

## Japan's Arms Export and Defense Production Policy

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### Japan's Arms Export Policy: Past and Present

In April 2014, the second Shinzo Abe Administration announced new principles for the transfer of defense equipment and technologies. These new principles are a departure from a several decade long ban on arms trade, which prohibited virtually all Japanese arms trade. Under the original three principles of arms trade, the Japanese government enacted self-imposed restrictions on the trade and transfer of ammunition, the transfer of defense technologies, investment in defense industries overseas, and military-related construction.<sup>2</sup>

The “old” three principles were first announced publicly by Prime Minister (PM) Eisaku Sato in 1967 and prohibited the trade and transfer of arms to communist countries, countries on which the United Nations (UN) had imposed an arms embargo, and countries involved in international conflicts. PM Takeo Miki amended the guidelines of the principles in 1976 to include all elements of arms trade and transfer, and, most importantly, restricted those transfers to countries not banned under the three principles.<sup>3</sup> PM Miki rationalized these new arrangements using the Japanese phrase “tsutsushimu” (“restraint” in direct translation), and argued that Japan should practice tsutsushimu in all arms transfers, which made it difficult to interpret what this phrase really meant. Together with various statements and speeches by ministers and government officials over the course of its history, the myth of a total ban prevailed in the Japanese political world, thus preventing Japanese defense companies from entering international defense markets and participating in international joint development and production of arms.<sup>4</sup>

In reality, the original three principles were merely an administrative guideline of the Foreign Exchange and Foreign Trade Law (FEFTL, Law No. 228 of 1949). The FEFTL, the equivalent of the Export Administration Act and Arms Export Control Act of the United States, is supported by the legislative and ministerial decree that includes a list of arms and armaments in its annex. The three principle resides over those decrees administered by Minister of Economy, Trade and Industry (METI) which have jurisdictional control, and managed by the Cabinet Secretary's Office, with advice from the National Security Council (after its establishment in December 2013). As for the historical development of the principles, the administrative guidelines developed into political guidelines during the political contest between the Liberal Democratic Party (LDP) and the Socialist Party in the 1970s and early 1980s. The LDP found it to be political suicide to be labeled an anti-Pacifist and anti-Constitution party under

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<sup>2</sup> See Masataka Morimoro, *Bukiyushutsu Sangensoku* (in Japanese) (Shinzansha, 2011); Keiichi-ro Tomita, “Bukiyushutsu Sangensoku (in Japanese),” Issue Brief, No. 726 (November 2011) for historical development and debate in the Diet. Investment in defense companies overseas was deemed to be included as an export under then Prime Minister Takeshi Fukuda's Diet statement of 1977. As for military construction, it is controlled for same reason as foreign investment. It is outlined in a 1981 statement by the then Minister of Construction.

<sup>3</sup> The principles were issued as a reaction to the defense export incident. PM Sato's statement arose from export case of pencil rocket export by the University of Tokyo to Indonesia and Yugoslavia, and PM Miki's announcement in the Hotta Hagane case, in which the company exported a half-completed gun tube to the Republic of Korea (ROK).

<sup>4</sup> See <http://www.meti.go.jp/policy/anpo/> for regulation and administrative procedures.

the contested political climate, so the LDP exercised severe control over the transfer of armaments and related technologies, which contributed to the establishment of the myth.<sup>5</sup>

However, the Japanese government gradually relaxed the three principles in response to policy requirements. As early as 1983, the Japanese government made a statement of exception of the application of the three principles to allow transfer of defense technologies to the United States without amending the principles or the legislative and ministerial decrees. Furthermore, since the end of the Cold War, the Japanese government has issued multiple statements through the Cabinet Secretary exempting various arms and arms-related transfers without substantially amending laws or regulations. Examples include exemptions for joint development of SM-3 Block IIA missiles with the United States, permitting defense-related equipment to be used by the Self-Defense Forces (SDF) for Peacekeeping Operations (PKO) and other operations out of the country, and sending landmine destruction equipment out of the country for UN mandated operations.<sup>6</sup>

Aside from transfers for profit or security-related purposes, the Japanese government has been astonishingly flexible on the transfer of armaments related to the activities of the SDF. Unnoticed by many in the Japanese media, the SDF have accompanied as well as transferred defense-related items for their operations and have provided technical information on defense equipment for repair and maintenance purposes overseas.<sup>7</sup> Finally, the Democratic Party of Japan's (DPJ's) Noda Administration made a decision to grant comprehensive approval of joint defense development and production for domestic actors working with foreign companies on the conditions that the actors adhere to Japan's security policy, and to prior consultation with the Japanese government on third-party transfers for foreign partners. The Noda Administration's decision came in December 2011, and the decision to enter the F-35 program followed in March 2013.

