

**Japan's Export Restrictions**  
and **Korea's Response:**

10

Questions

&

Answers



Government of  
the Republic of Korea



## What is the current status of Korea's export control management system?

- Has Korea joined any international export control regimes? Have there been any issues with compliance?
- How does the international community assess the operation of Korea's export control systems?

### Korea's membership in international export control regimes and their implementation

Note: Export restrictions are applied through government-authorized export licenses for strategic items that must be restricted in the interest of preserving world peace as well as maintaining safety and ensuring national security. This policy is carried out in accordance with Article 19 of the Foreign Trade Act.

- Korea participates in four major international export control regimes\*—1996 Wassenaar Arrangement (WA), the 1995 Nuclear Suppliers Group (NSG), the 1996 Australia Group (AG), and the 2001 Missile Technology Control Regime (MTCR)—and has adopted every catch-all guideline recommended to the member states of these four organizations.

\*These four export control regimes cover trade in conventional arms, dual-use items and technologies.

- Korea's export control system is based on stipulations in the Foreign Trade Act, the Public Notice on Trade of Strategic Items, and other related ordinances.

### The international community's assessment of Korea's export control system operation

- Korea is a model participating state in all four of the major international export control regimes of which it is a member. Korean operation of export controls has been highly evaluated internationally.
  - Of the 81 agenda items proposed by the Wassenaar Arrangement Experts Group in 2018, 19 came from Korea, and 10 of those 19 were approved, proving Korea is a highly respected participating state.
- The U.S.-based Institute for Science and International Security recently ranked Korea 17th\* in its Peddling Peril Index (PPI), which assesses nations on their control of trade in strategic items, including conventional weapons.
  - Korea's ranking has climbed steadily since 2017, while the ranking for Japan has fallen sharply over the past two years.

\*PPI Rankings

Korea: 32nd (2017), 31st (2018), 17th (2019)

Japan: 29th (2017), 28th (2018), 36th (2019)

02

Question

Why has Japan imposed export restrictions on Korea? Are these retaliatory measures in response to Korea's Supreme Court ruling on reparation for forced labor?

02

Answer

- After the Court handed down its ruling on October 30, 2018, on reparations for Korean victims of forced labor, senior Japanese officials mentioned there would be retaliatory measures should their enterprises suffer damage.\*

\*In reference to the expropriation of Japanese enterprises' assets, a high-ranking Japanese official said: "Retaliatory measures will not be limited to tariff increases but will include various other measures such as suspending fund transfers and visa issuances."

- Immediately after the present measures were taken, senior Japanese officials uttered remarks that hint at a connection with the ruling on compensation for forced labor.

\*"When promises are not kept between countries, it's natural to assume that trade controls are also not being implemented properly." [July 2, 2019]

- Moreover, the present measures were enforced without any prior consultation with the Korean Government, and Japan was unable to provide concrete facts or compelling grounds and continued to change the justification for the measures taken.

- In consideration of the remarks that have been made by leading figures on the Japanese side as well as the timing and methods of their actions, we judge their measures to be retaliatory in nature, starting from a backlash to the Supreme Court's ruling. This is also how it has been reported by major overseas media outlets. [See note in Q10.]

03

Question

Do problems exist in the Korean system, as claimed by Japan?

- Japan has said that problems exist with Korea's catch-all controls and their implementation. Is that true?
- Has Korea not consulted or exchanged views with Japan, despite Japanese requests, for the past three years, as the Japanese side asserts?
- Do problems arise from a lack of administrative personnel or the sharing of responsibilities by the various Korean Government organizations tasked with export control?

03

Answer

Korea's system of catch-all controls

Note: The system requires government licenses for exporting goods that have a high potential for diversion, for use as WMDs or other purposes, even if they are not classified as strategic materials.

- Korea has a regulatory framework of catch-all controls that cover goods with a high potential for diversion to use in the development, production, storage or use of both conventional weapons and weapons of mass destruction.
  - Korea reflects in its regulations and applies all the catch-all guidelines recommended by the four major international export control regimes in which it participates.

