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Advancing India's Rise as a Leading Power

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Japan's Security, Export Control and Arms Export Policy: Prospects for India-Japan Defence Cooperation

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List of Abbreviations

ACSA	Acquisition and Cross Servicing Agreement
ALGS	Autonomous Logistics Global Sustainment System
ASEAN	Association of Southeast Asian Nations
ATLA	Acquisitions Technology and Logistics Agency
BMD	Ballistic Missile Defence
CISTEC	Centre for Information on Security Trade Controls
COCOM	Co-ordinating Committee for Multilateral Export Controls
DPC	Defence Production Committee
ETCO	Export Trade Control Order
FEFTA	Foreign Exchange and Foreign Trade Act
FEO	Foreign Exchange Order
GDP	Gross Domestic Product
GSDF	Ground Self-Defence Force
IHI	Ishikawajima-Harima
IML	Industrial Mobilisation Law
IPCL	International Peace Co-operation Law
ITAR	International Traffic in Arms Regulation
JIMEX	Japan-India Maritime Exercise
JMSDF	Japan Maritime Self Defence Forces
JOA	Japan Ordinance Association
LDP	Liberal Democratic Party
MCI	Ministry of Commerce and Industry
METI	Ministry of Economy Trade and Industry
MITI	Ministry of International Trade and Industry
MOD	Ministry of Defence
MOFA	Ministry of Foreign Affairs
MTCR	Missile Technology Control Regime
NATO	North Atlantic Treaty Organisation
NCS	NATO Codification System

NDPG	National Defence Programme Guidelines
NSC	National Security Council
NSG	Nuclear Suppliers Group
NSS	National Security Strategy
ODA	Official Development Assistance
PASSEX	Passing Exercise
QUAD	Quadrilateral Security Dialogue
SCAP	Supreme Commander of the Allied Forces
SDF	Self Defence Forces
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNSC	United Nations Security Council
US	United States of America
WMD	Weapons of Mass Destruction

Executive Summary

On April 1, 2014, the Government of Japan issued "The Three Principles of Transfer of Defence Equipment and Technology". These principles lifted the ban on arms exports that Japan had imposed on itself in 1967 and 1976. The ban introduced in 1967 was destination-based, while the ban in 1976 placed outright curbs on arms exports. This paper is an attempt to understand the contours of these policies and to measure the extent of both the restrictions on export prior to 2014 and the changes introduced thereafter. The report also identifies the extent to which the bans of 1967 and 1976, and the lifting of the ban in 2014, were implemented. In addition, the paper tries to provide a detailed understanding of the legal basis of security, export control and arms export licensing in Japan, so as to provide an insight into the structural challenges facing Japan's defence industry and its export.

The report also provides some possible solutions to overcoming the challenges facing Japan as the latest entrant in the international weapons market. The larger aim is to identify the opportunities for strengthening India-Japan defence co-operation. The two countries can greatly benefit each other through such cooperation, as India is the second-largest arms importer in the world, while the Japanese defence industry faces an existential crisis unless it can accelerate its exports substantially.

The study finds that the root of the problem facing Japan's defence exports is the prevalent normative constraint imposed by its pacifist outlook. This pervades the export policy, the licensing regime, the legal framework, the mindset of the government, the bureaucracy, the industry players and the public in general. The fear of being branded as a "merchant of death" continues to prevent Japanese industry from increasing the share of arms in their manufacturing portfolio. However, the report also demonstrates that loopholes in policy and legal frameworks have allowed Japan to facilitate dual-use exports. India's greatest opportunity in the short-term lies in utilising Japan's dual-use export potential.

Apart from normative constraints, Japan's defence industry faces several other challenges. As a relatively new entrant in the international market, Japanese exporters are inexperienced and Japanese products lack the advantages that arise from being combat tested. Moreover, the lack of joint production has prevented Japanese products from achieving synergies which are prevalent in jointly produced advanced new-generation weapons.

The Japanese defence export arena is still at a very nascent stage, and in the long term, has huge growth potential. Japan's new Prime Minister Yoshihide Suga may soon sign an agreement with Vietnam that will allow Tokyo to export defence equipment and technology to Hanoi. India and Japan must also be ready to identify the potential of such new opportunities and use it strategically to strengthen the bilateral relationships in the current uncertain geopolitical environment of the Indo-Pacific.

Japan's Security, Export Control and Arms Export Policy: Prospects for India-Japan Defence Cooperation

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1. Introduction

Japan's arms export policy has been a subject of much interest across the world because of the unique ban Japan imposes on arms exports. Most countries have elaborate export controls, and outright bans are mostly destination-based, but Japan is the only country that until recently completely banned arms exports. What makes the ban perplexing is also the fact that Japan is known for its highly advanced defence technology and weapons. Japan also finds a rank in the world's top ten defence budgets, even though its defence budget accounts only for one per cent of its GDP. The ban does not derive directly from the pacifist clause of the Japanese Constitution. Instead, it is an extension of a pacifist mentality that has become part of the security identity of Japan. This paper seeks to provide an overview of Japan's arms export policy, the basic structure that regulates the larger export controls, Japan's policy on dual-use exports and an understanding of Japan's defence industry. The larger aim of the paper is to understand the challenges that Japan's arms export policy and defence industry face, and to find possible solutions to these challenges. The aim is also to look at possible avenues of cooperation between India and Japan in this arena.

Before delving deeper into the subject, a brief understanding of the context of this paper will be useful for the reader. On April 1, 2014, the Japanese government issued "The Three Principles of Transfer of Defence Equipment and Technology" (referred to as the New Three Principles from here on). These New Three Principles lifted the ban on arms exports that Japan had imposed on itself. This ban was first imposed in 1967 through the "The Three Principles on Arms Export" (referred to as the Old Three Principles from here on), which essentially provided details on the three categories of destinations to where arms exports from Japan were banned. This ban was extended to an outright ban on arms exports in 1976. Essentially, it is this outright ban and not the "Old Three Principles" that has been replaced by the "New Three Principles", despite the common belief otherwise. It must, however, be mentioned that all the above are policy guidelines and do not provide the legal basis for Japan's arms export policy. The legal basis is provided by the Foreign Exchange and Foreign Trade Act of 1949.

2. Evolution of Japan's Defence Industry and Export Controls

Japan had the status of being the biggest arms exporter in the world in the medieval period; it was responsible for supplying high-quality steel weapons to most of Asia[1]. This status was hampered by the feudal isolation of Japan or sakoku for over 200 years, and Japan stopped most of its trade with the external world.[2] In the mid-19th century, facing pressure from the West to open, there was an explosion of nationalism within Japan. Such nationalism was combined with an understanding that Japan needs to completely overhaul its economic system and borrow heavily from the West while retaining the Japanese essence. In the context of the defence industry, it meant borrowing Western military technology and perfecting it with Japanese inputs. This mentality is best exemplified in the prevalent idea of wakon yosai or Western technology/Japanese spirit.

Japan Air Self Defence Force F-15DJ produced under licence by Mitsubishi Heavy Industries. Source: Wikimedia Commons

[1] Noel Perrin, Giving up the gun: Japan's reversion to the sword, 1543-1879, (Boston: Godine, 1979)

[2] The Tokugawa shogunate imposed a policy of isolationism on Japan for 214 years from 1639 to 1854. During this period, all foreign trade and foreign relations were completely stopped. This ended when the American Mathew Perry forced Japan to sign the Treaty of Kanagawa in 1854.

Wakon yosai and Japan's defence industry took on a renewed spirit with the Meiji restoration of 1868 under the cry of Rich Nation/Strong army or fukoku kyohei. The Meiji spirit was about moving away from dependence on the West and increasing industrial productivity or shokusan kogyo. The result of this policy was Japan gaining tremendous self-sufficiency in war materials by the end of the century[3]. This is the beginning of what is called kokusanka or autonomous defence production. This was accompanied and facilitated by the zaibatsu conglomerates which came about in this period specialising in war materials. The 1870s saw the establishment of Mitsubishi, Kawasaki and Ishikawajima-Harima (IHI), who remain the top Japanese defence contractors to the present day.

The process of developing a strong defence industry was also tremendously aided by the First World War, which immensely benefitted the Japanese defence industry by creating a huge market for the export of Japan's defence production. The military was becoming more powerful, and the Industrial Mobilisation Law (IML) was passed in 1918, which gave the government the authority to regulate industry during the war. Soon, the military took complete control over industry and general administration in Japan, leading to a further strengthening of the defence industry.

However, soon the military and the militarists had taken complete control of the situation. All of this culminated in the Second World War and Japan's defeat and surrender.

After the disastrous end of the war, the allied forces under the Supreme Commander of the Allied Forces (SCAP) took over. The entire war machinery and industry were dismantled under the terms of the Paris Peace Conference. The pacifist terms introduced through Article Nine in the Japanese Constitution made Japan give up the right of belligerency as a means of resolving international conflicts, as part of which Japan was not to have a navy, army or air force or maintain any war potential.[4] Under the post-surrender

[3] Green, M. J. (1995). Arming Japan: Defence production, alliance politics and the post-war search for autonomy. New York: Columbia University Press.