### Three Principles on Transfer of Defense Equipment and Technology<sup>8</sup>

The new guidelines for defense equipment transfer established under existing law are consistent with legislative and administrative decrees to date, and do not significantly alter existing measures outlined in past exemption statements. In fact, these new guidelines reconfigure existing arrangements to permit security cooperation through relaxation of regulations rather than complete amendment. Even the number of the principles (three) has been inherited.

The first principle is "Clarification of cases where transfers are prohibited." This is a slight amendment of the old three principles; a clause related to transfers to communist countries was deleted. The principle now states that transfers are prohibited when "the transfer violates obligations under treaties and other international agreements that Japan has concluded... [or] the transfer violates obligations under

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<sup>5</sup> Japan had exported munitions to U.S. and UN during the Korean War, and many low-tech items in the course of the early Cold War. Japanese manufacturing capacity at that time did not provide an opportunity to export extensive amounts of defense equipment.

<sup>6</sup> There were 21 exemption cases under original principles. See Kazuto Kutsukake, "Revision of Three Principle of Arms Trade and Three Principles on Transfer of Defense Equipment and Technology (in Japanese)," *Legislation and Investigation* No. 361 (January 2015), for list of exemptions.

<sup>7</sup> *Mainichi Shinbun*, February 1, 2015.

<sup>8</sup> "Three Principles on Transfer of Defense Equipment and Technology," Ministry of Foreign Affairs of Japan, April 1, 2014, [http://www.mofa.go.jp/press/release/press22e\\_000010.html](http://www.mofa.go.jp/press/release/press22e_000010.html).

United Nations Security Council resolutions... [or] the defense equipment and technology is destined for a country party to a conflict (a country against which the United Nations Security Council is taking measures to maintain or restore international peace and security in the event of an armed attack).”

The third portion of the first principle is a new and constructive development. The old principle simply stated that arms trade was prohibited to countries party to a conflict, while the new principle defines such a country as one that is under some form of UN Security Council sanction. During the Cold War, the phrase “countries party to a conflict” was used by the opposition party, especially the Japan Socialist Party (which changed its name several times and became the Social Democratic Party of Japan), the Japan Communist Party, and even the Komei Party, to criticize defense equipment cooperation conducted under the Japan-U.S. alliance. They claimed that because the United States was involved in conflicts, the United States did not qualify for exemption. The new principle puts a cap on this futile debate and paves the way for a wider range of defense cooperation with the United States and most allies and friends that have security arrangements with the United States.

The second principle is both a streamlining and an expansion of the exemptions under the old principles. The wording of the second principle is “limitation to cases where transfers may be permitted as well as strict examination and information disclosure.” The important part of the second principle is that it lists specific cases in which overseas transfer of defense equipment and technology may be permitted. The operative guideline issued on the same day as the new principles provides concrete examples of what should be permitted.

The second principle is broken down into two parts: 1) proactive contribution to the advancement of peace and international cooperation, and 2) contribution to the security of Japan. The first part of the second principle reiterates and formalizes the statements issued on SDF participation in peace operations, such as in the case of Cambodia in 1992, landmine sweeping operations in 1997, Timor Leste in 2002, and Iraq in 2003. The second part is a mixture of the new and old rules. It clearly states that “overseas transfer relating to international joint development and production with countries involved in a cooperative relationship with Japan in terms of security, exemplified by the United States,” should be permitted. Taking the United States as an example of a country with a cooperative relationship with Japan, the principle details various forms of cooperation, such as the Acquisition and Cross-Servicing Agreement (ACSA); mutual technology exchange; licensed production and repair; and cooperation with Japan in evacuation, transport, warning, surveillance, and minesweeping. In addition, the second part also reiterates the previous exemption by stating that restrictions be excluded against “temporary export of equipment, return of purchased equipment and provision of technological information, associated with the activities of the SDF, etc.”<sup>9</sup>

The third of the three principles deals with control measures. The principle states that “Ensuring appropriate control regarding extra-purpose use or transfer to third parties” should be applied. The control measures outlined in the third principle are somewhat controversial when it comes to placing obligations on countries receiving Japan’s defense equipment and related technologies. The principle states that the recipient country should provide prior consent regarding extra-purpose use and transfer to third parties,

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<sup>9</sup> The second principle also states that “Those cases will be examined strictly while ensuring transparency,” and outlines the framework for administering the permission processes which includes the inter-agency consultation mechanism at the NSC-level.

although such obligations are not mandatory and transfer will be permissible without prior consent if it is deemed an appropriate contribution to the active promotion of peace and international cooperation.

