

## INTERNATIONAL TRADE LAW BULLETIN

26 September 2023 (E\_Vol.1)

**Japan Places New Restrictions on Exports of Semiconductor Manufacturing Equipment**

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**I. Introduction**

On 23 July 2023 Japan's latest export tightening regulations on semiconductor manufacturing equipment took effect. These new regulations added to Japan's list of export-controlled items (control list) 23 types of equipment related to the manufacturing or testing of advanced chips, as well as "components or accessories" of such equipment. The 'export' (i.e., cross-border transfer, or transfer from a Japan resident to a non-resident) of technologies related to the controlled goods, as well as certain related software, also became subject to a license requirement.

Japan's new export control regulations are significant in two respects. First, Japan is home to several leading chipmaking equipment suppliers; the new regulations – aimed at controlling the export of tools and technology for manufacturing advanced semiconductor devices – will affect those suppliers. Manufacturers of components or accessories of controlled equipment may be affected as well, to the extent such components or accessories are intended for use in equipment meeting the specifications of the expanded control list.

Second, Japan's export control regulations, including its control list, had long been implemented and administered in accordance with the so-called

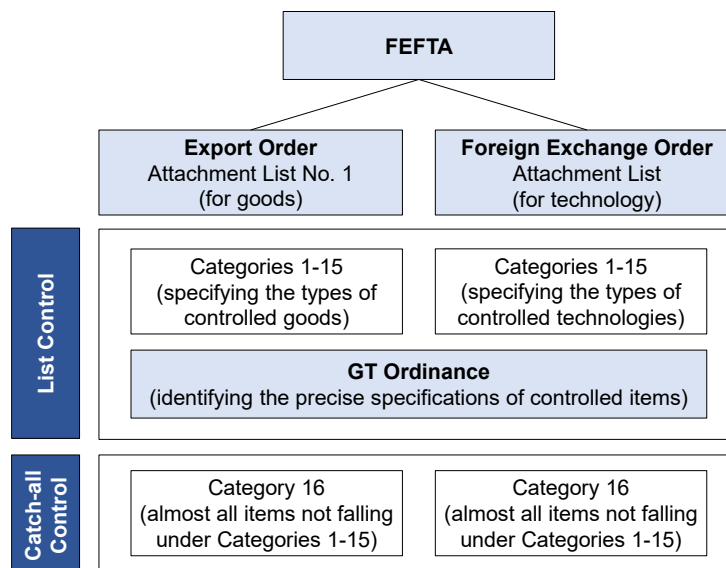
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multilateral export control regimes, including the Wassenaar Arrangement for conventional arms and their related dual-use items.<sup>1</sup> The expansion of Japan's control list under the new regulations can be seen as a historical turning point of Japan's policy in that the new regulations impose a license requirement on items *not* found in the control lists of the multilateral export control regimes.

In the following, we first briefly look at the overall framework of Japan's export control regulations, before explaining the background and substance of the new regulations and how companies might address their impacts.

### II. Overall Framework of Japan's Export Control Regulations

Japan's export controls (for arms and dual-use items) are implemented through Articles 48(1) (for goods' export) and 25(1)(3) (for technology transfers) of the Foreign Exchange and Foreign Trade Act ("**FEFTA**"). As in many countries, the primary legislation, FEFTA, does not specify the goods or technologies to be regulated, or which specific conditions will trigger a license requirement for such goods or technologies. Instead, two cabinet orders implemented under FEFTA – namely the Export Trade Control Order (as regards goods) ("**Export Order**") and the Foreign Exchange Order (as regards technology or software) – set forth two broad categories of control.



First, the 'list' control covers particularly sensitive items, including arms and

<sup>1</sup> Other multilateral export control regimes include the Nuclear Suppliers Group (NSG), the Australia Group (AG), and the Missile Technology Control Regime (MTCR).

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high-spec dual-use goods and technologies. The export of list-controlled items requires a license from the Ministry of Economy, Trade and Industry (“METI”), *regardless* of their destination, end use, or end user. Japan maintains a list of controlled *goods* under Categories 1 through 15 of Attachment List No. 1 to the Export Order, and a list of controlled *technologies* (including software) under Categories 1 through 15 of the Attachment List to the Foreign Exchange Order (together, the “**Attachment Lists**”). More detailed criteria and specifications of controlled items<sup>2</sup> are further identified in METI’s Goods and Technologies Specifications Ordinance (“**GT Ordinance**”).<sup>3</sup> Traditionally, the control list under the Attachment Lists and GT Ordinance closely mirrored the control lists of the abovementioned multilateral export control regimes.