[4]Article Nine of the Japanese Constitution states that,

1. Aspiring sincerely to international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes.
2. In order to accomplish the aim of the preceding paragraph, land, sea and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognised.

policy and Potsdam Declaration, Japan was allowed to maintain an industry only to be able to pay for reparations, and arms production was not allowed.[5]

However, as the winds of the Cold War began to start blowing, the United States soon realised that Japan would serve as a very easy Soviet target if left without any means to defend itself and without any military potential. Japan was also to serve as a valuable American base in Asia. Thus, the United States shifted to what has been famously called the "reverse course" or the gyaku kosu starting in 1949.[6] As part of the reverse course, the SCAP and the Ministry of Commerce and Industry (MCI) were made in charge of the reconstruction of Japan's defence industry. The MCI wanted a model that would facilitate something like the pre-war kokusanka, while Prime Minister Yoshida Shigeru and his supporters in the Liberal Democratic Party (LDP) advocated an economic model led by light industries and greater importance to the US-Japan alliance rather than self-sufficiency. However, in 1949, the Foreign Exchange and Foreign Trade Act (FEFTA) was enacted to regulate Japan's exports because of the fear that Japan could export to the Soviet Union.

The reverse course came fully into force with the beginning of the Korean War in 1950, and all restriction on arms production and export was unofficially lifted. The Korean War provided a much-needed boost to the Japanese defence industry. In March 1952, the official restriction on the production of arms was officially lifted; this was soon followed by the end of the allied occupation of Japan in the same year. By 1952, with the establishment of the Defence Production Committee (DPC) and the Japan Ordnance Association (JOA) or Nihon Heiki Kogyokai, the mechanism for the sustained push for autonomous defence production and the defence industry was ready in Japan.[7]

The debate on the nature of Japan's defence industry revolved around the issue of kokusanka versus reliance on the United States. Michael Green (1995) expertly summarises the arguments that those in favour and those against kokusanka used. It was primarily a dilemma of balancing the fear of entrapment versus abandonment by the United States.[8] Throughout the Cold War years, attempts by Japan through autonomous defence production was to have enough autonomy not to be completely dependent on the United States and

[5] Samuels, R. J. (1994). Rich Nation, Strong Army: National Security and the Technological Transformation of Japan. Ithaca and London: Cornell University Press.

[6] ibid

[7] The Japan Ordnance Association went on to become the Japan Defence Equipment Industry Association or the Nihon Boei Sobi Kogyokai.

[8] Green, M. J. (1995). Arming Japan: Defence production, alliance politics and the post war search for autonomy. New York: Columbia University Press.

yet not so self-sufficient that Washington might feel threatened and the alliance relationship would be affected.[9]

The crux of the pro-kokusanka debate was that defence production and export could be a very profitable venture and just like the Korean War provided one of the most significant boosts to the Japanese economy, this could continue to benefit Japan. This kind of argument is what Richard Samuels (1994) calls 'technonationalism'. He defines technonationalism as "the belief that technology is a fundamental element of national security, that it must be indigenised, diffused, and nurtured in order to make a nation rich and strong."

Arguments against kokusanka revolved around the pacifist culture of Japan. The core of the opposition was straightforward – an autonomous defence industry would come dangerously close to maintaining war potential, thus violating Article Nine of the Constitution of Japan. This was a compelling argument that fed into the fears of not just the pacifist population, the leftist opposition to the LDP but also the Pacifist and pro-alliance faction within the LDP led by Prime Minister Yoshida. The second general argument was that it would reduce the capability for independent economic and political action. The early decades of the Cold War years proved sufficiently that the "normalisation" of Japan's economic activities depended a great deal on the security assurance provided to Japan within the alliance. Thirdly, technological and economic competition with the United States would increase the possibility of abandonment. This is because it would fuel the fears in the United States that Japan might overtake the United States while the US continued to pay for its security and, therefore, it would be better to abandon the alliance. Finally, an interesting point to be understood with regard to kokusanka was that while autonomous defence production would have its advantages, it would also prove to be very expensive and divert funds from other areas of the military and in all likelihood, reduce military efficiency, ironically increase the reliance on the United States and render the whole exercise futile.

The kokusanka debate shaped the defence industry of Japan in the Cold War era; the industry developed to be strong enough to make Japan autonomous while not strong enough to make the Japanese defence industry meet global standards. But despite the constraints of Article Nine, Japan succeeded in having a defence industry. Scholars like Andrew Oros have argued that sacrificing arms export was a compromise Japan made to ensure it at least had a defence industry.[10] The debate around having an autonomous defence

[9] ibid

[10] Oros, A. (2010). Normalizing Japan: Politics, identity, and the evolution of security practice. Stanford, CA: Stanford University Press.

industry itself was so intense that perhaps arms export would have cut it too close to the bone. However, this defence industry faced other structural challenges due to restrictions on exports and continued to cater to its only customer, the Japanese government and the Self Defence Forces (SDF).

The kokusanka debate provides the broader context to Japan's first ban on arms exports imposed in 1967 by Prime Minister Eisaku Sato. Before this ban, Japan's arms export was regulated by the FEFTA and other multilateral regimes that Japan became part of, such as the Co-ordinating Committee for Multilateral Export Controls (COCOM).[11] Japan's first weapons export after the end of the occupation was 37mm shells to Thailand in 1953.[12] Japan also exported to Burma, Indonesia, Taiwan, South Vietnam, Brazil and the United States.[13] Japan was only exporting small arms and ammunitions during this period, because Japan's reformed defence industry was capable of only that, and not because of the ban.

Soon after the end of the Korean War, another external war, the Vietnam War significantly shaped the destiny of Japan. Several Japanese companies obtained massive weapons contracts from the US for supplying in the Vietnam War. This raised immense concerns about Japan's involvement in the war.[14] The concern was so large that even the use of non-military Japanese goods by Americans in Vietnam made the Japanese public unhappy. Akio Morita, the head of Sony electronics, rendered a public apology when it was revealed that Sony cameras were being used to guide American missiles in Vietnam. He apologised saying he was not aware of such usage of Sony video cameras.[15] These developments were the immediate circumstances that led the LDP government of Prime Minister Eisaku Sato to declare the arms export ban in the form of "The Three Principles of Arms Export" in the year 1967.

Apart from the Vietnam War, the US policy towards Okinawa and the prospect of returning Okinawa to Japan also indirectly affected the problem of arms export. The United States was trying to continue to use Okinawa as a base for

[11] Japan became part of the precursor to COCOM in 1949, as part of which exports to the Soviet Union was restricted. In 1952 Japan, became a formal member of the COCOM. COCOM was a multilateral regime that placed embargoes on eastern bloc countries.

[12] Sakuragawa Akiyoshi, '武器輸出禁止に関する日本の政策：武器輸出の三原則に関する食事療法の議論 (Japan's Policy on Prohibiting Arms Export: Diet Debate on Three Principles of Arms Export), Kokusai Seiji, vol. 108

[13] ibid

[14] Edgar, A. D., & Haglund, D. G. (1992). Japanese defence industrialization. Kingston, Ont.: Centre for International Relations, Queens University.

[15] Oros, A. (2010). Normalizing Japan: Politics, identity, and the evolution of security practice. Stanford, CA: Stanford University Press.

US forces even after returning it to Japan, and this raised concerns in Tokyo about further erosion of Japan's commitment to pacifism as enshrined in the Constitution. This fear also brought to light the issue of arms export.[16] The enactment of the three principles just three months after the lower house election was a way for the LDP to signal to the public that they could reassure their concerns about security issues. The LDP found it to be suicidal to be labelled as anti-pacifist and anti-constitutional in the political climate of the time.[17]

US President Richard Nixon and Japanese PM Eisaku Sato, meeting at the White House in 1969. Source: Associated Press

2.1 The Three Principles of Arms Export, 1967

According to the Three Principles of Arms Export issued in 1967, arms exports to the following countries was not permitted:[18]

[16] ibid

[17] Sato, H. (2015). Japan's Arms Export and Defense Production policy. Center for Strategic & International Studies (CSIS)

[18] The full text of the Three Principles of Arms Export 1967 can be found at https://www.mofa.go.jp/policy/un/disarmament/policy/index.html

1. communist bloc countries
2. countries subject to the arms export sanctions under the United Nations Security Council Resolutions
3. countries involved or likely to get involved in international conflicts

Under the old three principles, it is safe to say that Japan strictly adhered to the first and second principles. However, adherence to the third principle is not that immaculate. Japan's involvement in the Vietnam War was quite significant. The Japanese business world earned more than a billion dollars annually from direct and indirect procurement for the war.[19] The three principles forbid the export of arms to Vietnam, because, according to the third principle, it was a country involved in an international conflict. However, Japan continued to export arms to Vietnam using loopholes such as dual-use and justification as civilian use. Nevertheless, Japan did not officially export "arms" to Vietnam once the conflict started (the last official export of arms to Vietnam was in 1954). Instead, Japan was exporting to Thailand, which was in-turn exporting to Vietnam. Japan was also exporting to the Philippines between 1967-76, which, along with Thailand, was a participant in the Vietnam War. Thus, Tokyo violated its third principle.

