concerns about individual exports (e.g., concerns about an item being diverted for use in the development of weapons of mass destruction or for military use). Regular transactions between private companies rarely pose such concerns and do not require a license in most cases.

Based on this understanding, we would appreciate it if proper information is disseminated so that Japanese companies are not asked to go through a procedure that is essentially unnecessary, and confusion is not generated due to misunderstandings.