Regarding nonproliferation and the political necessity of preventive measures to block Japanese defense equipment and related technologies from being used in international conflicts, the Japanese government had to strike a balance between transfer and restriction. The Japanese government tends to focus more on the restriction side of the equation, since the society is still dominated by the legacy of the strong Japanese technological base in the late 1980s and early 1990s, and the public is convinced that Japanese companies own the majority of leading-edge technologies. The policy accommodates concerns among some of the Japanese public about Japanese defense companies becoming active seekers of defense profits. In reality, the Mutual Defense Act (MDA) with the United States contains an exemption clause of prior consent, so that any defense-related transfer concluded under this arrangement is excluded in advance. Additionally, from a business perspective, asking defense-related business partners to accede to strict prior consent may diminish the attractiveness of partnering with Japanese defense manufacturers and companies with sophisticated technologies. Furthermore, the ways in which the Japanese government can verify prior consent is limited by both administrative and practical means. Japan has rich experience with verification measures for strategic trade controls, to ensure end-use and end-user control of dual-use items and technologies, but Japan has no credible expertise on defense trade.<sup>10</sup>

Therefore, the new third principle emphasized the significance of government involvement in examination and monitoring. The new principle outlines the process for examination and approval of defense equipment transfers from the Ministry of Economy, Trade and Industry and the Ministry of Defense (MOD); the role of licensing authorities; ministerial-level consultation mechanisms; and the role of the newly established National Security Council (NSC) in making final decisions. Although not all decisions are made at the NSC-level, cases which involve the NSC will be put under public scrutiny to fulfill a transparency condition of the new principle. METI's licensing division is required to publish an annual report of defense equipment approval and denial decisions, the first of which was due to be published at the end of Japan's fiscal year (March 2015).<sup>11</sup>

### **Why are the New Principles Necessary at this Moment?**

The new three principles are historic for Japan's security policy. Together with the establishment of the NSC, the enactment of the Act of Protection of Specially Designated Secrets, and the decision to change the constitutional interpretation on exercising the right of collective self-defense, the second Abe Administration has changed the basic structure of Japan's security policy mainly by streamlining the system and restructuring and modernizing the work of the government. As seen in many areas of the

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<sup>10</sup> With regards to dual-use items and technologies, Japan has established multiple layers of control measures including a prior license application consultation with think tanks and consultants to provide security-related information for end-use and the end-user. The Center for Information on Security Trade Control (CISTEC), a think tank established after the Toshiba-Kongsberg Incident in 1987, works as intermediary between METI and industry. See <http://www.cistec.or.jp/>.

<sup>11</sup> The annual report will be issued from the Security Export Control Policy Division within the Trade Control Department of the Trade and Economic Cooperation Bureau. The Trade Control Department has administrative responsibility to oversee all trade goods and technologies, including defense equipment and technologies. However, a trade promotion function is conducted by the Aerospace and Defense Industry Division of the Manufacturing Industries Bureau at METI. The Director for Defense Industry in the Aerospace and Defense Industry Division has institutional responsibility for the promotion of defense industrial policy at METI.

Japanese government, Japanese policymaking suffers from the legacy costs of past political decisions. Security policymaking is no exception. Japan's legacy security policy has imposed serious constraints on security cooperation with foreign countries since any security cooperation with any country except for the United States was deemed a violation of the constitution. Even the security cooperation arrangements with the United States were limited by domestic considerations.

Renewing the system and policies on defense equipment transfers is of special necessity and urgency because of the changing defense production environment. In the 1990s, a wave of global defense industrial restructuring reduced the number of major defense companies to five in the United States and three in Europe. Globalization facilitated international procurement by defense manufacturers, dispersing the defense production base globally. Increased utilization of dual-use technologies in defense production has enhanced opportunities for non-traditional military suppliers to enter the defense market through production of parts and components. Most importantly, major defense equipment has become techno-centric and highly sophisticated, thus making it difficult for late comers to catch up without investing heavily in a defense production base.

In this new defense environment, Japan had to consider whether it was realistic to continue its relatively closed domestic defense market or to rely on domestic defense production while receiving a majority of production licenses from the United States. The traditional formula became difficult for two reasons. First, the domestic defense market was too small to keep the defense production base necessary to produce defense equipment of the quality required for the security needs of the SDF. The MOD procurement level has significantly decreased since the end of the Cold War, and single digit procurement of equipment was too costly for major defense contractors in Japan to keep their defense sections alive within their portfolios. The CEOs of major defense contractors like Mitsubishi Heavy Industries and IHI Corporation had to convince their shareholders that they should keep these defense divisions, which yielded low profits and were not popular among the Japanese public, in their companies.<sup>12</sup>

Second, countries with major defense companies, like the United States, became reluctant to provide the production licenses for major defense equipment to foreign countries. It was no secret among Japanese defense manufacturers that the technological foundation of their defense production relied largely on the licenses provided by the United States. While the Japan Defense Agency (JDA) announced indigenization of Japanese defense production in 1970, it did not mean to rely solely on Japan's domestic technology and production.<sup>13</sup> Since the 1980s, the JDA publicly noted that approximately 90% of Japan's defense procurement in price terms is produced domestically, but that the technological base itself was imported from the United States. As the United States began to focus on the issue of defense technology diversion and competition with Japan's rising economy in the late 1980s, providing defense production licenses to an economic competitor was not seen as viable, even with security considerations in mind.