2.2. Extension of Arms Export Ban in 1976

The period beginning from the 1970s was a time when the LDP was struggling to maintain its dominance when the country was reeling under economic hardships created by the Nixon shocks. On February 27, 1976, Prime Minister Takeo Miki's cabinet issued what it called "the government's unified view on arms exports" to the House of Representatives budget committee; it was read out by the Prime Minister.[20]

The 1976 policy guidelines issued extended the previous ban by stating that "arms exports to other countries not included in the three principles of 1967 will also be restrained." He also prohibited the export of weapons-related technology. This is essentially the policy that governed Japan's arms export until 2014 when the ban was lifted.

[19] Havens, T. (1987). Fire across the Sea: The Vietnam War and Japan 1965-75. Princeton: Princeton University Press.

[20] Keichiro, T. (2011). *Bukiyushutsusangensoku – sono genkyō to minaoshi rong (Three principles for arms export – Current status and review discussion). Tokyo: National Diet Library.

The policy guidelines came about due to public protests against the possible sale of C1 military transport aircraft to the Middle East and Latin America.[21] The Ministry of International Trade and Industry (MITI) Minister Toshio Komoto had also expressed his readiness to sell the military transport aircraft US-1, in which China had shown interest.[22] Thus, the strengthened new arms export ban can be understood as a way of appeasing voters before the then-upcoming lower house elections. The 1976 Cabinet order stated that Japan had decided,

a. not to permit the export of arms to countries and regions banned in the three principles
b. to refrain from arms export to other areas not included in the Three Principles in conformity with the spirit of the Japanese Constitution and Foreign Exchange and Foreign Trade Law,
c. to treat equipment for arms production in the same category as arms

It is noteworthy that the use of the term "refrain" created a lot of ambiguity and confusion; however, it did continue to maintain the myth of a complete ban.[23]

The next major development came in November 1983 when Prime Minister Yasuhiro Nakasone began to erode these principles when he signed an Exchange of Technology Agreement between the United States and Japan. It allowed for the export of military technologies to the US as an exception and on a case-by-case basis. This was the first major notable exception made to the arms export ban by Japan. It was also one of the 21 exceptions made to the arms export principles through various cabinet statements.

In 2004, the government moved to breach the ban to enable co-development with the US of the Ballistic Missile Defence (BMD) programme. This was another significant exception to the ban.[24] The argument given was that the BMD was necessary for the smooth functioning of the US-Japan alliance and hence, the defence of Japan.

In March 2005, Japan decided to provide two patrol vessels to Indonesia to fight piracy in the Strait of Malacca. These were unarmed vessels and, therefore, the

[21] Edgar, A. D., & Haglund, D. G. (1992). Japanese defence industrialization. Kingston, Ont.: Centre for International Relations, Queens University.

[22] Drifte, R. (1986). Arms Production in Japan: The Military Applications of Civilian Technology. New York: Routledge.

[23] Sato, H. (2015). Japan's Arms Export and Defense Production policy. Center for Strategic & International Studies (CSIS)

[24] The Asahi Shimbun, "Good Ally of US: 40-year Arms Ban Eased for Missile Defense", December 11, 2004, http://www.asahi.com/english/politics/TKY200412110179.html

government decided that they will not violate the arms export ban.[25] This was the first instance of the government offering patrol vessels to a developing country free of charge under the ambit of Official Development Assistance (ODA) to fight piracy.

In 2006, both the United States and Japan agreed that interceptor missile or its technology being jointly developed by them would not be used for other purposes or sold to third countries without the prior approval of both the countries.[26] In 2009, Japan made another exception by transferring equipment to assist the SDF in anti-piracy operations in the Gulf of Aden.[27] Another exception made in 2011 dealt with supplying the Philippines Coast Guard with patrol boats in 2011 under the ODA mechanism.[28]

The 2010 National Defence Programme Guidelines (NDPG) did not mention anything about the removal of the ban. By 2010, however, the demand from the United States and from within Japan to lift the ban became very strong. This is because joint development and production of interceptor missiles had begun and each unit of the interceptor missile involved Japanese technology or equipment, making it difficult for the United States to export to third countries like the ones in Europe if the ban remained.

In 2011, Guidelines for Overseas Transfer of Defence Equipment was issued in a statement by Chief Cabinet Secretary.[29] This allowed for some more cases, which also became exceptions to the arms export ban. Through the guidelines, Japan sought a more proactive contribution to international security, improvement in the performance of its defence equipment and progress in the alliance with the US and its other partners. The government subjected all transfers to strict controls, and consent was required to ensure that these would not be used for purposes beyond the intended one. It was also not be re-exported to third countries to ensure that transfers benefit Japan's security and that they would not be used to aggravate international conflicts. In 2012, Japan

[25] Japan's Official Development Assistance White Paper (2006), https://www.mofa.go.jp/policy/oda/white/2006/ODA2006/html/honpen/hp202040400.htm

[26] The Guardian,US to deploy interceptor missiles in Japan, June 26, 2006 https://www.theguardian.com/world/2006/jun/26/japan.northkorea

[27] 防衛装備の海外移転の許可の状況 に関する年次報告書, METI Status of Permission for Arms Export, 2017

[28] Ibid

[29] ATLA, Defence Equipment and Technology Co-operation https://www.mod.go.jp/atla/index.html

entered into an agreement with the UK to decide what kind of defence equipment they could develop jointly.

As Shinzo Abe came to power, he started making very decisive changes to the export ban policy. One of the first moves was announcing Japan's participation in the Autonomous Logistics Global Sustainment System (ALGS).[30] ALGS is an international supply chain management group for countries that deploy the F-35 joint strike fighter platform to ensure the mutual provision of parts. Participation in the group ensured the ability to export to several countries while following strict control on third party exports to countries outside the group.

JMSDF Izumo Class Warship. Source: Reddit

The next shift came when GSDF supplied 10,000 rounds of ammunition to South Korean military peacekeepers deployed in South Sudan to protect refugees.[31] This is covered in the International Peace Co-operation Law (IPCL) that governs this situation, although the Diet had repeatedly said it would not allow for such a situation. It also meant that Japan was supplying to a state arguably involved in an international conflict. This was followed in 2013 by the

[30] 防衛装備の海外移転の許可の状況 に関する年次報告書,METI status for permission of arms export, 2019

[31] Hughes, C. (2015). Japan's Foreign and Security Policy under the 'Abe Doctrine' – New Dynamism or New Dead End. London: Palgrave Macmillan.

Japan-UK Defence Agreement on joint research, development and cooperation on weapons and initiated cooperation on chemical and biological defence capabilities.

In December 2013, a National Security Strategy (NSS) was issued for the first time in Japan under the auspices of the newly established NSC. The NSS provided the mandate for the 2014 policy change that was to come.[32] It stated that defence equipment and technology cooperation should become mainstream in Japan's security activities and ensure proactive contribution to peace.

Finally, in 2014, the ban was overturned entirely in the form of the "The Three Principles on Transfer of Defence Equipment and Technology".[33] This was a cabinet decision and not legislation. These new guidelines allowed for export of all forms of weaponry under the supervision of the NSC, albeit, with limited restrictions. This was followed by the more detailed Implementation Guidelines on the Three Principles issued by the National Security Council (NSC).[34] Thus, the 2014 guidelines changed the status of arms exports in Japan from limited exceptions to the ban on arms exports to limited restrictions on the export of arms.

2.3 The Three Principles on Transfer of Defence Equipment and Technology, 2014

Principle I:

Transfer of defence equipment and technology will not be permitted when

a. it violates treaties and other international agreements that Japan is part of
b. it violates the obligations under the UN Security Council Resolutions
c. the destination is a country party to a conflict (a country against which UNSC is taking measures)

[32] The extract from the NSS that was a prelude to the 2014 policy can be found in Appendix I.

[33] The Cabinet order on the Three Principles of Defence Equipment and Transfer can be found at https://www.mofa.go.jp/files/000034953.pdf

[34] The Implementation Guidelines to the Three Principles of Defence Equipment and Technology by the NSC can be found on https://www.mofa.go.jp/files/000121050.pdf

Principle II:

Transfers will be permitted under strict examination and information disclosure when it contributes to the active promotion of peace and international cooperation, or to Japan's security and activities of the SDF.

Cases that require the careful consideration of the NSC will be examined at the NSC. As far as these cases are concerned, the government will disclose this information in accordance with the Act on Access to Information Held by Administrative Organs.

Principle III:

Ensuring appropriate control regarding extra-purpose use or transfer to third parties: In cases satisfying Principle II, overseas transfer of defence equipment and technology will be permitted only in cases where appropriate control is ensured. More concretely, the Japanese government will, in principle oblige the government of the recipient country to gain its prior consent regarding extra-purpose use and transfer to third parties. However, appropriate control may be ensured with the confirmation of control system at the destination in such cases as those where the transfer is judged to be appropriate for active promotion of peace and international cooperation, when the transfer involves participation in an international system for sharing parts, etc., and when the transfer involves the delivery of parts, etc., to a licenser.