- Importantly, the catch-all controls on conventional weapons are implemented based on the Public Notice on Special Measures for Trade and other regulations in order to fulfill obligations under the Foreign Trade Act and Public Notice on Trade of Strategic Items, as well as to preserve world peace and security.
- Therefore, Japan's linking the issue of catch-all controls with its present measures is unexpected; moreover, Japan had never indicated that problems existed with Korea's catch-all controls previously.
- The Japanese side did not raise the Korean catch-all controls as an issue during discussions on holding consultations between the Korean and Japanese export control authorities at the bureau chief level regarding the export control of strategic materials. This fact raises further doubts with respect to the basis for Japan's measures.

### Communication, consultation with Japan

- Japan's assertion is false that no consultations or exchanges of views have occurred for three years.
- Japan seems to view the lack of a consultation on export control of strategic materials between the Korean and Japanese export control authorities as a problem, yet...
  - Korea hosted the 6th Consultation on Export Controls in June 2016. Japan was to host the 7th meeting, yet Japan waited one year and eight months—until March 2018—before proposing a schedule to the Korean side.
  - After Japan proposed in March 2018 that the 7th consultation be held, the two sides were unable to adjust the schedule to mutual satisfaction. They both agreed on the need to hold such a consultation after March 2019, but since then the host, the Japanese side, has not made any particular contact on the matter.

- Linking a problem concerning the reliability of the Republic of Korea [ROK]'s export control system with the inability to open the latest round of consultations is an unreasonable claim that ties measures of truly great consequence to a simple scheduling conflict.
- Meanwhile, opportunities for information exchange have not been cut off. The ROK and Japan have shared information and worked together on export controls on various occasions such as seminars or conferences held in each country.\*

\*Asia Export Control Seminar (hosted annually by Japan's Ministry of Economy, Trade and Industry [METI], with the ROK in attendance since 2012), conferences on implementation of U.N. Security Council Resolutions (with Japan's METI also in attendance 2016 and 2018), the Australia Group annual plenary meeting, among others

### Cooperation between export control personnel and licensing authorities

- The ROK has 110 dedicated export control officers—not much different from the number of officials who work in Japan's METI—and they perform their work properly and efficiently.
  - In addition, the work of the ROK's export control administration is divided among the Ministry of Trade, Industry and Energy [MTIE]; the Defense Acquisition Program Administration [DAPA]; and Nuclear Safety and Security Commission [NSSC]—each specialized in their respective areas.\*
  - The Korea Strategic Trade Institute [KOSTI] and Korea Institute of Nuclear Nonproliferation and Control [KINAC] are also public institutions legally required to conduct specialized export controls, and they perform their work in cooperation with the various government ministries and agencies.
- The United States, like the ROK, also has decided on a decentralized approach; export management systems are operated in accordance with the circumstances for each country.

\*MTIE (strategic materials used in industry); NSSC (specialized in the nuclear power industry); and DAPA (materials and items for military use)

## Is it not true, as Japan claims, that its export measures are not discriminatory and have no real impact other than more complicated procedures?

- Japan says that Korea—even though it has been removed from their whitelist of preferred trading partners—will merely find itself on the same level as other Asian countries. If so, is that a problem?
- Japan’s position is that there is no serious problem because among the three industrial materials subject to export restrictions, individual licenses have already been approved for two of them: EUV resist and hydrogen fluoride. Is this true?

### Discriminatory features

- The ROK first satisfied the requirements\* for designation on Japan’s whitelist in 2004 and remained so listed for 15 years. The present removal of Korea from the whitelist is unfair as it discriminates against Korea in comparison with other nations that have satisfied these conditions.

\*The ROK and Japan are the only two countries in Asia to 1) be in four major international export control regimes (WA, MTCR, NSG, AG); 2) have signed three major treaties—the Non-Proliferation Treaty, Chemical Weapons Convention, Biological Weapons Convention; and 3) run catch-all controls.

