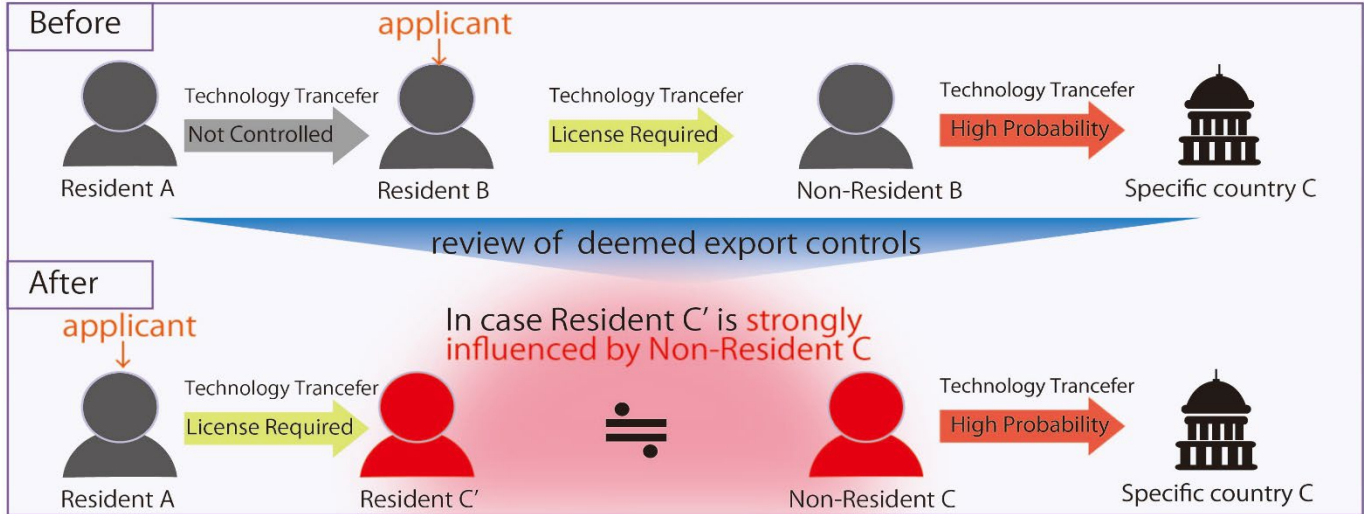


As of May 1, 2022, due to the revision of laws and regulations, the scope of regulation for the provision of technology in Japan has been changed.

Previously, technology transfers from one resident to another were not subject to control, but now a technology transfer to a resident (including Japanese) who falls under a specific category is subject to control under the Foreign Exchange and Foreign Trade Act after the review of deemed export controls.



\*Translation of partial excerpt from a website of the Ministry of Economy, Trade and Industry (METI) on the clarification of deemed export controls

Residents include Japanese residents as well as international students who entered Japan at least 6 months prior, and international faculty members and researchers who work at the University of Tsukuba. Residents who are strongly influenced by a foreign non-resident, like resident C' after the review in the above figure, fall under one or more of the following three specific categories:

**Specific category (1)** is the category of those who are under the control of a foreign government, foreign corporation, etc. (including universities and research institutes) based on a contract.

Example 1) Researcher who belongs to the University of Tsukuba and is engaged in research while maintaining employment in a foreign company\*<sup>1</sup>

Example 2) Student who is involved in the management of a foreign venture company\*<sup>1</sup>

Example 3) Faculty member who concurrently works at a foreign university, etc. (including the case where he/she works under the cross-appointment system)

\*1: Japanese subsidiaries of foreign companies are not included.

**Specific category (2)** is the category of those who are effectively under the control of a foreign government, etc. based on economic benefits provided by them.

Example 1) An international student who is provided with large\*<sup>2</sup> funds for studying abroad by a foreign government, etc.

Example 2) Faculty member or researcher who participates in a science and engineering personnel recruiting program sponsored by a foreign government, etc. and is provided with large\*<sup>2</sup> funds for research and/or living expenses as an individual

\*2: Refers to money and other benefits that account for 25% or more of the person's annual income.

**Specific category (3)** is the category of those operating in Japan at the behest of a foreign government, etc.

Example 1) Person who receives instructions or requests regarding his/her operations in Japan from a foreign government, etc.

【The METI expects to notify companies, universities, etc. of those who are suspected of falling under specific category (3).】

Check whether you fall under any of these specific categories based on the Self-Declaration on Specific Categories. The Self-Declaration on Specific Categories is not intended to apply unreasonably disadvantageous treatment to you, but to ensure the University's compliance with laws and regulations in response to the review of deemed export controls following the amendments of laws and regulations.

Reference: Website of METI on the clarification of deemed export controls

<https://www.meti.go.jp/policy/anpo/anpo07.html>

\* A website describing deemed export controls for university faculty members, employees, and students.



## <General Q&A about specific categories>

Q1: Do foreign governments, etc. in the context of specific categories include (1) to (4) below?

- (1) Government-run companies or publicly owned companies
- (2) National and public universities and research institutes
- (3) United Nations and other international organizations
- (4) Public organizations equivalent to independent administrative institutes in Japan

A1: Foreign governments, etc. refer to foreign governments, foreign government agencies, foreign local governments, foreign central banks, and foreign political associations including political parties.

- (1) to (3), in principle, are not deemed to be a foreign government, etc. as long as they have a separate legal body from the government.
- (4) may, as a foreign government agency, be deemed to be a foreign government, etc.

