

# The Center for Information on Security Trade Controls (CISTEC) Export Control Model of Japan: Role, Utility, and Management

CISTEC<sup>1</sup>

## Abstract

*This article focuses on the role, utility, and management of Japan's Center for Information on Security Trade Controls (CISTEC) model. The article provides analysis on CISTEC's development, mission, human resources, and financial structure. The article then explains CISTEC's impact on Japan's Ministry of Economy, Trade, and Industry (METI), other government agencies, and industry. The article concludes by identifying new and future challenges for CISTEC and providing several observations regarding the uniqueness of the CISTEC model.*

## Keywords

Japan, export controls, Center for Information on Security Trade Controls (CISTEC), Asia, capacity-building, Ministry of Economy, Trade, and Industry (METI)

## Introduction

Recently, significant attention has been given to Japan's Center for Information on Security Trade Controls (CISTEC) due to its development of a "CISTEC model" or "Japanese model" for export control cooperation. Requests for participation in various international export control seminars and conferences and information about the role and function of CISTEC have been conspicuously increasing. There are two reasons for this increased interest. First, international partners have indicated that the model can be helpful for establishing and enhancing export controls in their countries. Second, there are few similar organizations that exist worldwide. This article explains the factors that contribute to the effectiveness of the CISTEC model in

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1 CISTEC is a non-profit and non-governmental organization specializing in export controls in Japan. This article was co-written by CISTEC's management.

Japan and describes challenges and lessons learned that can be useful to other countries seeking to implement effective export controls.

## **CISTEC's Development and Mission**

CISTEC is a “general incorporated foundation” classified as a non-profit organization (NPO) in Japan. It is not a government agency, an industry association, or a law firm. However, CISTEC does incorporate certain aspects of each of these sectors into its own organization. Specifically, CISTEC's regular activities include export control awareness-raising, the provision of tools for smooth implementation of related laws and regulations, gathering and provision of relevant information on laws, regulations, technology, and international environments, consolidation of industry opinions, and formal and informal negotiations with government authorities.

CISTEC was established in 1989 under the leadership of Japan's Ministry of Economy, Trade and Industry (METI) following a violation of the rules of the Coordinating Committee for Multilateral Export Controls (COCOM) by a major Japanese machine tool manufacturer in the late 1980s. METI possessed the general supervisory right to operate public interest corporations and gave CISTEC various consignment expenses. However, since 2010, following a public interest corporate reform by the Japanese government, CISTEC transitioned into a “general incorporated foundation” not under governmental supervision and funds. This means that CISTEC is now organizationally independent from the Japanese government. Regarding CISTEC's operations, CISTEC and METI cooperate closely and have a mutually complementary relationship.

Because CISTEC is a private organization, it is technically permitted to create competing organizations operating simultaneously. However, currently this is not the case and CISTEC is the only nonprofit in charge of export controls in Japan.<sup>2</sup> This situation has developed naturally in the course of CISTEC's operations over the course of nearly thirty years.

In Europe and the United States, law firms play a leading export control advisory role for industry, but in Japan there are few situations in which lawyers become involved in export control processes. Instead, CISTEC plays an important role here which will be further described later in this article.

As of 2019, CISTEC's membership is comprised of around 491 associate member corporations. These are composed mainly of private companies and research institutes, including major exporting companies, manufacturers, trading companies, and more. The number of associate member corporations increases every year. Membership has increased by nearly 190 companies since 2007, when it was about 300 companies. Associate member corporations need to pay an annual membership fee in order to receive export control services from CISTEC and participate in the activities of the Export Control Committee.

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2 There are Japanese industrial associations. One of their many functions is export control. Examples include the Japan Machinery Center for Trade and Investment (JMC) and the Japan Foreign Trade Council, Inc. (JFTC). However, CISTEC is the only organization specializing in export controls in Japan.

CISTEC's main tasks are as follows:

1. *Administration of the Export Control Committee, including:*
  - Exchange of opinions among associate member corporations and METI;
  - Negotiation and cooperation with METI for rationalization of export control rules and practices;
  - Review of controlled item lists of international export control regimes and recommendations to METI on these lists.
2. *Services and support to CISTEC members, including:*
  - Publishing services, comprehensive database services, training programs, consultation services such as enhancing industry compliance;
  - Research projects;
  - Audit services and organizational development support services;
  - Certification examination program;
  - Classification support services.
3. *Outreach cooperation*

CISTEC's third task includes cooperation with government and international organizations in Japan and overseas through outreach seminars and by dispatching speaker delegations to governments and industries worldwide.