Second, the ‘catch all’ control applies to less sensitive items that do not fall under the control list. Items subject to the catch-all control are listed in Category 16 of the Attachment Lists, which captures essentially all items not listed in Categories 1 through 15. Unlike the list control, the catch-all control requires exporters to apply for a license only when certain conditions regarding the item’s destination, end use, and/or end user are met. Notably, the catch-all control does not apply if the destination is one of the ‘white-list’ (or ‘Group A’) countries/regions, being 27 preferred trade partners having comprehensive export control systems (e.g., the United States, many European countries, and South Korea). The export of a Category 16 item to non-Group A destinations may be subject to a license requirement if *inter alia* the export is known to be used to develop or manufacture Weapons of Mass Destruction (WMDs) or conventional weapons, depending on the specific destination.

### III. Recent Trends in Japan’s Approach to Export Controls

While export controls have long been an important means for Japanese policymakers to maintain international peace and security, recent years have seen the link between economic policy and security considerations take on renewed significance: in October 2021 Japan created a ministerial position overseeing economic-security issues and in November 2021 Japan established an Expert Committee on Economic Security Legislation under this minister. Against this background, export controls have increasingly been regarded by policymakers as a tool to enhance not only *national* security but also *economic*

<sup>2</sup> Excluding Category 1 items (i.e., arms) which are not subject to the narrowing in this way.

<sup>3</sup> [Ordinance of the Ministry Specifying Goods and Technologies Pursuant to Provisions of the Appended Table 1 of the Export Control Order and the Appended Table of the Foreign Exchange Order \(Ordinance of the Ministry of International Trade and Industry No. 49 of October 14, 1991\).](#)

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security, including by preventing cutting-edge technology from being exported or transferred to countries of concern. Japan is not alone, however, in paying greater attention to potential links between security, technology, and economic matters.

In October 2022 the United States announced expansive export controls under its Export Administration Regulations (“**EAR**”) on advanced computing and semiconductor manufacturing items destined for China. The restrictions are generally aimed at equipment that could be used to manufacture sub-14 nanometer chips. 14 nanometer level chips were first introduced in the mid-2010s and are now several generations behind current cutting-edge technology. Soon thereafter, in mid-January 2023, leaders of the US, Japan, and the Netherlands – three states that excel in the field of semiconductor manufacturing equipment – held a series of meetings and reportedly agreed that they should align their policies to regulate exports of certain advanced chipmaking tools.

Following these developments, on 31 March 2023, Japan announced a draft revision to FEFTA’s control list to newly cover 23 types of advanced semiconductor manufacturing equipment, which are mostly tools used in the manufacturing of sub-14 nanometer chips and which include tools associated with extreme ultraviolet (EUV) lithography (which is the world’s most advanced chipmaking technology used to form sub-7 nanometer circuit patterns). The revision was formally promulgated on 23 May and took effect on 23 July.

On 30 June 2023, the Netherlands followed suit by announcing additional export controls on certain advanced semiconductor manufacturing tools (notably including advanced deep ultraviolet lithography equipment and tools related to EUV lithography), components and accessories therefor, and related technology and software.<sup>4</sup> The new Dutch regulations took effect on 1 September 2023.

### **IV. Japan’s New Export Control Regulations on Semiconductor Manufacturing Equipment**

The 23 July expansion of Japan’s control list was implemented through an

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<sup>4</sup> <https://www.government.nl/latest/news/2023/06/30/government-publishes-additional-export-measures-for-advanced-semiconductor-manufacturing-equipment#:~:text=On%201%20September%202023%20a,additional.to%20a%20national%20authorisation%20requirement.>

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amendment of METI's GT Ordinance rather than the Attachment Lists, which form part of cabinet orders requiring a more burdensome procedure to amend.

More specifically, prior to the latest amendment, subparagraph *(I)* through *(Nu)* of Article 6.17 of the GT Ordinance<sup>5</sup> covered 10 types of semiconductor manufacturing equipment, as well as their "components or accessories", as controlled goods. Article 19 of the GT Ordinance, in turn, regulated technologies related to regulated equipment. The scope of the controlled items was essentially identical to the scope of the relevant sections of the Wassenaar Arrangement Control List.