3. Structure of Export Control in Japan

The legal basis for export control is provided by FEFTA. This has not been changed by any of the policy guidelines on arms export, including the one in 2014. Article 48 of FEFTA deals with controlled good, and Article 25 deals with controlled technologies. The list of these controlled goods and technologies is provided in two supporting cabinet orders. The Export Trade Control Order (ETCO) pertains to controlled goods covered under Article 48 of FEFTA. The Foreign Exchange Order (FEO) pertains to controlled technologies under Article 25 of the FEFTA. Appendix 1 of the ETCO provides a list of controlled goods.[35] Figure 1 shows a contracted version of this list. The controlled goods include all those in categories 1 to 16. The "Three Principles of Defence Equipment and Transfer" of 2014 pertain only to "defence equipment and technology" and to the "transfer of facilities related to arms production". This is the same as "arms and military technology". In this case "Arms" refer only to

[35] Find the translated text of ETCO and the full Appendix 1 list at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=2850

items in Category 1 of Appendix 1 of ETCO (refer to Figure 2 for an expanded list of items within the category of arms). And "military technology" refers to the list under FEO. Therefore, in Figure 1, only category 1 pertains to restrictions under the "Three New Principles". Those items included in category 2-15 are also controlled items and come under regulation through the FEFTA. Category 16 includes non-controlled items, the details of which is explained in later sections.

Figure 1: Compressed List of ETCO Appendix 1 showing Controlled Goods, borrowed from CISTEC website.

The controlled items

Japanese category	Type of control	Classification of the items			International regimes
1	List control	Military items	Arms		WA/ML
2		Dual-use items	WMD-related	Nuclear items	NSG
3				Chemical weapons	AG
3-2				Biological weapons	AG
4				Missiles	MTCR
5			Conventional arms-related	Advanced materials	WA Cat. 1
6				Material processing	WA Cat. 2
7				Electronics	WA Cat. 3
8				Computers	WA Cat. 4
9				Communication/information security	WA Cat. 5
10				Sensors and lasers	WA Cat. 6
11				Navigation/avionics	WA Cat. 7
12				Marine	WA Cat. 8
13				Aerospace/propulsion	WA Cat. 9
14				Other ML items	Except for WA/ML
15				Sensitive items	WA very sensitive
16	Catch-all control	Items other than those under categories 1–15			

Source: http://www.cas.go.jp/jp/seisaku/hourei/data/ETCO.pdf

The arms export policy and the new three principles of arms export pertain to the items listed in category 1 of ETCO Appendix 1. The items under "arms" can be found in Figure 2. These items have to be used by military forces and directly employed in combat to be qualified as arms or arms technology under the three new principles.[36] This means that if an item in this category is not used by the military and directly employed in combat, it will not fall within the ambit of the Three Principles. An example will be guns for hunting. It also means that if it is an item used by the military in combat but is not included in the list, it will not come within the ambit of the Three Principles. The new Three Principles also include "defence technology", which has been defined as technologies for the

[36] Refer to footnotes 33 and 34.

design, production or use of arms. The list and specifications for this are included in the FEO Appendix 1.[37] Dual-use items and technologies that fall outside the purview of the new Three Principles fall under the ambit of the FEFTA. However, even those that fall under the purview of the new Three principles will have to go through the licensing mechanism specified by FEFTA.

Figure 2: Category 1 of ETCO Appendix 1 – Category of arms applicable to the Three Principles of Defence Equipment and Transfer, 2014

Category 1. Arms			
(1)	Firearms, ammunitions	(10)	Anti-submarine and torpedo nets
(2)	Explosives, explosive dispensers	(11)	Armor plates, military helmets, body armors
(3)	Propellants, military fuels	(12)	Military search lights
(4)	Stabilizers for explosives and propellants	(13)	Military bacterial agents, chemical warfare agents, radioactive materials, etc.
(5)	Directed energy weapons	(13-2)	Chemical mixtures for decontamination of the above materials
(6)	Kinetic energy weapons and projectiles	(14)	Biopolymers for chemical agents, etc.
(7)	Military vehicles, bridges, etc.	(15)	Equipment and devices for the production and testing of military propellants
(8)	Military vessels, etc.	(16)	Equipment for the production and testing of weapons
(9)	Military aircraft, etc.	(17)	Military satellites

Source: http://www.cas.go.jp/jp/seisaku/hourei/data/ETCO.pdf

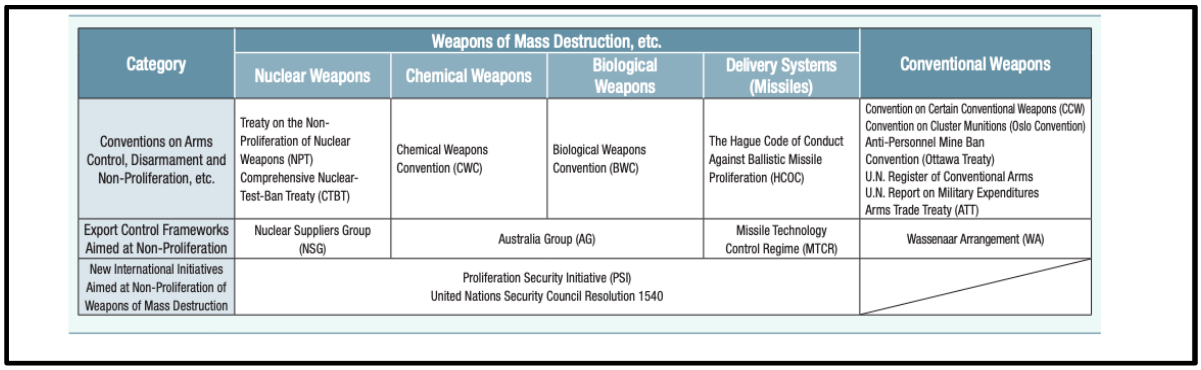
If an article or technology to be exported falls under the category of "arms" or "arms technology" (referred to as the product under the three principles), the application for a license will still have to be submitted to the Ministry of Economy Trade and Industry (METI). This is because the legal basis for the Three Principles continues to be governed by FEFTA, which falls under the purview of METI. METI will then examine whether it is permitted under the three principles. To do this, METI will refer to the three principles and the detailed operational guidelines on the Three Principles provided by the NSC. It will first examine whether the product under the three principles are prohibited

[37] Find the English Translation of Foreign Exchange Order here, http://www.japaneselawtranslation.go.jp/law/detail/?id=3383&vm=02&re=02

under the first principle, which lists the cases where the product will be prohibited.

The first case under the first principle (ban on transfer of defence equipment and technology if it violates treaties and other international agreements that Japan is part of) does not clarify whether Japan is only referring to arms control and proliferation-related treaties. However, other documents such as the Defence of Japan published by the Ministry of Defence (MOD), provides examples of these treaties, which includes arms control and proliferation treaties, in which Japan is a signatory. Japan is a signatory to all major international arms control treaties and regimes. The list provided by MOD can be found in Figure 3. This is a new addition to the older three principles.

Figure 3: List of International Arms Control Regimes and Treaties Japan is part of (Defence of Japan, 2019)



Category	Weapons of Mass Destruction, etc.				Conventional Weapons
	Nuclear Weapons	Chemical Weapons	Biological Weapons	Delivery Systems (Missiles)	
Conventions on Arms Control, Disarmament and Non-Proliferation, etc.	Treaty on the Non-Proliferation of Nuclear Weapons (NPT) Comprehensive Nuclear-Test-Ban Treaty (CTBT)	Chemical Weapons Convention (CWC)	Biological Weapons Convention (BWC)	The Hague Code of Conduct Against Ballistic Missile Proliferation (HCOC)	Convention on Certain Conventional Weapons (CCW) Convention on Cluster Munitions (Oslo Convention) Anti-Personnel Mine Ban Convention (Ottawa Treaty) U.N. Register of Conventional Arms U.N. Report on Military Expenditures Arms Trade Treaty (ATT)
Export Control Frameworks Aimed at Non-Proliferation	Nuclear Suppliers Group (NSG)	Australia Group (AG)		Missile Technology Control Regime (MTCR)	Wassenaar Arrangement (WA)
New International Initiatives Aimed at Non-Proliferation of Weapons of Mass Destruction	Proliferation Security Initiative (PSI) United Nations Security Council Resolution 1540				

Source: Defence of Japan-2019, MOD Website

The second case under the first principle, where it is prohibited, is the same as the second principle under the older three principles and no changes have been made. The third case under the first principle, where arms export is prohibited, has made an important addition. The older principles said that exports would be prohibited to countries involved in international conflicts, but the new principles state that exports will be prohibited to countries involved in those international conflicts against which the UNSC has taken measures.

