

Japan to tighten export restrictions to Korea



A dispute arising from events that took place more than 70 years ago is behind the the Japanese government's removal of Korea from the so-called list of 'White Countries', write Go Hashimoto and Kirika Morita.

It's official. On 2 August 2019, the Ministry of Economy, Trade and Industry of Japan ('METI') announced the approval by the cabinet of the order to remove Republic of Korea from the so-called Group A list, freshly renamed from the previous 'White Countries List'.¹

Countries on the said list are accorded preferred status in terms of export control enforcement. This is a rare, if not unprecedented, move by the Japanese government in post-war history to show its strong determination to advance its position against its neighboring countries. A brief review of what has transpired to date may help us place the developments in perspective.

subhead

On 1 July 2019, METI announced amendments to four sets of guidelines relating to the implementation of export control regulations, which went into effect on 4 July 2019. The main contents of the amendments are as follows:

- Individual export licences are required for three items (fluorinated polyimide, resist and hydrogen fluoride) and related technologies, which means that the bulk licences for them will no longer be applicable.
- The process of removing Korea from 'White Countries' in appended Table 3 of the Export Trade Control Order (the 'Order') has been put in motion and public comments on this amendment to be submitted by 24 July. As noted above, the 'White

Countries' are currently renamed as 'Group A Countries'.

Under Japanese law, the Foreign Exchange and Foreign Trade Act (the 'Act') and the related orders, including

Individual export licences are required for three items (fluorinated polyimide, resist and hydrogen fluoride) and related technologies.

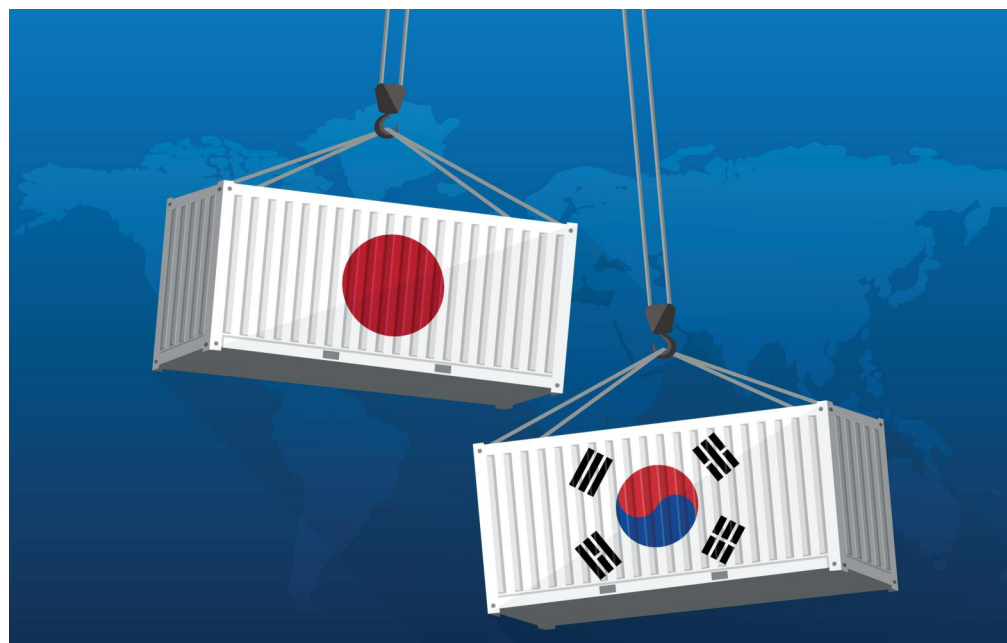
the Order, control exporting goods and transferring technologies for the stated goal to maintain peace and security of Japan and the international community. The Act requires anyone (i) who wishes to export designated goods to certain countries or (ii) who wishes to transfer designated technologies ultimately to, and for use in, designated countries, regardless of

whether or not the transaction takes place in Japan, to obtain a licence from METI if the transactions are specified by the Order as having possibilities of obstructing peace and security (article 25 and 48 of the Act).

As an exception, exports to 'White Countries' are subject to more streamlined export licensing requirements and rarely require an export licence unless they involve the export or transfer of so-called 'listed products and technologies' (article 4 of the Order).

Even if the destination is a non-White country, under certain limited conditions, a bulk export licence system may also apply where the licensing procedures are simplified by allowing licensees to make multiple exports of controlled items (article 2-2 of the Export Trade Control Ordinance and Guideline on Bulk Export Licence).

Requiring individual export licence, instead of bulk export licence, in connection with the three items



Links and notes

¹ https://www.meti.go.jp/english/press/2019/0802_001.html

(fluorinated polyimide, resist and hydrogen fluoride), will have a big impact on large Korean high-technology manufacturers such as Samsung Electronics Co. and SK Hynix Inc., because most of the fluorinated polyimide, resist and hydrogen fluoride used for manufacturing semi-conductors have been produced in Japan. Frequent or high-volume exports and transfers of these products and technologies to Korea may be delayed by the need to obtain individual export licences for each transaction.

In addition to the added administrative costs above, exporters are no longer permitted to file their application for export licences with a METI local bureau or branch office but are now required to do so with the Security Export Licensing Division of METI's main office in Tokyo. Generally, it takes approximately three months to review each individual export licence application. This amendment will now be enforced and will be applicable to exports of the three items independent of the Japanese government's decision to

remove Korea from the list of White Countries.

Catch-all catch

Removal of Korea from the list of White Countries will also delay exports of the relevant products/technologies

Removal of Korea from the list of White Countries will also delay exports of the relevant products/technologies from Japan to Korea.

from Japan to Korea. As a result of the removal, under certain conditions, exporters to Korea may be subject to the so-called catch-all control, when exporting all items except the listed products and technologies if such exported items appear to be diverted for use in developing, designing, manufacturing or storing weapons of mass destruction ('WMD') or their delivery systems such as missiles (appended Table 16 of the Order).

After a period of public comment solicitation, the removal of Korea from the White Country list came into effect as of 2 August as noted above. This is the first such removal of any country from the list of White Countries by the Japanese government.

Tokyo says it is about national security. Seoul says it is a retaliatory action by the Japanese government in violation of the spirit and the rules of the WTO. All this has been happening against a backdrop of animosity between the two countries on issues ultimately dating back to the occupation of Korea by the Japanese which ended in 1945.

The Korean government is reportedly preparing to appeal the matter to the WTO. On the other hand, the Japanese government denies any intention of resolving the matter before a WTO panel because it is strictly a matter that concerns national security. How the matter will develop and will be resolved remains to be seen while government officials, practitioners and commentators will extensively analyse the merit of the arguments advanced by the respective governments.

Suffice it to say, however, that we need to understand this as a salient part of the resurgence of nationalistic policy priorities and the resulting politicisation of economic diplomacy. Recently, we, as practitioners, have seen 'weaponisation', as it were, of fiscal and economic policies, so much so that even countries like Japan, which has traditionally kept a low-key diplomatic approach for more than several decades, have joined the ranks despite the historical issues periodically raised by neighbouring countries. We are expecting, and we have in fact been receiving, an increasing number of inquiries requiring interdisciplinary approach with legal, economic, political and even geopolitical considerations, to solve this newly presented export control conundrum.

Go Hashimoto is a partner and Kirika Morita is an associate at Atsumi & Sakai Law Firm in Tokyo, Japan.

go.hashimoto@aplaw.jp

kirika.morita@aplaw.jp