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<sup>12</sup> A survey conducted by Teikoku Data Bank in 2013 shows that the number of defense companies which have direct contract with MOD is 4568. But the number of manufacturing companies is 675, yielding a ratio of 14.8%. Most of the manufacturing companies are civilian-oriented with military divisions within their production lines. See <http://www.tdb.co.jp/report/watching/press/pdf>.

<sup>13</sup> In 1970, the Director General of the Japan Defense Agency, Yasuhiro Nakasone, issued Defense Industrial Policy. It listed several objectives: 1) to maintain Japan's industrial base for national security, 2) to acquire equipment from Japan's domestic research and development and production efforts, 3) to use civilian industries for domestic arms production, 4) to set long-term goals for research and development and production, and 5) to introduce competition into defense production.

Indeed, as Michael Green has pointed out, relying on imports from the United States was not an ideal procurement option for Japanese defense officials, both for economic and political reasons.<sup>14</sup> However, the stark reality was that Japanese defense manufacturers could not produce defense equipment based solely on their own technologies. The FS-X debate in the early 1980s demonstrated the extent to which Japan had to rely on U.S. defense technologies. Japanese manufacturers could produce a portion of major defense equipment, but they could not implement a full production line that included the engines, particularly in the case of the F-2 (the finished product of the FS-X program).

The F-2 case was an ignored harbinger of things to come in the world of defense production in the 1990s and beyond. To facilitate interoperability among militaries of allied and friendly countries, and to assemble high standards technologies appropriate for major defense production, a country cannot rely solely on its own technology. Rather, joint development and production should have been the answer to the high cost-per-unit of major defense equipment. Indeed, transatlantic relations based on the North Atlantic Treaty Organization (NATO) partnership were moving in that direction, and Japan-U.S. defense technological cooperation began on joint development and production of ballistic missile defense (BMD) in the late 1990s and beyond. But misperception was widespread among Japanese policy makers and the business community. It is reported that when Japanese defense manufacturers were asked to join the Joint Strike Fighter (JSF) program, their immediate responses were negative. They then asked their counterparts when Japan could acquire licenses for F-22 production.<sup>15</sup>

Exactly when the technology-driven nature of defense equipment development became established is not clear, although as the JSF program developed, and intra-European defense mergers and acquisition (M&A) proceeded, it became clear that the trend was irreversible. The U.S. Defense Science Board published a report in 1999 entitled “Report of the Defense Science Board (DSB) Task Force on Globalization and Security.” This report argued that globalization has stimulated cross-border M&A, global partnerships in defense equipment development and production, internationalization of defense procurement, and increased use of dual-use technologies (commonly referred to as commercial off-the-shelf technologies).<sup>16</sup> Together with military realities apparent during the wars in Serbia, Iraq, and Afghanistan, it became clear that technological superiority is the key to military combat, and that such superiority is supported by the technology itself and the capacity of the users to integrate those technologies into battle plans.

One of the goals of the Export Control Reform (ECR) initiated by the Obama Administration is to facilitate trade in high technology by lowering the barriers set forth by the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). Those two regulations are administered by different departments, ITAR by the State Department and EAR by the Commerce Department. Creating a single control list, single licensing agency, unified information technology system, and enforcement coordination center will serve to fix the issue pointed out by the administration that “the current export control system is overly complicated, contains too many redundancies, and, in trying to protect too much, diminishes our ability to focus our efforts on the most critical national security priorities.” The primary objectives of the ECR are to facilitate increased U.S. exports in the high

<sup>14</sup> Michael Green, *Arming Japan: Defense Production, Alliance Politics, and the Postwar Search for Autonomy* (New York: Columbia University Press, 1998).

<sup>15</sup> Based on an interview conducted by the author.

<sup>16</sup> Final Report of the Defense Science Board Task Force on Globalization and Security (December 1999).

technology sector. By removing unnecessary trade restrictions, technology trade is expected to grow. Further blurring of the boundary between civilian and defense technology is one of the factors related to the ECR, and Japan was no-alien to this trend.

### Proposals by the Industrial Sector

Japan's high-tech companies—including dual-use technology driven ones—would benefit from the guidance set forth under Japan's Three Principles on Transfer of Defense Equipment and Technology. Japanese technology companies may export their competitive advantage in more conventional ways due to an expected increase in business opportunities, and, at the same time, the decreased reputational risk of being involved in defense production overseas.