Once the product to be exported clears the scrutiny of the first principle, the second principle is applicable. The second principle mentions the cases where export is permitted. The first scenario under this is when the transfer ensures the active promotion of peace and international cooperation. The recipient, in this case, has to be a foreign government or a UN organisation or organisations conducting activities based on a UN resolution. This is very important as this essentially rules out exports to private entities. The second scenario under this

principle where the transfer may be permitted is if it contributes to Japan's security. This will include international joint development and production with the US and other allies, enhanced defence and security cooperation with allies and partners, and support to activities of the SDF. Joint development and production with the US is not a new addition; it was introduced as an exception to Japan's arms export policy in 1983 and 2005. Enhancing defence cooperation and security and supporting activities of the SDF have detailed scenarios mentioned in the implementation guidelines to the three new principles[38]. Masataka Morimoto explains how the implementation guidelines, disguised as the detailed guidelines,[39] have in fact added new cases where transfers are allowed. The NSC designs the implementation guidelines, and these can be updated when required. This means that the nature of the three principles could look very different in the future.

After the export item has passed the scrutiny of the first two principles, it will be examined based on the end-use, and the destination of the export. This also involves assessing the security impact the transfer may pose to Japan. The security impact will be ascertained by considering the nature, technical sensitivity, use, quantity and form of the defence equipment and technology.

According to the third principle, a transfer will be permitted only where appropriate control is ensured with regard to extra-purpose use and transfer to third parties. The government of the recipient country has to seek prior permission from Japan for extra purpose use and third-party transfer. The operational guidelines also list other circumstances where appropriate control at the destination may be ensured. In order to confirm the control system, the government of Japan will need a document or certificate issued by the recipient government or person responsible. In case the Government of Japan finds out that the equipment or technology is not appropriately controlled after a transfer, the government will take strict measures against the person in Japan responsible for the transfer.

As mentioned before, METI is responsible for examining an application for export and whether it falls under the ambit of the three principles. But when these cases require special consideration, careful deliberation of the appropriateness of destination, the extent of security concerns, or when the type of case has never been deliberated by the government before, the application will be deliberated by the NSC. Those cases deliberated by the NSC

[38] Refer to foot note 34

[39] Masataka Morimoto(2014), 防衛装備移転の慣行を検討する, Analysis of the Practice of Defence Equipment Transfer, CISTEC

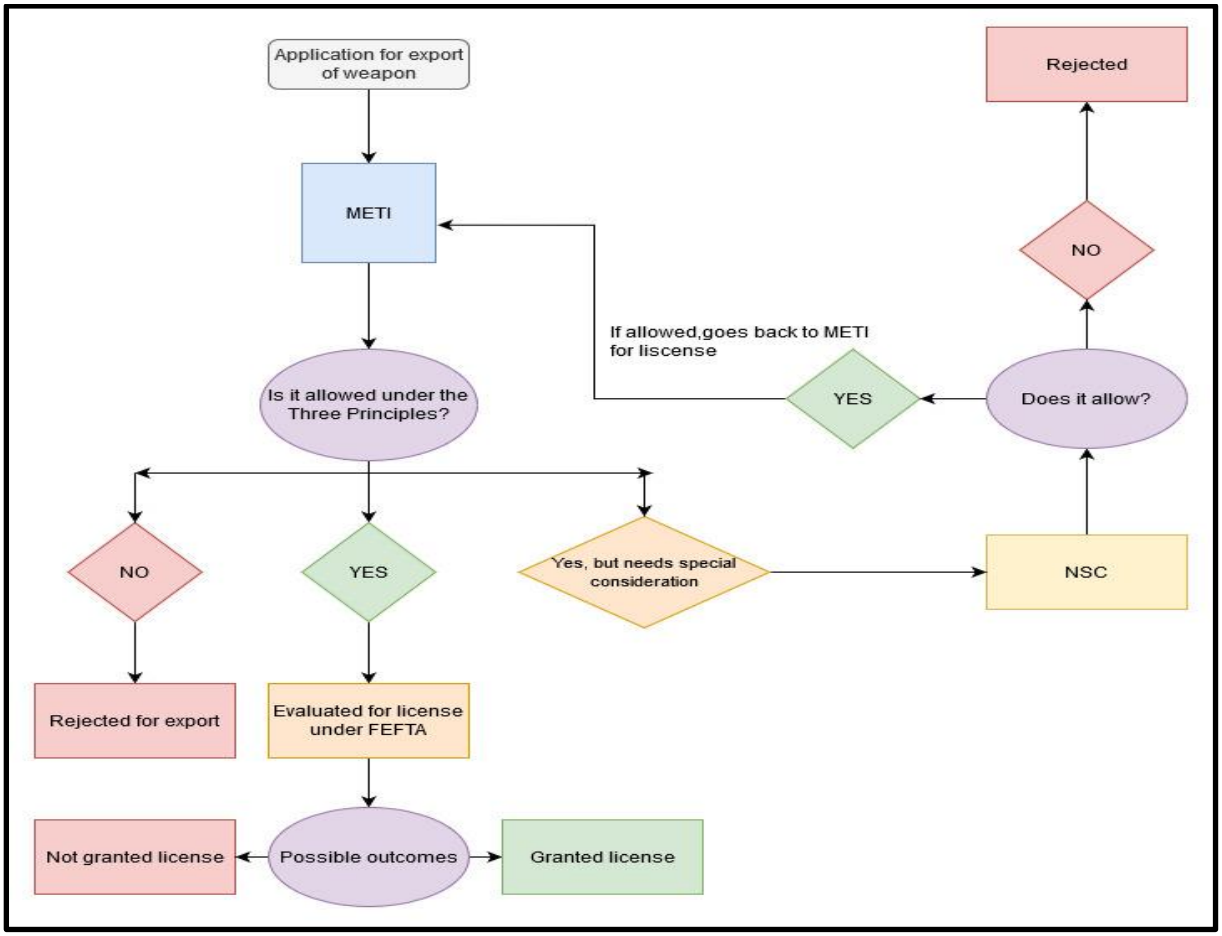
have to be published by the government. Table 1 gives a list of cases approved by NSC. The process has been explained in the flow chart (Figure 4).

Table 1: List of Cases approved by NSC

Special Cases Deliberated upon and Approved by the National Security Council (NSC)			
	Case	Destination	Date
1	Aegis system software and parts	USA	July 23, 2015
2	TC-90 Aircraft to the Philippines	Philippines	September 6, 2016
3	Patriot PAC-2 parts (seeker gyroscope)	USA	July 17, 2017
4	Seeker gyroscope technical information for Joint Research	UK	July 17, 2017
5	Relocation of F100 engine parts to the US	USA	December 18, 2017
6	Transfer of warning and control radar	Thailand	July 20, 2018

Source: METI website

Figure 4: Flow chart showing the process of arms export approval process in Japan.



4. Licensing for Export

METI provides a licence for the export of controlled items under the FEFTA. Even if a weapon or weapon technology is permitted for export under the Three Principles, it will require a licence for export under FEFTA. Even dual-use products that do not fall in the list of items in Category 1 of Appendix 1 of ETCO (Refer to Figure 1 and 2), and Appendix 1 of FEO, require a licence for export. The products that fall under Category 2 to 16 are considered dual-use or general-purpose products that are subject to licence (refer to Figure 1).

Under the FEFTA, exports are subject to control when they pertain to the following four categories:

1. Export of goods
2. Export of technology
3. Transhipment of goods
4. Brokering transactions related to goods or technologies

The product or technology to be exported could require one of two types of licences. The first is list-control licence; this is an item or list-based control. The second is a catch-all control, which is end-user or end-use based. The items in category 1 to 15 of Appendix 1 of ETCO are subject to a list control, while items in category 16 are non-controlled items but are subject to catch-all control. All the items in this list pertain to the lists of major international export control regimes – Nuclear Suppliers Group (NSG), Australia Group, Wassenaar Agreement, Missile Technology Control Regime (MTCR), and Chemical Weapons Convention. Items in category 16 are non-controlled items, but Japan declared them to be subject to WMD catch-all control in 1996 and conventional weapons catch-all control in 2008.[40]

Under the WMD catch-all control, the exporter has to obtain a licence, if METI asks the exporter to do so, or if the exporter becomes aware that the product will be used for the development, manufacture or storage of WMD; or if the end-user is part of the end-user list. All countries are subject to the WMD catch-all control except 27 countries listed in FEFTA.[41] METI also publishes an end-user list, which currently lists 527 entities in 11 countries and regions. These

[40] FEFTA was amended in 1996 to include WMD catch-all control, and in 2008 to include Conventional Weapons Catch-all Control

[41] Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, South Korea, Luxemburg, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the UK and the USA.

counties are India, Iran, North Korea, Pakistan, China, Syria, UAE, Afghanistan, Taiwan, Israel, and Hong Kong. There is also a commodity watch list applicable under this control which lists specific dual-use items subject to control.

Under the military catch-all, items destined for UNSC arms embargo, and all non-controlled items (except for wood, timber, etc.) are subject to licensing under this category should the exporter be aware that the product could be used for the development, manufacture or for conventional military weapons. This currently includes Afghanistan, Central Africa, Democratic Republic of Congo Cote d'Ivoire, Eritrea, Iraq, Lebanon, Liberia, Libya, North Korea, Somalia, and Sudan.

