



EXPORT CONTROL DEVELOPMENTS

Japan to Update Export Control List to Reflect Wassenaar 2010

Japan's Ministry of Economy, Trade and Industry ("METI") published an updated export control list on March 5, 2011 in "Ministerial Ordinance No. 49 of 1991". Public comments can be made up to April 3, 2011. The updated export control list reflects the changes that occurred in December 2010 under the Wassenaar Arrangement ("WA"). We summarize below some examples of electronics (3A001) and encryption items (5A002) that affect the IT and semiconductor industries. *(Please note that the Ministerial Ordinance is in Japanese and the following contains unofficial translation. It should also be noted that Japan does not utilize ECCN classification and conversion is required to Japan's unique numbering system.)*

Relaxation of technical parameters in Integrated Circuit Analogue-to-Digital and Digital-to-Analogue converter integrated circuits, Category 3A001.a.5.a:

- 3A001.a.5.a.2. - output rate parameter increased (from current 200 million) to greater than 300 million words per second;
 - 3A001.a.5.a.3. - output rate parameter increased (from current 105 million) to greater than 200 million words per second;
 - 3A001.a.5.a.4. - output rate parameter increased (from current 10 million) to greater than 125 million words per second;
 - 3A001.a.5.a.5. - output rate parameter increased (from current 2.5 million) to greater than 20 million words per second;
- i. **Add new exemption note to 5A002 encryption item** *(Please note the exemption "J" is written as "ㄉ" in the Ordinance.)*
- j. Equipment, having no functionality specified by 5A002.a.2., 5A002.a.4., 5A002.a.7., or 5A002.a.8., where all cryptographic capability specified by 5A002.a. meets any of the following:
 - a. It cannot be used; or
 - b. It can only be made useable by means of " cryptographic activation " .

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ii. **Add new controlled item as 5A002.b** *(Please note that 5A002.b is written as Ordinance Article 8, paragraph 1, item 9-2.)*

- 5A002.b: Systems, equipment, application specific "electronic assemblies", modules and integrated circuits, designed or modified to enable an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a that would not otherwise be enabled.

Exporters are advised to note other changes within the Ministerial Ordinance and review their export items from Japan, where applicable, including deletion of items, replacement of words and the addition of new control of items throughout the WA Dual-use categories 1 to 9.

As in previous years, Japan is likely to implement the updated control list several months after the April 3, 2011 deadline for public consultation.

Classification Disparities Likely to Occur Between Countries

With the latest update we expect disparities to occur with other WA-adopting countries that are slower in updating their control lists. For example, Singapore and Malaysia adopt the EU list (referred as Annex I to Regulation 428/2009), which currently only reflects WA December 2008 updates. What this may mean for exporters is that even if an item has identical technical parameters, its classification may vary depending on each country's adoption of the latest updates in their export control lists. **Hence, we strongly recommend classification reviews as soon as possible to identify any disparities, which could have severe implications from a compliance perspective.**

As a guide, we provide below a quick comparison of WA updates that the following countries have adopted as of March 2011*.

- WA 2007 list: Australia
- WA 2008 list: EU, Singapore, Taiwan, and Malaysia
- WA 2009 list: US EAR, Hong Kong, Korea, and Japan (as of March 2011)
- WA 2010 list: Japan to adopt soon in 2011

** The above is only for reference to show general understanding of WA updates. Please note that there may still be minor differences of the control lists between countries that have adopted the same WA updates.*



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