Indeed, in theory the new principles seem to surpass those the defense industry in Japan demanded. In July 2012, the Keidanren's Defense Production Committee and the Aerospace and Defense Committee of the American Chamber of Commerce in Japan jointly issued a policy recommendation entitled "Joint Statement on Defense Industry Cooperation between Japan and the United States."<sup>17</sup> In this report, both parties emphasized the importance of the relaxation of the old principles and facilitation of joint development and production of defense equipment for enhanced bilateral security cooperation. The report explained four models for enhanced bilateral defense cooperation.

The first of the four models, Model A, was described as "a formal joint development and production program established between both governments, similar to the U.S./Japan BMD/SM-3 joint-development program." Model B was defined as an "early stage research collaboration between industries to study future defense technology." Model C was designated as "industry collaboration in support of a single government program established by one national government." Finally, Model D was termed "the case where a licensee supplies defense equipment in response to a request by the licensor's country." Models A and D entail cooperation based on Memorandums of Understanding (MOUs) between the two governments, and Models B and C entail industrial cooperation not based on MOUs. Indeed, although government involvement in each transaction differs in the initial stage of joint development and production, Models B and C can be transformed and covered by formal defense cooperation agreements, if necessary.

In seminars and workshops held after this report was released, those who were involved in the making of the report openly admitted concerns that the type of cooperation in Models B and C pose a risk of violating the Foreign Exchange and Foreign Trade Law (FEFTL) and its regulations. Risk associated with FEFTL is not based on legal and administrative terms, but on political and reputational terms. However, the new three principles make room for individual efforts by companies to expand defense technology development cooperation separate from government initiatives. In addition, Models B and C allow companies to expand defense cooperation beyond United States. Interviews conducted by the author indicated a wide discrepancy between industry leaders and government officials. Industry leaders are reluctant to seek business opportunities without government involvement. On the other hand, government official questioned the industry's passive attitude.

<sup>17</sup> "Joint Statement on Defense Industry Cooperation between Japan and the United States," July 17, 2012, <http://www.keidanren.or.jp/en/policy/2012/059.html>.

This discrepancy can partly be attributed to domestic opposition to Japanese companies involved in arms trade. There is a widely-held consensus among the Japanese public that any business or research activities associated with defense equipment development and production means that these companies are “merchants of death.”<sup>18</sup> The merchants of death argument was brought into the public scene in the post-war era by journalists who reviewed the causes and development of the war. Their conclusion was that armament manufacturing companies in both camps influenced the policymaking of the wartime parties, thus unnecessarily prolonging the war. The Japanese public seems to unconsciously conflate arguments about the military industrial complex, the wartime economy, and merchants of death, and sometimes shows disgust for issues related to defense production. Since more Japanese defense manufacturing companies profit from the civilian sector than from the military sector, the public fears that there will be a spillover effect into civilian businesses when they are involved in defense production.

Indeed, because this public feeling may not disappear instantly through rational policy initiatives, the industry and government must make long-term commitments to ease the anxiety among the public. An important way to achieve this goal is to emphasize the significance to Japan’s security policy of preserving the defense industrial base. In May 2013, the Keidanren issued a “Proposal for the National Defense Program Guidelines” and outlined their position on the significance of defense production and the technological base.<sup>19</sup> The proposal outlined five rationales: deterrence capabilities and sovereignty dependent on advanced technological capabilities; speedy procurement, operational support, and improvement of equipment; development and production of equipment suited to national geographical characteristics and conditions in Japan; technological and economic ripple effects; and participating in international joint development/production with advantageous tasks, and ensuring bargaining power in case of imports or licensed production.

The May 2013 proposal by the Keidanren further argued that in order to maintain and develop the defense industrial base in Japan, the government needs to formulate strategies for defense production and strengthening the technological base, to promote international joint development/production, and to improve acquisition and procurement policy. The new three principles address the second proposal made by the Keidanren. In June 2014, the MOD issued the “Strategy on Defense Production and Technological Bases” which dealt with the first and third proposals of Keidanren.

### **Strategy on Defense Production and Technological Bases<sup>20</sup>**

The Strategy on Defense Production and Technological Bases (hereafter, Strategy) of June 2014 is a replacement for the defense industrial policy of 1970. It is based on the National Security Strategy of 2013, which tasked the MOD to create a mid-to-long term strategy to maintain stable defense forces under limited resource allocations. In 2013, the MOD initiated a task force discussion to consider measures through which to maintain the defense industrial and technological bases.<sup>21</sup> The final

<sup>18</sup> Takeshi Sakurai, “Relaxation of Arms Trade Ban and Perception of Japanese Public (in Japanese),” *KaiKanko-Senryaku Kenkyuu* (Strategic Studies of Naval Staff College) vol. 4, no.1 (June 2014).