Q2: Do foreign corporations, etc. in the context of specific categories include branches of foreign corporations located in Japan?

A2: Foreign corporations, etc. refer to corporations and other associations established based on foreign laws and regulations. Branches of foreign corporations located in Japan are not included in foreign corporations, etc. in the context of specific categories.

Q3: Do persons who fall under specific categories include juristic persons and other associations? Does it include both residents and non-residents?

A3: Persons who fall under specific categories are limited to residents who are natural persons.

Q4: Is technology transfer to residents who fall under a specific category subject to the Catch-all Control?

A4: Yes, it is.  
In the event that resident A transfers a technology that constitutes item 16 in the appended table of the Foreign Exchange Order to resident B, and resident B is influenced by non-resident C (or resident B falls under a specific category), a license must be obtained if the use of the technology by non-resident C meets the requirements of the Catch-all Control.

Q5: Is it correct to think that if a corporation, etc. treats an employee who refused to submit a pledge as a person who does not fall under any specific category, that they are fulfilling their duty of care as a corporation, etc.?

A5: No, it is not. If a notification is not made by an employee under their direction and order to the effect that he/she does not fall under any specific category, the probability that he/she may fall under one or more specific categories cannot be eliminated. If a technology subject to control under the Foreign Exchange and Foreign Trade Act is transferred to that employee, they, in principle, are not considered to have fulfilled their duty of care as a corporation, etc. Consequently, it is necessary to consider limiting technologies transferred to that employee to publicly known or basic scientific/research technologies or to take other measures.

It is expected that requiring employees to submit a self-declaration on categories will be considered a part of the conflict of interest control that corporations, etc. are supposed to conduct.

Q6: If an employee comes to fall under a specific category, how should it be dealt with?

A6: You are expected to apply for a license when you transfer a technology subject to control under the Foreign Exchange and Foreign Trade Act to that employee.

## <Q&A about specific category (1)>

Q7: Professor A at Japanese university X concurrently works as a professor at foreign university Y. Does professor A fall under specific category (1)?

A7: In general, professor A falls under specific category (1) unless exception provision (a) or (b) regarding specific category (1) applies.

In brief, exception provisions (a) and (b) are the cases described below:  
(a) Case in which there is an agreement to the effect that directions and orders given to professor A by Japanese university X have priority over those given by foreign university Y.

(b) Case in which a person employed by an ordinary Japanese company has also entered into an employment contract or any other contract with a foreign subsidiary that is a group company (with more than 50% of its capital owned directly or indirectly by the Japanese company). Generally, this exception does not apply to universities.

Q8: Is it necessary to conclude a contract on the order of priority of directions and orders or the duties of care of a good manager in order for exception provision (a) to apply regarding specific category (1)?

A8: It is required that an agreement on the order of priority of directions and orders or the duties of care of a good manager be reached, but you are not necessarily required to conclude a written contract, pledge, etc. In short, if the order of priority of directions and orders or the duties of care of a good manager is agreed upon explicitly or implicitly in the group company rules or based on established practices, it is allowed to claim that exception provision (a) regarding specific category (1) applies on the grounds of this agreement.

On the other hand, for an agreement on the order of priority of directions and orders with a corporation that is not a group company, METI may require submission of documents, etc. that certify the presence and contents of such agreement.

## <Q&A about specific category (2)>

Q9: Do persons who are provided with large amounts of money or other significant benefits in the context of specific category (2) include those who have previously received such benefits?

A9: No, not in principle.

On the other hand, if a person has previously received benefits from a foreign government, etc. in the form of a loan, etc., and they owe the foreign government, etc. an obligation that is due and payable or has no due date set, the person is considered to have been receiving a benefit in the form of the nonuse of the right to claim the execution of the obligation.

Q10: Professor A at Japanese university X is provided with funds for research by a foreign government, etc. The use of the funds is limited to costs for research, and they cannot be used for costs for personnel including the receiver. In this case, do the funds for research constitute large amounts of money or other significant benefits in the context of specific category (2)?

A10: If the funds for research become part of the income of Japanese university X or the receiver's (professor A's) laboratory rather than his/her income under the control of the university's personnel in charge of fund management, the funds do not constitute such benefits in the context of specific category (2).

On the other hand, if the funds for research become part of the receiver's (professor A's) income, they constitute such benefits.

Q11: If benefits other than money are received, how should such benefits be converted to a monetary amount?

A11: If benefits other than money are received from a foreign government, etc., it needs to be determined whether the monetary amount converted from such benefits accounts for 25% or more of the receiver's annual income. Such benefits should be converted to a monetary amount by using a common method used in general business practices.

Q12: I was consulted by a faculty member or employee who has received the title of professor emeritus from a foreign university about whether this poses a problem. Should the faculty/staff member be treated as a person who falls under category (2)?

A12: The faculty member or employee need not be treated as a person who falls under category (2) just because he/she has received the title of professor emeritus.

Q13: Documents submitted by a student show that he/she was awarded a scholarship from a foreign government, etc., but for what percent of his/her annual income the scholarship accounts is unknown. In this case, is it correct to consider such a student not to be a person who obviously falls under specific category (2)?

A13: Generally, when students are awarded a scholarship from a foreign government, etc., such a scholarship accounts for a large part of their annual income. Therefore, consider them to fall under category (2). However, if it is found later by checking documents or by other additional means that the scholarship accounts for less than 25% of the student's annual income, he/she can be considered not to fall under category (2).

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