- Currently, the ROK participates in four major international export control regimes, is a party to three major treaties, and has implemented robust catch-all controls; the ROK is recognized by the international community as an exemplary country in the management of strategic materials.

- In May 2019, the U.S.-based Institute for Science and International Security released its annual Peddling Peril Index (PPI), which ranks 200 nations on their control of trade in strategic items, and the ROK was ranked 17th, while Japan came in 36th.
- Previously (in March 2011), Japan’s Center for Information on Security Trade Controls (CISTEC) gave positive marks to the ROK with respect to its system for judging strategic materials, its online export license system, and online strategic materials control system (Yestrade).
- Importantly, Japan allows a single general license for exports to other nations in Asia that covers all three key industrial materials used in semiconductor and display production, while it requires exporters to Korea to obtain three separate licenses for each item.\* Thus, while the ROK practices exemplary export controls, it is being unfairly discriminated against.
  - \*Japanese exporters in the compliance program are allowed to export the three key industrial materials under an open general license to some countries that do not participate in all four of the major international export control regimes.
- Moreover, this measure to exclude the ROK from Japan’s whitelist was enacted without any prior consultation and without offering sufficient grounds for the action. Considering that Korea was targeted on this occasion, chances are great that Japan’s export control system going forward will be applied non-transparently, unpredictably and in a manner that discriminates against Korea.

### Problems with the continuation of individual licenses

- Business sources say the Japanese Government’s export licenses for photoresist and hydrogen fluoride were issued last August.
- However, real problems now exist because 1) the uncertainty over the future supply of the items themselves has spread widely, considering Korea’s removal from the whitelist as well as the non-transparency and unpredictability of the process of taking measures regarding the three key industrial materials; and 2) complex procedures, delays and other problems are raising costs.

## How did Japan violate the WTO Agreement? How will a complaint be lodged?

- Which specific WTO rule has Japan violated?
- Won't complaint settlement take a long time?
- Will it be effective?

### Evidence of WTO Agreement violation

- Article 11 of the WTO's General Agreement on Tariffs and Trade stipulates that export restrictions such as export licenses are prohibited in principle. At the same time, discriminatory measures taken by individual countries on export procedures essentially violate the principle of most favored nation in Article 1 of GATT.
- Conditions for security exceptions [Article 21] must be met in the GATT rules before a violation of standard principles can be accepted, but the present measures have much more to do with arbitrary measures based on the 1965 Korea-Japan Claims Settlement Agreement and other historical disputes than any security matter. Thus, the exception will not be accepted on security grounds.

### WTO complaint procedures

Settling a complaint according to WTO rules requires about 15 months just to reach a judgment from the first proceeding. The length of time may be shorter or longer depending upon the dispute in question.

- To file a complaint with the WTO, the complainant must submit a written request for bilateral consultation to the respondent, indicating the violations of the WTO Agreement.
- On September 11, the Korean Government filed a complaint with the WTO regarding the export restrictions imposed by Japan on three key industrial materials for semiconductor and display production.
- Once the complaint has been lodged, the two parties to the dispute will conduct bilateral consultations, and if a mutually agreed solution cannot be reached, the Dispute Settlement Body (DSB) establishes a panel, which produces a panel report and circulates it to WTO member countries. If the parties to the dispute do not appeal the ruling of the report, the ruling is adopted by the DSB. Should either party to the dispute appeal the ruling, the WTO Appellate Body conducts another hearing, produces an appellate report and circulates it.