## **CISTEC's Human Resources and Financial Structure**

### *Human Resources*

CISTEC's staff is composed of four full-time executive officers and three to four executive-level staff. CISTEC also consists of former METI officials who while at METI had the sole authority to issue export control licenses under Japan's Foreign Exchange and Foreign Trade Law. METI's staff also includes former executives and employees of exporting industries. The Executive Managing Director has been a former official of METI since CISTEC was established. Since CISTEC's formation, the number of staff who have been former industrial executives has been gradually increasing. There are many employees who are seconded from major companies – about ten people – and regular staff members for the manager and senior researcher class. Seconded employees have played an important role in expanding the knowledge and human capacity at CISTEC and, after returning from their time at CISTEC, have become executives or transferred to CISTEC as regular staff.

There are, in total, about 45 executives and employees at CISTEC. However, the activities of the organization are carried out not only by this staff, but also by the organization's "Export

Control Committee” consisting of volunteer members of the associated member corporations.<sup>3</sup> In various committees and subcommittees under its umbrella, opinions are gathered from the industries and exchanged with METI. There are nine committees composed of associated member corporations and others, and there are various subcommittees and working groups that also operate under them. The cumulative number of these registered members is more than 1,300. Participating in CISTEC’s committee activities is one of the regular tasks of major companies’ export control divisions. METI staff and executives also often participate in these committee activities and their discussions.

In addition, although not full-time, CISTEC has contracts in place with about 25 export control advisors who are experts engaged in related businesses. These advisors, who are experienced professionals with years of experience working for major exporting companies, often participate as lecturers at CISTEC’s seminars and companies’ in-house training events. They also support product classification.

As mentioned above, partnerships between the government and the private sector also function within CISTEC’s secretariat and committee activities. Government officials have a good understanding of export control laws and regulations and their formation processes, but they are not necessarily fully informed about companies’ export control practices and technical trends. The opposite is generally true regarding staff from the private sector. The power of CISTEC lies in deepening mutual understanding and cooperation between the two sides and it is one of the factors that underscore the effectiveness of Japan’s overall export control model.

CISTEC executives are keenly aware of the need to successfully utilize the expertise of both the public and private sectors within the organization’s management structure. If the balance collapses, it may degenerate into a seniority organization, a subcontracting organization, or a convenience store organization. Alternatively, making requests to the government on behalf of the private sector and for their benefit would render CISTEC a simple petition group, unable to effectively resolve problems and challenges.

### *Financial Structure*

When it was established, 50 percent of CISTEC’s basic assets as a foundation were provided by industry and the other 50 percent from public support organizations, making it a public-private partnership. CISTEC’s total fiscal size is currently about 700 million yen.

In the first ten years of its existence, commissioned expenses and subsidies from METI and public support organizations accounted for nearly half of CISTEC funding. However, this proportion has shrunk year after year, and since 2011, all funding has been covered independently by CISTEC’s independent income. Forty percent of CISTEC’s current funding comes from company membership fees and the remaining 60 percent from voluntary projects, such as publications, seminars, databases, certification exams, and others.

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3 As the committee secretariat, approximately 10 senior researchers are being second from major export companies.

## **CISTEC's Impact on METI and Other Government Agencies**

As mentioned, CISTEC has not received direction or financial support from METI. However, because of METI and CISTEC's respective export control roles, they have a mutually complementary relationship. Government agencies such as METI consider CISTEC useful for the following reasons:

*CISTEC serves as a cross-industry liaison for collecting opinions, forming consensus, and conveying them to METI*

Associated member corporations of CISTEC are comprised of major manufacturing exporters. CISTEC consolidates diverse industry opinions and is therefore able to channel and communicate industry positions when METI coordinates policies on export control policy and implementation measures.

While other industry associations exist in specific sectors, such as the Japan Machinery Export Association and the Japan Foreign Trade Association, CISTEC is often in charge of coordinating cooperation between different sectors and channeling common positions to relevant government authorities as necessary. In addition, members of these related industry associations participate in CISTEC committee activities, further helping to channel their opinions and positions to CISTEC.

Sometimes, for example in the case of new regulations or regulatory changes, industry interests may not necessarily align. CISTEC plays an important role in fostering a common position and helping to align diverse interests. In addition to opinion consolidation within industry, CISTEC fosters the informal exchange of opinions, helping METI implement regulations that are in line with the realities facing exporters.

*CISTEC enhances exporting companies' self-regulation*

METI creates export control rules based on the agreements formed by international export control regimes. However, in order to make Japan's export controls effective, it is essential to strengthen exporting companies' self-regulation, including in actual practical operations. In this role, CISTEC is indispensable.

