

(Provisional Translation)

Implementation Guidelines for the Three Principles
on Transfer of Defense Equipment and Technology

April 1, 2014
Adopted by the National Security Council
Amendment : November 24, 2015
Amendment : March 22, 2016
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In accordance with the Three Principles on Transfer of Defense Equipment and Technology (hereinafter referred to as “the Three Principles”, which was adopted by the Cabinet on April 1, 2014), the Implementation Guidelines for the Three Principles (hereinafter referred to as “the Implementation Guidelines”) is decided as follows:

Note: Definitions of terms in addition to those in the Three Principles are described in 6. below.

1. Cases in which Overseas Transfer of Defense Equipment and Technology may be Permitted

Cases in which overseas transfers of defense equipment and technology may be permitted are as follows:

- 1) Overseas transfers that contribute to active promotion of peace contribution and international cooperation, only if the transfers have positive meaning from the viewpoint of peace contribution and international cooperation, and when:
 - A. the recipient is a foreign government, or
 - B. the recipient is the United Nations (UN) System, organizations conducting activities based on a UN resolution, organizations conducting activities on a request of international organizations or organizations conducting activities which are requested by a country which is located in the area of the activity and supported by any of the principal organs of the UN.
- 2) Overseas transfers that contribute to Japan's security, only if the transfers have positive meaning from the viewpoint of Japan's security, and that:
 - A. are related to international joint development and production with countries cooperating with Japan in security area including the U.S.,
 - B. contribute to enhancing security and defense cooperation with countries cooperating with Japan in security area including the U.S., and of the following:
 - (a) overseas transfer of defense equipment and technology included in the provision of supplies and services conducted by the Self-Defense Forces (SDF) in accordance with Japanese laws,
 - (b) provision of military technology as a part of mutual exchange of technology with the U.S.,
 - (c) provision of parts or services related to a licensed product of the U.S. or provision of repair services etc. to the U.S. armed forces, or
 - (d) overseas transfer of defense equipment and technology related to cooperation concerning rescue, transportation, vigilance, surveillance or minesweeping with countries cooperating with Japan in security area, or

- (e) overseas transfer of defense equipment and technology included in equipment and goods transferred by the Minister of Defense to Ukraine facing the aggression in violation of international law pursuant to the article 116-3 of the Self-Defense Forces Law.
- C. are necessary for supporting activities of the governmental agencies including the SDF (hereinafter referred to as “the SDF etc.”), which include the activities of foreign governments or private entities etc. related to the activities of the SDF etc., or for ensuring the safety of Japanese nationals, and that are:
 - (a) temporary export of equipment, return of purchased equipment or provision of technical information related to the activities of the SDF etc. including replacements of items which need repairing with non-defective items,
 - (b) export of equipment for the protection or self-protection of public officials, or
 - (c) export of equipment for the self-protection of Japanese nationals operating in danger areas.
- 3) Overseas transfers whose impact from the viewpoint of Japan's security is judged to be very small such as return of misdelivered items, export of samples to be returned later and re-export of equipment that was brought into Japan by police officers of a foreign governmental agency.

2. Focuses of the Strict Examination of Overseas Transfers

Prior to granting an export authorization for an individual case that is judged as a case in which overseas transfer of defense equipment and technology may be permitted as referred to in 1. above, the Government will conduct strict examination on desirability of the transfer, taking into consideration the following two focuses in a composite manner:

- Appropriateness of the destination and end user
- Extent the overseas transfer of the defense equipment and technology may raise concern for Japan's security

More specifically, as for the appropriateness of the destination, the Government will consider it taking into account such factors as what impact the country or region of destination is posing to the international peace and security as well as Japan's security. As for the appropriateness of the end user, the Government will consider it taking into account such factors as the use of defense equipment and technology by the end user and the certainty of appropriate control.

As for the extent of the security concern, the Government will consider it taking into account such factors as nature, technical sensitivity, use (purpose), quantity and form (whether finished products or parts, goods or technology, etc.) of the defense equipment and technology to be transferred, as well as the possibilities of extra-purpose use or transfer to third parties.

From the focuses including those described above, the Government will make a comprehensive judgment when deciding whether it will finally approve or disapprove each transfer in light of the existing guidelines of the international export control regimes and based on the information available at the time of the overseas transfers.

3. Ensuring Appropriate Control

Prior to overseas transfer of defense equipment and technology, the Government will in principle

oblige the Government of the recipient country to gain its prior consent regarding extra-purpose use and transfer to third parties in order to ensure appropriate control of the defense equipment and technology after the overseas transfer. However, appropriate control may be ensured with the confirmation of a control system at the destination when:

- 1) the transfer is judged to be appropriate for active promotion of peace contribution and international cooperation, and when:
 - A. the transfer is in urgent need or highly important from humanitarian perspective,
 - B. the recipient is the UN System or organizations conducting the activities based on a UN resolution.
 - C. the transfer is for the provision of technical information or specimens which are necessary for participating in an international tendering.
 - D. the defense equipment to be transferred is small in price and quantity and thus deems to have small security concern.
- 2) the transfer involves participation in an international system for sharing parts etc. ,
- 3) the transfer involves delivery of parts etc. to a licensor,
- 4) the contribution of parts or technology to be transferred to the recipient country is judged to be considerably small,
- 5) the overseas transfer is necessary for the activities of the SDF etc. or for ensuring the safety of Japanese nationals, or
- 6) the transfer is judged to have very small impact from the viewpoint of Japan's security such as return of misdelivered items, export of samples to be returned later and temporary landing of goods.