<sup>19</sup> “Proposal for the National Defense Program Guidelines,” Keidanren, May 14, 2013, [http://www.keidanren.or.jp/en/policy/2013/047\\_proposal.html](http://www.keidanren.or.jp/en/policy/2013/047_proposal.html).

<sup>20</sup> “Strategy on Defense Production and Technological Bases,” Ministry of Defense, June 2014, [http://www.mod.go.jp/j/approach/others/equipment/pdf/2606\\_e\\_honbun.pdf](http://www.mod.go.jp/j/approach/others/equipment/pdf/2606_e_honbun.pdf).

<sup>21</sup> The Interim Report of the Study Group on Defense Production and Technological Bases says the strategy should consider three options: 1) selecting important areas based on judgment criteria for selection and concentration, and choosing priority

conclusion of the task force was that the MOD should strike an appropriate balance between indigenous production, licensed production, and imports, based on cost and affordability. Partly based on this report, the MOD finalized its Strategy and described how, why, and when such measures would be implemented.

The Strategy outlines practical reasons why the current regulations must be reviewed. It says that the security environment related to the defense production and technological bases has changed and Japan must adapt to the changed environment. Regarding the changes, the Strategy lists “challenges such as weakening of production and technological bases,” the “international security environment such as realignment of European/US defense industry and advances in international joint development and production projects,” and “the overseas transfer of defense equipment and technology based on Three Principles on Transfer of Defense Equipment and Technology adopted in April 2014.” In this regard, the new three principles are described as a factor that facilitates the promotion of the Strategy.

Next the Strategy sets the goals. The Strategy outlines the following goals: (1) Ensure sovereignty of security, (2) Contribute to latently enhance deterrence and maintain and enhance bargaining power, and (3) Contribute to advancing domestic industries driven by highly sophisticated technology. These goals do not suggest proactive implementation of the Strategy to enhance and develop an economic foundation for domestic defense industry; nor do they mention the promotion of industrial partnerships and the provision of technical assistance to countries deemed essential for Japan’s strategic and security interests. Also, the Strategy does not suggest an active role for the MOD when it comes to allocating resource to emerging technologies, such as autonomous, robot, cyber, space, and nano-weapon systems that may contribute to the development of Japan’s strength.

However, it is true that the Strategy could not have been established without the new three principles. In Goal 2, it notes “maintaining indigenous bases is necessary to procure defense equipment which requires protection of classified information and is difficult to obtain from overseas since other countries limit exports due to security reasons,” which indicates Japan is seeking reciprocity among technology possessing countries. In Goal 3, the Strategy notes “when MOD acquires defense equipment... it can negotiate advantageously on price by maintaining certain bases domestically and showing the possibility of indigenous development.” This explicitly refers to the value of Japan’s technological competitiveness for joint development and production projects with foreign countries.

One of the interesting parts of the Strategy is the MOD emphasis on public-private partnerships. The Strategy notes that one of the MOD’s stances on this strategy is to promote these partnerships, and specifically mentions that the MOD will explain the future direction of equipment policy to the industry, thereby enhancing predictability for companies to invest, conduct research and development (R&D), and train personnel from a long-term perspective. The Strategy is premised on a lack of official arms manufacturing facilities and reliance on the private sector for arms development and production.

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areas for investment that need to be developed and maintained within Japan, while taking into account the technological level of Japanese industries, with the goal of realizing domestic development and production; 2) pursuing international cooperative development and production, with regard to equipment which falls within the important areas and involves cutting-edge technology and requires huge costs; 3) importing equipment temporarily which falls within the important areas but cannot be produced domestically, due to the lack of adequate technology within the country; 4) procuring other equipment from the world market, considering the price and performance. See [http://www.mod.go.jp/e/d\\_act/d\\_policy/interim\\_report.html](http://www.mod.go.jp/e/d_act/d_policy/interim_report.html) for the summary.

Therefore, the MOD is proposing to establish the Defense Equipment Agency in the fiscal 2015 budget, which is expected to become a command center for the future direction of equipment policy.

The Strategy then outlines five methods of defense procurement. As discussed in a 2013 task force on the defense industrial base, the Strategy describes the merits of each method based on the current state of the strength of Japan's defense industry. The methods the Strategy outlines are: domestic development; international joint development and production; licensed production; utilizing civilian goods; and imports. As far as domestically produced goods are concerned, the strategy specifies "defense equipment for which domestic technology can meet the conditions regarding SDF performance requirements, operational support, lifecycle cost and delivery schedule."

The Strategy provides a comprehensive picture of how to maintain Japan's defense production and technological base by elaborating other methods such as contract procedure and rules, research and development, and defense industrial issues. Together with these methods, the Strategy specifically devotes a section to defense equipment and technology cooperation as a method through which Japan can meet its goals.