Regarding technology, arms-related technology if permitted under the Three Principles, is subject to list control. Controlled technology (not necessarily arms-related) as defined by Article 25 of the FEFTA also requires a licence if it fulfils certain criteria based on the residency of the exporter and importer. Controls are also in place when there is brokering or transhipment of arms or arms-related technology or if the broker finds out that the product could be used for the development, manufacture or use of WMDs.

5. Dual-use Exports

Japan is one of the world's largest dual-use technology exporters. This is primarily because arms and arms technology were prohibited and to be considered "arms", a product has to be listed in the ETCO (1)(1) list; it also has to be used by the military and in direct combat. This automatically meant that even if there was one single civilian use displayed, the product or technology could be exported.

Secondly, only items listed as category 1 of ETCO are defined as arms, the controlled items from category 1 to 15 are dual-use items; this includes nuclear, biological and chemical weapons ingredients and even missiles. These are all controlled items and subject to a list control, and subject to international agreements. The non-controlled items in category 16 and anything else that is not food or timber are subject to WMD and military items catch-all control. However, this in Japan is governed by the "know condition", meaning that if the exporter knows that the end-user will use it for WMD or conventional weapons, the item is subject to licensing. This puts the onus on the exporter; however, it is impractical to expect domestic industries to have information of this nature. And the exporter can always claim that he did not "know" if later the product was found to be used for WMD or conventional weapons.

6. Japan's Dismal Record of Arms Export since 2014

Despite the hype about Japan lifting its arms export ban, not much has changed since 2014. Table 2 shows that total export cases have been declining from 2016 to 2018, but this is certainly a very short period to ascertain a trend. Even within the cases approved, almost 90 per cent of the exports pertain to temporary export of equipment, the return of purchased equipment and provision of technical equipment related to the activities of the SDF. Moreover, most of the exports are directed towards the United States. The cases approved by the NSC (listed in Table 1), which are cases for which Japan has no precedent in the past, are also minimal and mostly include equipment parts except the export of TC-90 aircraft to the Philippines. This is significant because it means Japan has not been doing anything different since 2014.

Japan's Soryu Class Submarine. Source: Baird Maritime

The two major deals of transferring the US-2 amphibious aircraft to India and the soryu class submarines to Australia did not take off. A deal with the UAE, which approached Japan for buying Japan's C2 aircraft, also did not take off. A major development, which came was even before 2014, was Japan joining the F-35 consortium in 2012 as mentioned before. Japan does not have access to the elite production team; however, Japan has been manufacturing some engine parts, radar parts and electro-optical distributed aperture system parts for F-35s. Japan also has an F35 assembly and check-out unit in Nagoya. Japan was able to participate in the F-35 programme in this limited way even before 2014 through the exception allowed to the United States in 1983 and

subsequent years. While Japan only has a customer status in the F35 consortium, this could still be a violation of the Three Principles because Japan is manufacturing some parts for the aircraft and assembling it. One of the customers of F35 is Israel, which is a country involved in international conflict and has UNSC resolutions against it. Even though Japan has requested membership in the elite consortium as a full member, an entry has so far been denied. Japan has also been trying to sell P-1 patrol aircraft to France and Germany, and Acquisitions Technology and Logistics Agency (ATLA) displayed the aircraft at the Paris air show in 2017. However, France and Germany have been reluctant to buy an aircraft that is not combat tested. In October 2020, the German government said that it has excluded Japanese made P-1 patrol aircraft from a list of candidates for a patrol plane to be purchased by 2025. If a deal can go through, it will be a much-needed entry point for Japan into the North Atlantic Treaty Organisation (NATO) arms market.

Table 2: Japan's Arms Export Cases from 2016-18

Japan's Arms Export Data (2016-18)							
	Type and Destination based on the Operational Guidelines of the Three Principles	**Destination and Number of Cases Approved**					
		2016		**2017**		**2018**	
		Individual Cases	**Total**	**Individual Cases**	**Total**	**Individual Cases**	**Total**
1	**For active promotion of peace and international cooperation**						
	Foreign Government	China (38), Philippines (2)	40	China (23), Philippines (4)	27	China (29), Philippines (2)	31
	UN/Related organisation	South Sudan (5), Djibouti, Oman, Seycheles (3)	8	South Sudan (5); Djibouti, Oman, Seycheles (3)	8	South Sudan (5); Djibouti,Oman (3)	8
2	**When Contributes to Japan's Security**						
	Joint Development and Production with US and allies	US(33), UK(5)	38	USA (36), UK (5), India (1), Australia (1), Germany (1)	44	USA (36), UK (7), India (2), Australia (1)	46
	Transfer for Provision of services for SDF	0	0	0	0	0	0
	Transfer of weapon technology with the US as part of mutual tech exchange with the US	0	0	0	0	0	0
	Provision of parts and services to liscenced prodcuts from US, and repairs to the US military	USA (7)	7	USA(8)	8	USA (13), Germany (1) ,UK (1)	15
	Transfer for rescue, transportation, vigilance, surveillance, and minesweeping cooperation for countries that have security cooperation with Japan	Phillipines (4)	4	Philippines (7),Thailand (3), Malaysia (1), UAE (1)	12	Philippines (6), Thailand (2)	8
	Temporary export of equipment, return of purchased equipment and provision of technical information related to activities of the Self-Defense Forces, etc.	USA (1,180), UK (126), France (29), Canada (23), Germany (13), Israel (10), Ukraine (6), Netherlands (5), Singapore (5), Gili Sha (4), Sweden (4), Switzerland (4), Italy (3), Austria (2), South Korea (1), Multiple (18)	1433	USA (1,082), United Kingdom (99), France (22), Germany (18), Canada (15), Israel (10), Greece (8), Singapore (7), Ukraine (5), Italy (4), Netherlands (4), Austria (2), Switzerland (2), Belgium (1), Sweden (1), Australia (1), New Zealand (1), Djibouti (1), Multiple (28)	1311	USA(1,088), United Kingdom (78), Germany (33), Canada (29), France (22), Israel (12), Italy (12), Netherlands (5), Switzerland (3), Australia (2), Ukraine (2), Malaysia (2), Sweden (1), Afghanistan (1), Greece (1), Singapore (1), Thailand (1), New Zealand (1), Multiple (41).	1335
	Export for public guarding/ security of public persons		1	0	0	0	0
	For security of Japanes nationals operating overseas	0	0	0	0		
3	**Transfer of items that will have minimum security impact**						
	Return of Misdelivered Items		0	0	0	3	3
	Return of Rental items	USA (21), UK (7), Germany (6), France (3), Canada (2), New Zealand (2), Singapore (2), Austria (1), Belgium (1), Slovakia (1), Israel (1)	47	USA (25), Germany (8), Israel (7), England (2), Switzerland (2), Austria (1), Norway (1)	46	USA (24), UK (5), Israel (4), Switzerland (2), Sweden (2), Austria (1), Germany (1), New Zealand (1), France (1), Norway (1)	42
	Return of Equipment bought in Japan	UK/Korea	1	Netherlands (1), UK (1)	2	USA (1), Netherlands (1), Switzerland (1)	3
	Return of defective products			USA (5)	5	USA (1)	1
	Temporary Exports subject to reshipment			USA	1	USA (3), UK (2), Germany (1)	6
	Export for Elasticity Test	USA (1)	1				
	TOTAL		**1580**		**1464**		**1498**

Source: Compiled from METI website

However, not all has been dismal. Japan has signed significant defence equipment transfer agreements with important partners. As mentioned earlier, Japan had signed the Defence Equipment and Technology Transfer Agreement with the UK in 2013. Japan signed a similar agreement with Australia in 2014, France, the Philippines and India in 2016, and with Italy in 2017.

7. Challenges to Arms Export

The challenges to Japan's arms export policy has been compiled from a series of interviews with industry personnel, subject experts, Japanese language media coverage and analysis based on research.

i. **Pacifism and the Pacifist Mindset:** Japan's defence industry has been passive to arms exports because of the larger pacifist identity inherent in Japan. Several interviews conducted during this study of subject experts and industry personnel confirmed the fear among Japanese industries of being branded as "merchants of death" in a pacifist country. They fear that if their brand is associated with such a negative image, it may affect the performance of their other profitable services.

   Countries seek defence cooperation and partnerships with equal partners. This is ensured by cross-servicing agreements, joint research projects, joint military exercises, information sharing agreements, etc. In Japan's case, this is strictly limited by the constraints of Article Nine.

   Deep-rooted pacifism has resulted in the development of a culture of using euphemisms for military terminology. SDF, for example, uses very peculiar military terminology that is different from international terminology to make it palatable to the domestic population. This makes dealing in the international market difficult. The Acquisition and Cross Servicing Agreement (ACSA) with Australia, for example, did not use the word ammunition when it was signed in 2010; this was added in 2016 after the policy change in 2014. Foreign governments will not settle for imprecise terminology and will require clear binding agreements when it comes to equipment acquisition.