When confirming the control system at the destination, the Government will conduct the confirmation, in so far as reasonable, through a document such as a certification issued by the recipient government or other person responsible for the control of the defense equipment and technology to be transferred. In addition, the Government will confirm the circumstances surrounding the control of defense equipment and technology at the destination, the reliability of the organization controlling defense equipment and technology, the export control system and the circumstances surrounding its implementation in the country or region of destination, based on the information available at the time of the transfer.

If it is found that the defense equipment and technology is not appropriately controlled after its overseas transfer, the Government will take strict measures against the person etc. who transferred the defense equipment and technology, including imposing penalties in accordance with the Foreign Exchange and Foreign Trade Act (Law No. 228 of 1949, hereinafter referred to as “the Foreign Exchange Act”).

4. Procedures upon the Deliberations

1) Deliberations at the NSC

Overseas transfers of defense equipment and technology will be deliberated at the NSC in the following cases. When judging the possibility of approving the overseas transfer of defense equipment and technology falls under B or C below in accordance with the Foreign Exchange Act, the Minister of Economy, Trade and Industry will give due consideration to the deliberation.

- A. when the basic policy is considered,
- B. when especially careful consideration is required as for the application of the conditions for approving the transfers,
- C. when especially careful consideration is required as for the appropriateness of the destination and the extent of security concerns, etc. with particular care, or
- D. when the status of overseas transfers of defense equipment and technology is reported.

2) Deliberations at the NSC board

Overseas transfers of defense equipment and technology will be deliberated at the NSC board in the following cases. The Minister of Economy, Trade and Industry will make a decision based on such deliberations when deciding whether or not to approve overseas transfers of defense equipment and technology that refer to B below in accordance with the Foreign Exchange Act.

- A. when the basic policy is considered,
- B. when the Government has never made a decision to permit overseas transfers of similar types, or
- C. when the status of overseas transfers of defense equipment and technology is reported.

3) Cooperation among the Government ministries and agencies concerned

Given that a comprehensive judgment is required for deciding whether or not to approve overseas transfers of defense equipment and technology, the Government ministries and agencies concerned will coordinate closely for necessary arrangements and what appropriate control for such overseas transfers should be. The following department or division will serve as a point of contact for each ministry or agency. However, other department or division may also serve as such a point of contact as necessary for each transfer.

- A. National Security Secretariat, Cabinet Secretariat (NSS)
- B. National Security Policy Division, Foreign Policy Bureau, Ministry of Foreign Affairs (MOFA)
- C. Security Export Control Policy Division, Trade Control Department, Trade and Economic Cooperation Bureau, Ministry of Economy, Trade and Industry (METI)
- D. International Cooperation Division, Department for Equipment Policy, Acquisition, Technology and Logistics Agency (ATLA), Ministry of Defense (MOD)

5. Regular Reporting and Information Disclosure

1) Regular reporting

The Minister of Economy, Trade and Industry will prepare an annual report on the status of the approval of overseas transfers of defense equipment and technology, submit it to the NSC, and publish it.

2) Information disclosure

For transfers that were deliberated at the NSC pursuant to 4 (1) above, the Government will disclose relevant information in accordance with the Act on Access to Information Held by Administrative Organs (Law No. 42 of 1999). The Government will pay due consideration to information disclosure so that it does not lack transparency compared to the cases where the Government has taken exemption measures on a case-by-case basis.

6. Miscellaneous Items

1) Definition

“International joint development and production” refers to international joint development including international joint research or international joint production in which the Government or Japanese companies participate and includes:

- A. International joint development between the Government and a foreign government
- B. Participation by a Japanese company in the development of defense equipment and technology by a foreign government,
- C. Production licensed from a foreign country that is carried out by a Japanese company in partnership with a foreign counterpart,
- D. Development or production that is carried out by a Japanese company using Japanese and foreign technologies in partnership with a foreign company,
- E. Participation in an international system for sharing parts etc., and
- F. Provision of technical information or specimens for a feasibility study regarding international joint development or international joint production.

2) Relationship with the previous Three Principles on Arms Exports and the collateral policy guidelines

Since the Three Principles is a guideline newly adopted upon reviewing the previous Three Principles on Arms Exports and the collateral policy guidelines, future overseas transfers of defense equipment and technology will be examined in accordance with the Foreign Exchange Act based on the Three Principles. The exemption measures that were taken under the previous Three Principles on Arms Exports and the collateral policy guidelines prior to the adoption of the Three Principles will be examined as the cases that may be permitted to transfer overseas under the Three Principles.

3) Date of enforcement

The Implementation Guidelines is enforced on April 1, 2014.

4) Revision

Given that the Three Principles is an implementation standard for the Foreign Exchange Act, the Implementation Guidelines may be revised when a draft is prepared by METI in consultation with NSS, MOFA and MOD and is adopted by the NSC.

(End)