The Strategy lists six areas of cooperation, four of which are directly related to the new principles. First, the purposes of these areas are to "deepen defense equipment and technology cooperation with the United States." Japan and the United States have engaged in mutually constructive defense equipment and technology cooperation since the establishment of the SDF. Areas of cooperation evolved from simple assembly to joint development of BMD systems. Currently, the two countries are beginning to work together on the process to include funds for Final Assembly and Check Out (FACO) of F-35s in the Japanese fiscal year 2015 budget. The Strategy gives highest priority to Japan's cooperation with the United States, and possible future expansion of that cooperation under the new principles. Second, it recommends "establish[ing] new defense equipment and technology cooperation." The Japanese government is seeking to establish defense relationships with the United Kingdom, France, and possibly with other European countries.<sup>22</sup> The Strategy also named India and Australia as the next potential partners. Regarding Australia, the Japanese government is proposing joint production of *Soryu*-class diesel submarines. If the proposal is successful, it will be the first major defense weapons and technology transfer case that does not involve the United States.

Third, the Strategy recommends "contributing to international logistics systems." In addition to Autonomic Logistics Global Sustainment (ALGS), the Strategy says Japan will contribute to the global logistics chain "through supplying parts, making use of Japanese companies' strengths (sensors, parts such as semiconductors, composite materials, advanced materials, high quality and punctual manufacturing, etc.) and experience in licensed production between companies." Fourth, the Strategy has a forward looking agenda which includes "improving bases for defense equipment and technology cooperation." In this section, the Strategy outlines a proactive agenda for Japan's defense industry by suggesting government involvement in searching for defense technology markets, which will smooth the ground for future defense cooperation. At the same time, as Prime Minister Shinzo Abe indicated at the

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<sup>22</sup> Japan and France Government signed a Document of Expression of Intention on promotion of bilateral defense cooperation and exchange in July 2014, and agreed to jointly seek areas and items of possible bilateral joint development and production. When French Defense Minister H.E. Mr. Jean-Yves Le Drian visited Japan again in March 2015, both ministries reaffirmed the commitment to the mutual development, and named unmanned system as one of the candidate areas for cooperation. See <http://www.mod.go.jp/j/press/kisha/2015/03/14a.html>.

2014 Shangri La Dialogue, the Strategy hints that Japan will provide defense-related equipment to countries, as it did with Malaysia and Philippines in the past. The fifth section discusses “promot[ing] application of defense equipment to civilian use,” and the sixth section covers “technology control and information security.”

### **From Strategy to Policy**

As described in this paper, the Three Principles on Transfer of Defense Equipment and Technology of April 2014 and the Strategy on Defense Production and Technological Bases of June 2014 lay out the case for the transfer of defense equipment and technologies under Japan’s security strategy. However, although it is true that these two documents did streamline the defense technology transfer system and strategic reasoning for the administrative mechanisms for transfers, the government has yet to outline the policy itself. The National Security Strategy of 2013 stands as the basic framework for Japan’s security strategy, but it does not function as a guide to specific policy decisions, due to the nature of the document. In this regard, the NSC, MOFA, METI, and MOD need to institutionalize mechanisms through which the impact and implications of individual transfers of defense equipment and technologies can be assessed based on Japan’s comprehensive security interests.

In addition, issuing the documents should not be an end in itself; rather, the Japanese government must deal with yet un-answered issues. There are a number of administrative issues and political/societal issues they must address. Regarding administrative issues, the Japanese government must avoid an inter-ministerial battle between the government institutions involved. For example, defense equipment and technologies are under the administrative control of the FEFTL and associated regulations of METI, so in theory METI has licensing authority over those items and technologies, just like it has authority over dual-use technologies. METI defines the range and scope of defense equipment and technologies and lists them in their administrative order. Also, METI has the authority to conduct licensing based on their assessment of the end-user, end-use, and verification of third-party transfers. The question, then, is whether or not METI has the capacity to assess which defense equipment and technologies should be approved and which should be denied.

Some argue that MOD should weigh-in when it comes to defense equipment and technologies. However, MOD also lacks the knowhow to promote export controls in this realm, and they have to start from the very beginning of the process. A possible solution to this issue is for the two ministries to work to develop a cooperative relationship, and work toward establishing efficient ways to complement their strengths and weaknesses. As the technology-centric features in development and production of major defense equipment become increasingly important, dual-use technology will drastically increase in significance for defense technology production. Under these circumstances, solely relying on MOD’s assessment capacity will damage Japan’s industrial strength over civilian production. As such, some form of export control reform must be introduced in Japan, just as similar measures have been introduced in the United States.