   The pacifist mindset pervades deep in Japanese society and bureaucracy. The METI and MOD still view their role as regulators of export and not as facilitators, and play no role in promoting them.

ii. **Structural challenges in the industry**: Secondly, Japanese defence manufacturers have faced the problem of scale in the manufacture of

weapons. Their only customer has been the Government of Japan; this does not generate enough demand, which makes the cost per unit very high. This, in turn, makes Japanese products very costly in the international market relative to other countries.

Due to restrictive export policies, the stigma attached and limited market, exports constitute a tiny portion of the portfolio of Japanese defence manufacturers. Even the biggest manufacturers in Japan have merely 10 per cent of their revenue emanating from the sale of weapons. This is contrary to most international defence manufacturers, who focus entirely on weapons manufacturing.

iii. **Japanese products not updated**: Because of the lack of joint development and lack of Japan's participation in the international market, Japanese defence manufacturers have lagged in terms of the latest technological advances in the defence industry. While Japanese technology is highly advanced in certain pockets such as optics, Japanese industry has not been able to keep up with the leaps in technology that the international defence industry has taken. Moreover, most advance weapons are jointly developed by countries; no one country is capable of producing advance weapons singlehandedly anymore.

iv. **Late Arrival in the Export Market:** Japanese defence industries are inexperienced in the field of international exports. They have displayed an inability to understand the role of sellers and the needs of buyers and negotiate accordingly. This was one of the major reasons for the failure of the Soryu submarine deal with Australia, according to several experts in the field.

v. **Complicated Export Policy**: The Japan export control policy is very complicated; there is still a lot of confusion among exporters about the procedure for exports, which makes them reluctant to enter the export market.

vi. **Continued Restrictions**: Another major challenge is that Japan can only export arms and arms-related technology to a foreign government and not to private entities. This places a major curb on the scope for exports. The scope is also limited only to cases that promote international peace and cooperation, the security of Japan and SDF activities, and requires prior consent by foreign governments for third party export and extra purpose use. This places severe curbs on Japan's exports; these are also

ambiguous concepts, which confuse exporters. They rely entirely on the Ministry of Export to identify opportunities and approach them, as private companies cannot fully ascertain what contributes to Japan's security, or international peace and cooperation.

vii. **Constrained Information Flows:** Even general business discussions which could reveal technology, etc., are subject to control; hence, salespeople struggle with how much they can reveal while pitching for their product to foreign clients. Japanese defence industries wait for the government to identify export opportunities and establish the necessary diplomatic structures before they invest time and energy into it.

Due to legal restrictions under FEFTA, Japanese industry representatives cannot fully share important weapons-related information with interested customers or fully respond to inquiries at individual business negotiations before transfers are approved; this creates suspicion among foreign companies. Even sharing of verbal or written information beyond what is in the public domain about the equipment that the interested customer demands is considered as "transfer of technology" under FEFTA.

viii. **Possible Increase in Bureaucratic delays:** The complication of the structural mechanism has increased after the new Three Principles. This is because the approval of export was the sole domain of METI, and now NSC will be involved in some cases. NSC comprises officials from different ministries; this will, in turn, create turf wars and bureaucratic delays.

ix. **Out of sync with international standard practices**: The harmonisation of the numbering of the Japanese export control lists with the European lists, which is the global standard, will make it easier for exporters to classify their product and seek a license. This is a significant demand for Japanese defence manufacturers.

Interviews with Japanese defence industry personnel showed that there was not enough awareness of NATO and the US catalogue list which provide the necessary mechanisms for international equipment procurement. Japanese companies need to aim to move from Tier 1 to Tier 2 of the NATO catalogue system. Tier 2 status means a country is

fully compliant with the NATO Codification System (NCS), while Tier 1 status means basic compliance. Japan only has a Tier 1 status.[42]

x. **Not Combat tested**: Another challenge that the Japanese defence industry faces is the view by foreign buyers that Japan's weapons are not combat tested, and most arms are developed from a defence point of view.

A Ground Self-Defense Force Type 16 manoeuvre combat vehicle "DSEI Japan" at the defense equipment fair at Chiba, Japan in 2018. Source: Getty Images

8. The Way Ahead for Japan's Security, Export Control and Arms Export Policy

i. Japan should harmonise its numbering and arms lists with European standards. Additionally, to meet international standards, it should publish its dual-use export licensing practices as well.

[42] CISTEC (2015), 防衛装備移転に係る手続き的環境整備に向けた課題について（要望, regarding the issues for procedural environment improvement related to defence equipment transfer.

ii. Japan is a beginner in the international arms export market and, until it gains some experience, it must focus on dual-use exports and practice co-production with other partners. Japan also specialises in carbon fibres and optics, and Japan should use this well-established expertise to become an essential components supplier in the global value chain of weapons.

iii. The world is moving from "spin-off" (adapting military products into civilian use) to "spin on" (civilian to military). Japan is already in a position to provide countries with technology that is "spin on" ready.

iv. Japan could also invest in refurbishing retired equipment and selling it to other countries. This will solve the cost per unit challenge that other countries complain of with respect to Japan. A good example of this is when Japan replaced P3C Orion maritime surveillance aircraft with KHI P1s. Japan will extend the lifespan of 30 P3Cs and sell it to other countries.

v. Another possible solution is for Japan to sell licensed products rather than designed products. Selling retired, and licensed products could help Japanese manufacturers deal with the problem of stigma and reputation.

vi. Former Prime Minister Shinzo Abe focused on revising the Constitution, but this alone is not going to arouse investor and customer interest in Japan. Japan has to change the mindset and the specifics of the process that curtail Japan's arms export.

vii. Japan could have one law that deals with production and export to integrate the policy better. FEFTA only deals with exports and brokering, unlike the US International Traffic in Arms Regulation (ITAR), which deals with production, export and brokering. This will provide a more holistic approach to Japan's arms export policy and help address better address challenges at different stages. A positive change in the direction is the establishment of the ATLA in 2016 to integrate research and development, procurement, technology management and export of defence equipment.

viii. Steps must also be taken to reduce the procedural burden on exporters in terms of easing legal requirements, classification, and the licence application period, among other things.

ix. The Japanese government needs to be more proactive in PR and in encouraging more international defence industry exhibitions and expositions. The undue restrictions on providing some details of defence equipment and other information sharing with the customer before METI approves the transfer must be removed.

x. The Covid-19 pandemic should be used by Japan to present itself as an alternative to China in the global supply chain of weapons parts and technology. Japan, as mentioned below, is one of the largest dual-use goods exporters, and this expertise should be extended to becoming established in the global defence equipment value chain.

9. India-Japan Defence Cooperation

Arms export is only one component of India-Japan Defence Cooperation. The success of India-Japan arms trade depends to a great extent on the strengthening of the overall relations. It is, therefore, necessary to provide a brief overview of the defence relationship between the two states.

A significant milestone in India-Japan defence ties was achieved when Japanese Prime Minister Junichiro Koizumi visited India in April 2005 to meet Prime Minister Manmohan Singh. The two countries issued a Joint Statement, "India-Japan Partnership in a New Asian Era: Strategic Orientation of India-Japan Global Partnership". The joint statement reinforced the strategic nature of the partnership between the two states. This new focus saw a shared responsibility to promote peace, security and stability in Asia and beyond. As part of an Eight-Fold Initiative, the two states decided on enhancing and upgrading the dialogue architecture and the dialogue mechanism. The joint statement also discussed the launching of high-level strategic dialogue. The two states would ensure the full utilisation of the comprehensive security dialogue, military to military talks and defence policy dialogue. The service to service exchanges of the defence establishments of the two countries would also be enhanced. In the maritime realm, the continuation and enhancement of the annual Coast Guard talks, anti-piracy exercises and sharing of technical assistance and information will be ensured. Under the agreement, the Indian Navy and the Japan Maritime SDF (JMSDF) will enhance cooperation between them.

Former Japanese Prime Minister Shinzo Abe and Indian Prime Minister Narendra Modi in Yamanashi, Japan during the latter's visit to Japan on October 28-29, 2018. Source: Twitter/@MEAIndia

In 2008, a Joint Declaration on Security Co-operation was issued after the summit meeting in Tokyo. The joint declaration included the following elements of cooperation. Apart from those mentioned in the previous joint declaration, in 2008, the two states decided to enhance information exchange and policy coordination in the Asia-Pacific region and enhance bilateral cooperation within multilateral frameworks including the East Asia Summit, ASEAN Regional Forum and ReCAAP. Cooperation was also to be strengthened to fight terrorism and transnational crimes, in the area of peacekeeping and peacebuilding; disarmament and non-proliferation. The mechanisms to ensure the success of the cooperation between the two states at the foreign office level will include dialogues at the foreign ministerial and foreign secretarial levels; a dialogue on disarmament and non-proliferation at Director General/Joint Secretary level; and a Track 1.5 Strategic Dialogue. The mechanisms for cooperation at the defence authorities' level will include meetings at the ministerial, secretary level, and joint secretary levels, at the level of service chiefs, navy to navy staff talks, and exchanges of students and

researchers for the respective defence institutions of each state. Consultations will also be held between the National Security Advisor of India and the Japanese counterpart.