#### Summary of WTO dispute settlement procedures

Written request for bilateral consultations dispatched [complaint lodged] → bilateral consultations held → panel established → panel composition finalized → panel hearing conducted → panel report circulated → report adopted or appealed → appellate report circulated

### Effectiveness of WTO dispute settlement procedures

- A complaint filed with the WTO will confirm internationally that the Japanese measures violated the WTO Agreement. It is an effective means of preventing similar measures from being taken in the future.
- Once the complaint is filed with the WTO, an international consensus is expected to be formed during the dispute process with respect to the unfairness of the Japanese measures.
- The terms for two of the three current members of the WTO Appellate Body will expire at the end of this year, causing some alarm, but now lively debate is taking place at the WTO to avoid a suspension of the Appellate Body's function. Therefore, it is difficult to predict the likelihood of a suspension at year's end.



06

Question

Does Korea's amending of its Public Notice on Trade of Strategic Items to remove Japan from its whitelist constitute reciprocal measures against those taken by Japan?

06

Answer

- Japan recently has adopted a system that does not correspond with the principle of international export control regimes, and the Korean Government has currently proposed amendment to the Public Notice to subdivide the "A" region classification into "A-1" and "A-2."
- Therefore, the Korean Government's measures would not be reciprocal with respect to the Japanese measures. These measures are meant to improve the domestic export control system within the framework of the international system in order to accord fittingly with the basic principles of international export control regimes.

Note: According to the basic principles of international export control regimes, the export control systems aim at international security and regional stability.

Currently, participating countries in the four major international export control regimes are classified as "A" regions among the areas to which export licenses for strategic materials are issued. Under the amendment, an "A-2" region classification will be established, and this classification will be assigned to participants in the four major international export control regimes that do not adhere sufficiently to the principles of international export controls.

07

Question

Will Japan's export restrictions substantially affect Korea's economy and industries?

- What are the Korean Government's countermeasures?

07

Answer

The impact on the Korean economy and industries

- The Japanese Government removed Korea from its whitelist starting from August 28, requiring Japanese exporters to obtain individual licenses to export strategic materials.
  - Compared to the open general licenses that were in use before the measures took effect, the individual licenses require greater paperwork and longer time to process. Should individual licenses be delayed for those items upon which Korean companies are highly dependent on Japanese sourcing, then production disruptions and other negative effects are expected.
- U.S.-based ICT companies and major international news outlets have expressed concern that the Japanese measures will seriously impact the global supply chains for semiconductors as well as smart phones and electronic products going forward.

## Answer

## Korean Government's countermeasures

- The Korean Government is implementing various countermeasures to minimize damage to Korean enterprises.
- Supply response support centers are providing relief by monitoring inventory levels, diversifying import channels, and removing bottlenecks for production facility expansion and new construction with regard to 159 items deemed essential.
- On August 5, the government announced competitiveness-strengthening measures for parts, materials and equipment with regard to 100 key items upon which Korean manufacturers rely most heavily on Japanese sources. These measures will help Korean companies to diversify the countries from which they import, engage in intensive short-term development projects, expand domestic production facilities, and be involved in technology tie-ups as well as mergers and acquisitions. Other multi-faceted supports will also be provided to stabilize the supply network.

## Question

## Does the Supreme Court's ruling on compensation for victims of forced labor put Korea in violation of international law?

- How does the Korean Government stand on the Supreme Court's interpretation of the Claims Settlement Agreement?

## Answer

- In October 2018, the Korean Supreme Court ruled that the Korea-Japan Claims Settlement Agreement of 1965 did not settle the issue of reparations for crimes against humanity and that the accused Japanese corporations were responsible for paying compensation to the victims of forced labor.

Note: The Korea-Japan Claims Settlement Agreement that went into effect on December 18, 1965, dealt with 1) the assets, rights and interests of both nations as well as both peoples; and 2) the issue of the right to make claims between the two nations and the two peoples.

The essential points of the Supreme Court's ruling on forced labor (October 30, 2018): The victims of forced labor have the right to claim reparations from Japanese corporations for damage incurred. This right to claim compensation is premised upon the crimes against humanity committed by Japanese corporations, which were directly associated with the Japanese Government's illegal colonization of the Korean Peninsula and execution of a war of aggression. Hence, it is not included in the subjects of application under the Korea-Japan Claims Settlement Agreement.