Based on the comprehensive guidelines formulated by METI, CISTEC has formulated a model Internal Compliance Program (ICP) for self-regulation that companies can use. It has been drafted for use by both large and small and medium enterprises. This model ICP is frequently revised and improved within CISTEC's committees and widely disseminated.

Importantly, METI incentivizes companies to strengthen their internal compliance by giving them preferential treatment. For example, METI can give a comprehensive license to companies that have a properly operating ICP. It is important to note that METI is the sole decision-maker regarding whether or not a company deserves preferential treatment.

*CISTEC supports exporters' understanding of export control rules and regulations*

The Foreign Exchange and Foreign Trade Law, Japan's main export control law, is extremely complicated and can be hard to understand. CISTEC translates the law for stakeholders in an easy-to-understand manner, adds commentary, and conducts public awareness promotion activities such as publications, seminars, and consultations.

In addition, due to the complexity of Japan's export control laws and ordinances, it can be difficult to classify products and technologies accurately. In order to make classification easier and reduce the burden on exports, CISTEC provides the latest versions of the regulations and tools, such as parameter sheets and item-by-item comparison tables, and more. Japanese Customs trusts the results of classifications based on CISTEC's tools.

In Japan, preparations are in progress to harmonize the classification numbering system with the European Union system. Until harmonization is complete, CISTEC has been voluntarily maintaining a detailed correlation table of Japan's classification numbers and their EU counterparts that is widely used as a reference by industry and other stakeholders.

*CISTEC membership provides a high degree of professional expertise that benefits METI*

There are many professionals who have engaged in export control implementation at the government and private sector level that make up CISTEC's staff. These experts are familiar with the implementation history of Japan's export control policies, systems, and practices. At METI and other government agencies, on the other hand, staff members are often replaced due to regular personnel changes and it is rare for one individual to be in charge of export control for a significant period of time. CISTEC therefore plays an important role in providing information on past policies and measures and the situation of exporters over time.

In CISTEC committee activities, requests to improve regulations and procedures are discussed on a daily basis and their results are channeled to METI. These reflect, for example, issues and recommendations on difficult-to-understand aspects of the export control system, areas where the system does not reflect the realities of corporate practice, or measures enabling operations to be more harmonized with the EU classification numbering system. Communicating these viewpoints helps balance the effectiveness of regulations and reduces the burden on industry. METI has adopted many of CISTEC's recommendations.

In addition, expertise on listed products and technologies is provided by CISTEC and its associate member corporations. CISTEC consolidates expert knowledge through committee activities and through its advisors who possess expertise from different specialized fields. CISTEC also publishes guidance and holds training seminars for each specialized field.

In some cases, on the basis of CISTEC's recommendations, industry experts are temporarily assigned to positions in government and participate in international negotiations and other activities on the premise of confidentiality.

*CISTEC supports government-run outreach activities*

METI operates the annual Asian Export Control Seminar and several overseas outreach seminars under its budget. CISTEC often undertakes organizational and chairperson responsibilities for these events. CISTEC cooperates with METI on industry outreach, often helps choose the topics that are discussed by industry, and selects appropriate expert lecturers. CISTEC also participates in regional and international outreach activities, where it is asked to introduce and explain Japan's export control system.

*CISTEC provides training for government agencies and other organizations*

CISTEC uses its industrial network for training on topics such as export control classification and others for government agencies and other organizations. CISTEC also provides information on other countries' export control rules, procedures, and related policies. The comprehensive database service provided by CISTEC is used by many trade control-related Japanese ministries and agencies. This role is discussed in more detail later in this article.

**CISTEC Impact on Industry**

CISTEC has a significant impact on industry operations. As mentioned, the number of CISTEC's associate member corporations increases each year. CISTEC provides the following services to industry partners:

*CISTEC creates opportunities for information exchange and negotiation with export control authorities*

As mentioned above, CISTEC is extensively engaged in the activities of the Export Control Committee which is composed of associate member corporations. By participating as a committee member in these activities, members have the opportunity to exchange opinions and participate in negotiations with METI, Japanese Customs, and other trade control-related government agencies. METI staff sometimes participate in CISTEC's working group meetings, providing further opportunities for dialogue.

When annual international export control regime meetings are held, or when the government revises legal rules and systems, industry's opinion should be reflected. It is an advantage for CISTEC to have the above-mentioned direct channel for exchange of information and opinions between industry and government.