In 2009, an action plan to advance security cooperation based on the Joint Declaration of 2008 was proposed. Along with enhancing and strengthening existing elements and mechanisms, the 2009 Action Plan mentioned the frequency of the meetings at various levels between the two states. Moreover, it added a senior official (2+2) meeting from the Ministry of Foreign Affairs and the Ministry of Defence of both countries. It added an Annual Comprehensive Security Dialogue at the level of the Joint Secretary/ Director General from the Ministry of Foreign Affairs and the Ministry of Defence of both countries. The Action Plan also discussed a Maritime Security Dialogue and consultations on regional issues between the foreign office and embassy. Specifically, concerning defence cooperation, the Action Plan added an Annual Defence Policy Dialogue at the Defence Secretary Level, regular ground to ground staff talks and developing an Annual Calendar of Defence Co-operation and exchanges.

In December 2015, India and Japan signed two very significant agreements. The first agreement was concerning security measures for the protection of classified military information and the second concerning the transfer of defence equipment and technology. The first agreement allows India and Japan to share classified information more freely with each other as the agreement guarantees the protection of such information better, which in turn ensures greater cooperation between the two states when it comes to defence and security issues. The second agreement on the transfer of defence equipment and technology was a direct result of Japan lifting the ban on arms export in 2014. This agreement allowed for the joint research, development and production of defence equipment and technology between the two countries and paves the way for a closer relationship between the defence industries of Japan and India. The air forces of the two countries also decided to hold inaugural staff talks in 2016.

The year 2016 was also a crucial year for the two countries in terms of strategic agreements and cooperation. Delhi and Tokyo signed the Agreement for Cooperation on the Peaceful Use of Nuclear Energy, which allows Japan to export and transfer nuclear material, equipment and technology to India. This was also a historical deal because it was the first time Japan signed a nuclear agreement with a country that is outside the Non-Proliferation Treaty framework and is a recognition of the importance Japan accords to India.

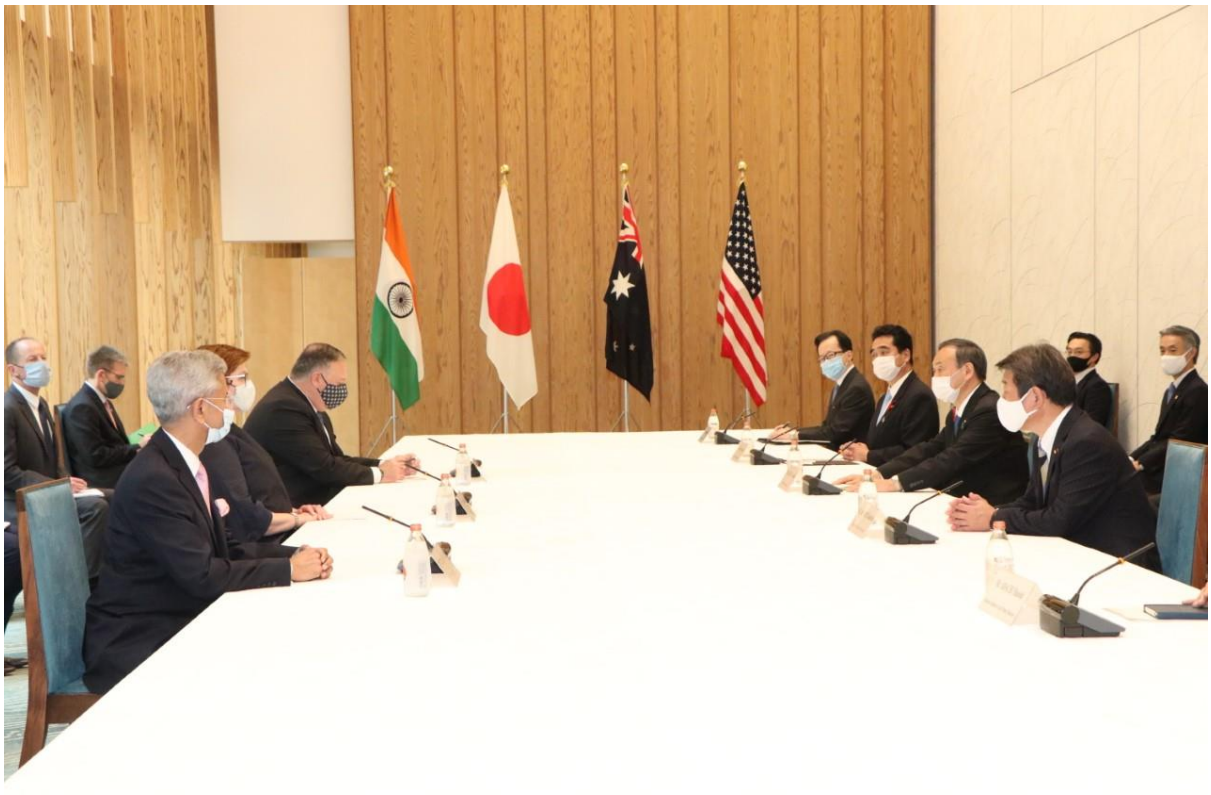
Another strong exemplification of greater defence and strategic cooperation between India and Japan is the number of defence exercises between the armed forces of the two countries. India and Japan held the first bilateral maritime exercise in 2012, the second in 2013 and the third in 2018 and the latest in September 2020. JIMEX-2020 was held from September 26-28 in the North Arabian Sea. The Indian Air Force and the Japanese Air Self Defence Forces held their first air exercise Shinyuu-Maitri in 2018 and the second in 2019. The first round of ground exercises, Dharma-Guardian, was held in 2018 and the second in 2019 in Mizoram, India. Moreover, Japan became a permanent participant of the Malabar Exercises between India and the US in 2015, thus making it a crucial trilateral exercise. The Indian Navy and Japan Maritime Self Defence Forces also regularly conduct Passing Exercises (PASSEX) by visiting each other's ports in India and Japan.

Malabar Exercise underway in 2019. Source: Twitter/@jmsdf_pao_eng

The role of these bilateral and joint exercises is important in improving and enhancing interoperability and coordination between the defence forces of the two countries. Moreover, they also play a crucial role in familiarising defence personnel with each other's defence equipment, which will improve the prospects of arms trade between the two countries.

The failure of the US-2 Amphibious Aircraft deal with India, which could have been one of Japan's biggest arms export deals since the 2014 policy change, should not dampen hopes for future cooperation. India is the second-largest arms importer in the world, and as a significant global player with aspirations, India's appetite is only likely to increase. India and Japan signed the ACSA in September 2020. This agreement will facilitate the smooth and prompt provision of supplies and services between the armed forces of the two countries. It will also make India the first non-western ACSA partner for Japan. India and Japan have also initiated the 2+2 defence and foreign ministerial mechanism with each other in 2019. These measures are certainly in the right direction as these ensure parity in relationships and countries prefer to engage in defence partnerships with equal partners. They also show an increase in the strategic depth of cooperation between the two countries.

India is seeking to diversify its arms imports to reduce its excessive dependence on Russia, the United States, Israel, France and the United Kingdom. Increasing defence trade with Japan comes at an opportune moment. Moreover, they have emerged as important strategic partners under the broader context of the Indo-Pacific and the QUAD (Quadrilateral Security Dialogue).



Foreign Ministers of India, Australia and the United States call on Japanese Prime Minister Yoshihide Suga in Tokyo, October 6, 2020. Source: Flickr/MEA Photogallery.

However, several challenges remain. A lot of these challenges stem from Japan's internal problems concerning lack of proactivity on the part of the defence industry to seek defence deals, the limitation resulting from being restricted to government-to-government transfer only and other internal constraints mentioned in the previous section above.

Specific challenges to India-Japan defence trade include the fact that Japanese defence equipment is extremely expensive because of the structural challenges of the Japanese defence industry. For India, the costs are exorbitant when compared to similar products available in the international market. This was the root cause of the failure of the US-2 Amphibious aircraft deal between the two states. Another challenge is that as per the Agreement on Defence Equipment and Technology Transfer between India and Japan, a Joint Committee is formed to determine the transfer. This Joint Committee includes Japanese representatives from METI, Ministry of Foreign Affairs (MOFA) and MOD. MOFA continues to have a strong pacifist approach to Japan's security policies and exercises a much stronger position compared to Japan's MOD, which plays a marginal role in such decisions. METI also continues to approach arms export from the perspective of a regulator rather than a facilitator.

This is coupled with the structural challenges ailing India's defence acquisition. It is riddled with issues such as bureaucratic delays, corruption, lack of a defined structure, lack of a single point of accountability and lack of modernisation, among others. Such issues make it difficult for India to identify and milk great opportunities for defence acquisition. Indian defence policy, therefore, needs internal reforms to be cognizant of a new supplier such as Japan. Indian weapons are in dire need of modernisation, which makes it a great potential market for Japan. However, both countries have a long way to go before fully taking advantage of each other's potential, and must introduce the necessary reforms.

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