- Therefore, the Supreme Court's ruling does not repudiate the Korea-Japan Claims Settlement Agreement, but rather clarifies its intended targets and scope.
- Korea is a democratic country that embraces the separation of legislative, executive and judicial powers as a core value, and the government respects the judgment of the judicial branch.



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**09****Question**

Is Korea willing to engage in dialogue with Japan? Going forward, how will you proceed with consultations with Japan?

- Do private sector exchanges have to be curtailed in the face of Japan's retaliatory measures?

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**09****Answer**

- Our position is that the issues must be resolved through dialogue, including discussions on various approaches that can be accepted by the peoples of both countries and the victims.
- On June 19, the ROK announced a reasoned approach for settling the issue of forced labor, and this message has already been conveyed to Japan. Korea will continue to make efforts to convince Japan to respond positively to resolving the issue through dialogue.

### Private sector exchanges

- The continuation of private sector and local government exchanges is desirable, for they are the basis for building a forward-looking Korea-Japan relationship.
- Once Japan withdraws its unilateral, arbitrary and retaliatory economic measures against Korea, exchanges are expected to resume and develop further.

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**10****Question**

What diplomatic efforts are being made by the Korean Government with respect to Japan's export restrictions?

- What efforts are directed at the United States and what has been the U.S. response?

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**10****Answer**

- The unfairness of Japan's measures and the negative effect they are having on the world trade order are being explained whenever an opportunity arises via bilateral channels with the United States and other major nations as well as via multilateral channels such as the WTO.
  - Going forward, efforts will be made at every opportunity through multilateral conferences such as the WTO and bilateral meetings to expand consensus within the international community over the unfairness of Japan's measures.
- Above all else, our focus will be on explaining that: 1) Japan's measures are a form of economic retaliation for a judicial ruling, 2) the negative effects will be felt in the global supply chains and world trade, and 3) the measures are not in line with the principles of the WTO and Wassenaar Arrangement.
- Most countries are concerned about the continuation of bilateral disputes and hope for rapid resolution through dialogue. Many countries also acknowledge the Korean Government's resolve to settle disputes through dialogue.
  - Several countries agree that Japan's measures have an adverse effect on the order of multilateral trade, and they fear that unilateralism will spread.

- Some nations worry that Japan's measures will cause harm not only to the regional supply chains but also to their own economies. They have also expressed the opinion that Japan must accept its global responsibility as a major supplier of materials.
- A number of major foreign newspapers have reported that Japan's measures are in retaliation for the forced labor ruling and have expressed concerns over the effects on the world economy.
  - ※ Reports by major overseas newspapers
    - NYT, Japan cites 'national security' in free trade crackdown [July 15]
    - WSJ, Protectionist Diplomacy Goes Global [August 3]
    - Foreign Policy, Japan started a war it wasn't ready to fight [August 6]
    - WP, How Japan's failure to atone for past sins threatens the global economy [August 11]

## Outreach to the United States

- The Korean position is being presented through various means, including visits by senior Korean officials, to explain the unfairness of the Japanese measures and their negative effects on the global economy. The targets of these briefings include the U.S. Executive Branch, Congress, think-tanks and other specialized groups, major newspapers and other opinion leaders.
- The United States understands Korea's position clearly and realizes the need for cooperation between its allies, Korea and Japan, in the interest of regional peace and stability. Thus, the U.S. position is to do what it can to resolve the dispute.
  - U.S. businesses have also begun to feel the effects of the Japanese measures. In response, they are raising their voices to prevent the situation from getting worse.
    - \*Six organizations—the Semiconductor Industry Association [SIA], Information Technology Industry Council [ITIC], National Association of Manufacturers [NAM], SEMI [formerly Semiconductor Equipment and Materials International], CompTIA [IT Industry], and Consumer Technology Association [CTA]—have sent a co-signed letter to the governments of Korea and Japan.

