

(Provisional Translation)

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

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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. contribute to enhancing security and defense cooperation with countries cooperating with Japan in security area including the U.S., and of the following:
 - (a) the overseas transfer of defense equipment and technology pertaining to finished products that do not fall under the category of arms under the Self-Defense Forces Law (including ammunition. The same applies hereinafter.),
 - (b) the overseas transfer of defense equipment and technology pertaining to finished products that fall under the category of arms under the Self-Defense Forces Law (in

cases other than the transfer of defense equipment and technology pertaining to international joint development and production to a partner country or the provision of defense equipment and technology pertaining to licensed products at the request of the license provider country (including further provision by the license provider country), only if Japan and the recipient country have concluded an international agreement obligating the use of defense equipment transferred from Japan in a manner consistent with the purposes and principles of the Charter of the United Nations),

- (c) overseas transfer of defense equipment and technology pertaining to parts
 - (d) provision of repair and other services
 - (e) 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. 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 transfer of defense equipment and technology (excluding arms under the Self-Defense Forces Law and technical information thereto) to a country that is subject to aggression in violation of international law, use of force, or threat of force.
- 4) 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, re-export of equipment that was brought into Japan by police officers of a foreign governmental agency and provision of technical information at the stage of coordination with other governments or companies of other countries.

2. Focuses of the Strict Examination of Overseas Transfers

1) Export authorization for individual cases

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

In particular, the Government will in principle not permit the overseas transfer of defense equipment and technology pertaining to finished products that fall under the category of arms under the Self-Defense Forces Law to countries where combat is currently deemed to be taking place as part of an armed conflict (excluding cases of the transfer of defense equipment and technology pertaining to international joint development and production to the partner country or the provision of defense equipment and technology pertaining to licensed products at the request of the license provider country (including further provision by the license provider country), and will deem overseas transfers permissible only in special circumstances in consideration of the need in terms of Japan's security. However, the Government will not permit the transfer of finished products from the Global Combat Air Programme to countries where combat is currently deemed to be taking place as part of an armed conflict.

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 such as whether the overseas transfer to the destination has positive meaning from the viewpoint of peace contribution and international cooperation 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. In particular, the overseas transfer of defense equipment and technology pertaining to finished products that fall under the category of arms under the Self-Defense Forces Law will be carefully considered, taking into account the impact on international peace and security, including whether or not combat is currently taking place in country or region of destination as part of an armed conflict, the security relationship between Japan and country or region of destination, the security environment of the country or region of destination, including its relations with neighboring countries, and the export control system.

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 (hereinafter referred to as "transfer to third parties etc."). In particular, the overseas transfer of defense equipment and technology pertaining to finished products that fall under the category of arms under the Self-Defense Forces Law will be carefully considered, taking into account the impact on Japan's security environment, including the impact on Japan's defense buildup and on SDF operations, and other factors.

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.

- 2) Prior consent for transfer to third parties etc.

In granting prior consent for transfer to third parties etc., the Government will conduct strict examination on desirability of granting such consent, taking into account the following two focuses as referred to in 1) in a composite manner, while taking into account the security meaning and others for the country granting the consent to.

- appropriateness of the destination country and end user
- extent the transfer to third parties etc. of the defense equipment and technology may raise concern for Japan's security

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 transfer to third parties etc. 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 in the following cases. Even in such cases, for transfer of those with high technical sensitivity, the Government of the recipient country is, in principle, obliged to do so.

- 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, or
 - D. the defense equipment to be transferred is small in price and quantity and thus deems to have small security concern.
- 2) finished products that do not fall under the category of arms under the Self-Defense Forces Law, only for products having low technical sensitivity. (However, it excludes the case of the transfer to a country where combat is currently deemed to be taking place as part of an armed conflict.)
- 3) the transfer involves participation in an international system for sharing parts etc.,
- 4) the transfer involves delivery of parts etc. related to finished products that are properly controlled under the export control system of a country other than the destination country,
- 5) the transfer involves delivery of parts etc. to a licensor or to an importer,
- 6) the transfer involves delivery of parts, etc. to participate in the supply chain of defense equipment, etc. led by other governments or companies of other countries,
- 7) the contribution of parts or technology to be transferred to the recipient country is judged to be considerably small,
- 8) the overseas transfer is necessary for the activities of the SDF etc. or for ensuring the safety of Japanese nationals, or
- 9) 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 and provision of technical information at the stage of coordination with other governments or companies of other countries.

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.

Also, in the cases of 3) to 7) above, when it is possible to assess that transferred parts or technology will be appropriately controlled under the jurisdiction of the country where the primary recipient is located, it is possible to deem appropriate control is ensured by limiting the destination to the primary recipient.

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”). In addition, in confirming the control status of arms under the Self-Defense Forces Law, the Government will conduct necessary inspections on the government or those responsible for the control of the defense equipment and technology to be transferred.

In addition, when defense equipment and technology transferred from Japan is transferred to a third country based on prior consent of the Government, the Government may ensure appropriate control of the equipment and technology by confirming the appropriate control over the third country by the recipient of the defense equipment and technology from Japan or its government.

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, C or D 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, for approving the overseas transfer of defense equipment and technology or the prior consent for transfer to third parties etc.,

- D. when the Government has never made a decision to permit similar types of overseas transfer or prior consent for transfer to third parties etc. of arms under the Self-Defense Forces Law (except for the cases where the overseas transfer of defense equipment and technology may be permitted, as listed in 1.-2)-B. or 1.-4)), or
- E. 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 or C 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 similar types of overseas transfers or prior consent for transfer to third parties etc. (except for the transfer of parts for prototyping and testing or the provision of technical information at the stage of coordination with other governments or companies of other countries, where the contribution to the recipient country is judged to be considerably small),
- C. when the Government newly transfers arms under the Self-Defense Forces Law to a destination for which the Government has made a decision in the past to permit overseas transfers or prior consent for transfer to third parties etc. of the same type of arms (except for the cases where the overseas transfer of defense equipment and technology may be permitted as listed in 1.-2)-B. or 1.-4)), or
- D. 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 Trade Control Policy Division, Trade Control Department, Trade and Economic Security 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 (including prior consent for transfer to third parties etc.), submit it to the NSC, and publish it.

2) Information disclosure

For transfers that were deliberated at the NSC pursuant to 4 (1) above (including those pertaining to prior consent for transfer to third parties etc.), 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

A. "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.

B. "Arms under the Self-Defense Forces Law" means firearms, gunpowder, swords, and other machines, instruments, devices, etc. intended to directly kill or wound people or destroy objects as a means of armed struggle (including, arms such as destroyers, fighter aircraft, tanks, etc., which are inherently equipped with firearms etc. and themselves act directly to kill or wound people or destroy objects as a means of armed struggle, but excluding parts).

C. "Parts" means an item that is incorporated as a part of a finished product. However, it

excludes the one that can function as equipment by themselves.

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) Foreign direct investment

In cases of foreign direct investment involving the transfer of defense equipment and technology that has been deemed permissible under the Three Principles, the Government will conduct an examination based on the Foreign Exchange Act, consistent with such transfer having been deemed permissible. In cases of foreign direct investment related to defense equipment and technology that do not involve the transfer of defense equipment and technology, the Government will conduct an examination based on the Foreign Exchange Act, in accordance with the aims of the Three Principles.

4) Date of enforcement

The Implementation Guidelines is enforced on April 1, 2014.

5) Revision

The Implementation Guidelines will be revised in a timely manner after promptly reviewing the necessity for revision in response to changes in the security environment and security needs. 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.