The 23 July amendment of the GT Ordinance added 23 types of advanced equipment to the control list, by inserting 22 new subparagraphs, i.e. subparagraphs *(Ru)*, *(Wo)*, *(Wa)*, *(Ka)*, *(Yo)*, *(Ta)*, *(Re)*, *(So)*, *(Tsu)*, *(Ne)*, *(Na)*, *(Ra)*, *(Mu)*, *(U)*, *(Wi)*, *(No)*, *(O)*, *(Ku)*, *(Ya)*, *(Ma)*, *(Ke)*, and *(Fu)*, to Article 6.17 of the GT Ordinance and by adding Article 6.17-2 to that Ordinance. Pursuant to Article 19 of the same Ordinance, technology (including certain software) related to the newly regulated goods also became subject to the list control. The types of equipment covered by the new provisions may be summarized as follows:

Provision of the GT Ordinance	Types of controlled equipment
<b>Article 6.17</b>	
<i>(Ru)</i> , <i>(Wo)</i> and <i>(Wa)</i>	Lithography equipment
<i>(Ka)</i> , <i>(Yo)</i> , and <i>(Ta)</i>	Etching equipment
<i>(Re)</i> , <i>(So)</i> , <i>(Tsu)</i> , <i>(Ne)</i> , <i>(Na)</i> , <i>(Ra)</i> , <i>(Mu)</i> , <i>(U)</i> , <i>(Wi)</i> , <i>(No)</i> , and <i>(O)</i>	Deposition equipment
<i>(Ku)</i>	Annealing equipment
<i>(Ya)</i> , <i>(Ma)</i> , and <i>(Ke)</i>	Cleaning apparatus
<i>(Fu)</i>	Test equipment
<b>Article 6.17-2</b>	Pellicles for EUV applications

As can be seen from the above, Japan's refreshed control list covers a wide range of equipment used in different steps of chipmaking. It is notable that, although some of the newly controlled items (in particular deposition equipment falling under subparagraph *(Re)* of Article 6.17 of the GT Ordinance) overlap with those covered by the recent expansion of the U.S. EAR's control list, other items are Japan-specific and fall outside of the U.S. control list. In addition, because "components or accessories" of regulated equipment (excluding

<sup>5</sup> Article 6.17 of the GT Ordinance identifies the specific types for goods controlled under Category 7(xvi) of Attachment List No.1 of the Export Order, i.e., "[e]quipment for manufacturing or testing of semiconductor devices or materials, or components or accessories therefor".

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components or accessories of EUV pellicles listed under Article 6.17-2 of the GT Ordinance) are also captured by the new regulations, manufacturers and exporters of *parts* may be affected as well, to the extent such parts are being exported for use (in the destination country) in equipment meeting the GT Ordinance's specifications.<sup>6</sup>

As noted, the items newly added to FEFTA's control list are not covered by the Wassenaar Arrangement control lists<sup>7</sup>, or other multilateral frameworks. Instead, as various sources have reported, the new regulations appear to reflect a trilateral agreement purportedly reached among the United States, Japan, and the Netherlands. Although the Japanese government has not officially stated that the new regulations are based on any such agreement, nor disclosed the content of any such agreement, the Minister of Economy, Trade and Industry explained that the new regulations were introduced in light of "the most recent trends in export controls on semiconductor-manufacturing equipment by relevant countries" and after "exchanging opinions with our allies and partner countries through various opportunities."<sup>8</sup>

In addition, unlike the U.S. regulations, Japan's revisions never specify Chinese market participants as targets but instead – consistently with the basic structure of FEFTA's list control – apply to all regions. At the same time, pursuant to a relevant METI notice<sup>9</sup>, the new regulations offer more generous licensing requirements (i.e. General Bulk Licenses for white-list destinations and Special General Bulk Licenses for non-white-list destinations) for affected items sent to 42 relatively 'low-risk' destinations, including the United States, many European countries, and South Korea, whereas exports of regulated goods and technology to other destinations (including China) will face stricter requirements.

### V. Applying for an Export License

Exporters of items subject to the new export control regulations must obtain a license from METI. The default form of export license is *individual export*

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<sup>6</sup> The term "components or accessories" is normally interpreted by METI relatively narrowly to refer to components or accessories specially designed for controlled equipment.

<sup>7</sup> The Minister of Economy, Trade and Industry has explained that the new regulations are intended to "complement the Wassenaar Arrangement" (In this respect please see the Press Conference by Minister Nishimura (Excerpt) on 31 March 2023, available at [https://www.meti.go.jp/english/speeches/press\\_conferences/2023/0331001.html](https://www.meti.go.jp/english/speeches/press_conferences/2023/0331001.html)).

<sup>8</sup> See the comment by Minister Nishimura at *supra* note 7.

<sup>9</sup> [https://www.meti.go.jp/policy/anpo/law\\_document/tutatu/tutatu24fy/houkatu\\_toriatukaiyouryou.pdf](https://www.meti.go.jp/policy/anpo/law_document/tutatu/tutatu24fy/houkatu_toriatukaiyouryou.pdf).