Besides licensing issues between METI and MOD, the role of MOFA in defense transfers should be strengthened. Because defense equipment and technology transfer is conducted not just for maintenance and development of Japan’s defense industrial base, but also for security policy purposes, MOFA must control the direction and the content of the transfers. However, if we recall the Japan-India nuclear cooperation agreement debate in 2009, the Cabinet Secretary made a decision over MOFA’s

opposition that the agreement would work against Japan's nonproliferation and disarmament policy. This case indicates that MOFA's capacity to control the transfer of defense equipment and technology is limited, and can be overturned by the stronger political power of other government institutions. Therefore, how to locate and institutionalize MOFA's authority over control mechanisms might be another issue to be dealt with.

In this regard, Japan should establish a permanent council within the National Security Council or, preferably, the Prime Minister's Office (*Kantei*) to make decisions on arms trade and the direction of defense equipment development and production. The members of the proposed permanent council must come from business and academic, and be influential on technological and industrial policy. Just as the discussion of the U.S. Defense Science Board provides a broad sense of direction on technological policy of related government organizations, the council, too, must exercise influence through issuing guidance about defense technology and production policymaking for each ministry of the Japanese government.

As for a political/societal issues, there are several separate but interrelated questions. First, many outside observers' analyses of these two documents suggest a comprehensive relaxation of Japan's defense trade. Some businesspeople in defense companies, whom the author interviewed, complained that since the establishment of the new framework, business inquiries on defense-related items have increased dramatically. Aside from business and administrative questions of how to deal with those inquiries, policymakers and academics have to question whether comprehensive relaxation is really occurring, and whether inquiries should be welcomed.

As noted in this paper, the two documents did pave the way for the transfer of defense equipment and technologies, in both qualitative and quantitative terms. It is true that these principles and the strategy have put forward an opportunity, but the policies that govern the principles and the strategy have not yet been elaborated. Therefore, the Japanese government is still undergoing "soul searching" on what should be the appropriate transfer level based on security, policy, and economic interests. Although Japan made swift moves on defense cooperation with the United Kingdom, France, and Australia after these principles and strategies had been laid out, more difficult and delicate security and policy cases are likely to follow. Whether Japan has enough capability to assess and make such decisions is another issue to be addressed.

These debates must be conducted both to address the anxiety among the Japanese public on the development of the defense trade, and to relax tension among Japan's defense production companies, which are alarmed about facing public criticism. Inquiries must be properly handled through channels that are open and transparent and be judged based on strategically feasible decisions. In order to implement these decisions, the Japanese government should elevate the government consultative body. Furthermore, in order to support the government's decisions, there should be a network of government-related institutions that support marketing, risk analysis, post-shipment verification, and end-use monitoring. Considering the effect of globalization on defense production in individual countries, locating and tracking technological developments is necessary for future defense equipment production.

With regard to Japan's relationship with the United States, there are several issues that have to be sorted out. For example, production licensing will likely become an issue of public debate in Japan. The new principles clearly state that licensed production items can be transferred back to the United States, but the principles do not address the transfer of these items to third parties. It is true that if these items are transferred back, the decision to export and transfer them will be a U.S. decision, influenced by politics in

the United States. However, these issues are easy targets for the media, who often accuse the Japanese government of taking advantage of the first of the new principles to make indirect transfers to other countries. Those criticisms will not affect the administrative processes, but will likely affect other transactions due to their negative political implications.

Another issue related to the Japan-U.S. defense relationship is the third-party transfer issue. As is the case with jointly developed and produced defense items, the range of allied and friendly countries is different among defense partners. As we have seen in the case of ALGS for the F-35, although Japan has no formal defense relationship with Israel, it inevitably provides some items or technologies to Israel through the global logistical supply chain. It was fortunate for Japan in this case that the Japanese government has a positive relationship with Israel and is a trusted country in terms of domestic control measures. It is more likely that in the future the global supply chain will be further scattered and that many different partners may be included in such a chain. The extent to which the Japanese public can comprehend the changed nature of defense development and production, and defense cooperation itself, is yet to be tested.

### **Conclusion: Future Defense Cooperation Policy**

As noted above, Japan has merely changed the system and the strategies for defense cooperation, but many of the issues expected to arise in the coming years are totally new and it is extremely difficult to predict their outcome. In December 2014, MOD initiated another task force on the transfer of defense equipment and technology, which essentially discusses how to utilize new tools.<sup>23</sup> As for the new tools, Japan has ratified the Arms Trade Treaty, which came into effect in December 2014.

The Japanese government has multiple tools to deal with issues related to the transfer of defense equipment and technology. It now has to think positively and constructively, especially with the United States, on how to develop and formulate a policy that is flexible and adaptable to the changing strategic and technological circumstances.

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<sup>23</sup> “Task Force on Defense Equipment and Technology Transfer,” Ministry of Defense, <http://www.mod.go.jp/j/approach/agenda/meeting/sobi-gijutsuiten/gjjiroku/giji.html>.