Regarding requests to the government where companies wish to remain anonymous, CISTEC is able to convey these as anonymous industry requests to the government.

Through the committee activities on international cooperation and exchange, dialogue can take place with officials and executives from foreign countries' governments and industries. CISTEC has been dispatching delegations to the United States and to European Union Member States every two years since 2002, and to Asian countries every year since 2016. Through these delegation meetings, CISTEC can obtain the most up-to-date information on export control

regulations and practices and also engage in frank discussions on important issues, including requesting comments for improvements or revisions. Such delegation meetings are also valuable opportunities for the participants from CISTEC, the member companies, and local subsidiaries to acquire contacts and interact with government officials and industry representatives from each country.

*CISTEC enables information and personnel exchange among companies from different industries*

While conducting everyday business activities, it is difficult for people in competitive relationships from different companies or sectors to exchange and share information with each other. However, in the field of export control, people often have the same goal and it is possible to widely share the information on export controls and compliance, such as ICPs, good practices, and more,

CISTEC's associate members include companies from many sectors, such as manufacturers, trading companies, IT companies, logistics companies, and others. Opinion exchange and dialogue promotes mutual understanding in dealing with different situations. Even if sometimes initially there are no mutual interests, there are many cases where adjustment and consensus can be made through CISTEC committee activities.

Because many industry experts are involved in CISTEC committee activities, they form a large export control community. For this reason, through this activity, it is possible to recognize the existence of specialized human resources which create opportunities for personnel transfer among companies.

*CISTEC enables sharing of the latest export control information and best practices*

CISTEC's associate members include most major Japanese exporting companies whose experts can share information about their best practices through committee activities. These practices are generalized through CISTEC's self-regulation guidelines and can gradually become common throughout industry and improve overall industry compliance. CISTEC's self-regulation guidelines provide detailed guidance on CISTEC's model ICP.

*CISTEC collects, consolidates, and shares information*

It is difficult and time-consuming for companies to gather information about the legal systems and procedures of other countries, illicit procurement, diversion, or other trade control implications in countries of concern. CISTEC, however, gathers and shares such information with associate members through committee activities.

CISTEC obtains and shares information on U.S. laws and regulations which is critical due to the U.S. regulations' extraterritorial effects. In addition to sharing the information through committee activities, CISTEC dispatches staff to the annual U.S. Department of Commerce BIS Update Conference and provides updates and information from the conference to its associate members.

Recently, United Nations Security Council sanctions resolutions have become increasingly complicated regarding North Korea, Iran, and other nuclear and missile issues. In addition, the United States is increasingly using primary and secondary sanctions. These developments can create serious challenges for companies developing global business activities. In this respect, the collection and provision of information by CISTEC is quite useful. Detailed reports on the above-mentioned CISTEC delegation trips to the United States, Europe, and Asian countries are widely shared among Japanese industry.

#### *CISTEC contributes to industry compliance*

CISTEC provides a wide variety of classroom and web seminars, publishes commentary and guidance, and offers practical skills certification examinations from beginner to expert level. Through these activities, CISTEC contributes to the improvement and efficiency of internal compliance programs.

Although export control seminars are also held at METI, they usually focus on explaining the Japanese legal system. CISTEC's seminars include this topic but also provide information on the export control systems of other countries.

In addition, CISTEC's comprehensive database contains the latest laws and regulations, classification tools, and information on customers of concern. The database search tools have been improving every year. This database contributes to industry compliance with export control laws and regulations and end-use checks.

#### *CISTEC provides third-party certification functions*

The published list of non-controlled integrated circuits is based on voluntary judgments by companies with highly developed ICPs. This list is published only when it satisfies CISTEC's criteria. For this reason, the list's reliability is enhanced externally rather than disclosed separately by the company, and it is trusted by Japanese Customs.

CISTEC's classification assistance service began in 2013. It contributes to improving the reliability of classification judgments by using CISTEC experts to verify or substantially modify difficult classification judgments. In other words, in this regard, CISTEC provides a third-party certification function. The CISTEC experts' classification advice is not legally binding but is nevertheless trusted due to their experience in classification work. Many small and medium enterprises use this service as it helps them improve their export control compliance level.

In addition, CISTEC has provided an audit/internal system assistance service since 2015. This service checks and reviews, as a third party, whether compliance based on a company's ICPs is properly carried out and whether such systems have been established in each company. This service aims to supplement the lack of professional human resources and experience of audit departments and the shortage of manpower and expertise of export control departments. CISTEC expert advice is not legally binding in this case either but is trusted due to experts' experience in export control audit/internal system assistance work.