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*licenses*, for which applications are examined on a single transaction basis. METI will issue an export license if it is satisfied that the planned export will not harm the maintenance of international peace and security, by considering the following factors:

- a the item for export will be delivered to the end-user (and not someone else),
- b the item for export will be used by the end-user (and not someone else),
- c the transfer of the item will not harm the maintenance of international peace and security by materially facilitating the design, development, or production of conventional weapons or WMDs, and
- d the item will be appropriately controlled by the end-user.

With respect to timing, the standard processing period is up to 90 days after the filing of the application, albeit the actual time taken is known to vary and could be much less. Should additional information be required by METI, then the period required could, however, be longer still. Potential exporters would be well advised to seek legal advice and to take all necessary steps well in advance of any contractually binding shipment dates.

In addition, where applicable<sup>10</sup>, an exporter may also seek a *bulk license*, which can cover multiple transactions taking place up to three years from its issuance. The availability of a bulk license depends on the sensitivity of the items for export and their destination. Rather than examining a single transaction, the focus of METI's review for issuance of a bulk license is on the exporter's compliance structure, such as their internal compliance program ("CP"). Exporters with the capacity independently to effectively perform export control may apply for and be granted a bulk license.

### VI. Other Matters for Exporters to Consider

**The importance of classification:** METI has stated that the majority of export control regulation violations previously uncovered relate to misclassification or non-classification. Notably, where a company purchases and exports goods or technology misclassified by a manufacturer, nevertheless the entity actually exporting the goods or technology is likely responsible for the classification

<sup>10</sup> As explained, in the case of the items newly covered by the latest amendment of the GT Ordinance, General Bulk Licenses and Special Bulk Licenses are available for 42 relatively 'low-risk' destinations.

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used. This applies not only finished equipment but also to “components or accessories”<sup>11</sup> thereof.

**The potential license exemptions:** in certain limited circumstances, exporters may be able to make use of a license exemption. These include (*inter alia*) (1) the low-value goods exemption, (2) the exemption for the re-export of goods imported for repair, (3) an exemption for technology transfers if such technology is publicly available or if related to basic scientific research, and (4) an exemption for list-controlled items incorporated into a non-list-controlled end product as a part or component.

**The punishment can be severe:** breaches of FEFTA can be punished in several, potentially severe, ways, including: (1) criminal prosecutions, with both imprisonment and substantial fines being possible, (2) administrative sanctions possibly prohibiting one from exporting activities for up to three years, (3) reputational harm, as METI is empowered to publicize warnings issued to exporters, and (4) the writing of a report detailing the cause of any violation and countermeasures undertaken. Failure to comply with FEFTA may also see an exporter simultaneously breach other legislation relating to *inter alia* customs regulations.

### VII. Conclusion

As the reader will appreciate from the foregoing, the regulations themselves and their application can be complex. While there are potential paths through the regulations, including the possibility of obtaining a bulk license or exemptions, market participants would be well advised to carefully carry out the needed analysis at an early stage: failure timely to comply could result in a party being in breach of contract, while failure to comply with these laws at all could result not only in reputational damage, but also in fines and jail time for those involved.

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<sup>11</sup> See *supra* note 6.



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### PUBLICATIONS

- Article "Special Dialogue: What Financial Institutions Should Prepare Before the Commencement of Operation of the Economic Security (Pillar II) System"  
Publication Kinyu IT Focus September 2023  
Author Hideaki Umetsu

### NEWS

- **Opening of New York Office**

Mori Hamada & Matsumoto ("MHM") is pleased to announce the opening of the New York office (Mori Hamada & Matsumoto NY LLP) on September 6, 2023.

Our New York office will be headed by Yuto Matsumura, a managing partner of MHM with a deep and broad global network of contacts. Joining him will be Aruto Kagami and Nobuhiko Suzuki, partners with elite expertise, extensive experience, and proven results in cross-border mandates, as well as senior associate Fumiya Sunose and Ken Kawamoto. Aruto Kagami also specializes in cross-border competition law matters, white collar investigations, crisis management, and disputes; Nobuhiko Suzuki's practice sees him specialize in cross-border M&A and corporate matters.

After many years of advising on cross-border deals and multijurisdictional disputes involving Asia and the Americas, in close association with major law firms in the region, MHM has now chosen New York — the center of global commerce and an important bridge between these regions — as the firm's first location outside Asia. The United States and broader region continue to be an important market for our clients, and therefore an important market for MHM. Through the New York office, MHM intends to further bolster our relationships with peer firms and clients, while also enhancing our ability to meet the diverse needs of cross-border legal services spanning these regions.

Our New York office's permanent location will shortly be announced separately.