

# Japan Machinery Center for Trade and Investment

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March 6, 2009

Mr. Christopher R. Wall  
Assistant Secretary for Export Administration  
U.S. Department of Commerce

Re: Response to Request for Comment --- Federal Register Vol. 74, No.2 (January 5, 2009).

Dear Mr. Wall :

The Japan Machinery Center for Trade and Investment ("JMC") hereby submits comments in response to the above-referenced notice published in the Federal Register Vol. 74, No. 2, on January 5, 2009.

JMC is an association of 272 firms that manufacture and export machinery products worldwide. JMC includes most of the major electronics and machinery exporters in Japan. JMC understands the significance of export controls in the global trade, and therefore JMC assists its member companies to comply with the export control regulations. JMC also is sensitive to concerns from member companies about burdens sometimes associated with such controls.

To prepare these comments, JMC conducted a survey of its members to learn how the extraterritorial application of the US export control regulations affects its members' decision making with respect to the procurements of parts and components. The results derived from the survey are indicated in the attached document entitled, "An Overview of the Survey," and "the Detailed Summary of the Survey"

JMC would greatly appreciate your taking its comments into account for your policy review.

Best Regards,



Haruhiko Kuramochi,  
Executive Managing Director  
Japan Machinery Center for Trade and Investment

# **Japan Machinery Center for Trade and Investment**

## **Contact**

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## Overview of the Survey

**Survey Period** : January 23 – 31, 2009

**Response** : 34 of 272 JMC members responded to the questionnaire. The response rate was 12.5%

(Note)

- In order to ensure internal consistency in survey results for different Japanese companies, we used the same questionnaire as Japan's Center for Information on Security Trade Control ("CISTEC") used for its survey.
- Some of JMC member companies are also members of CISTEC.
- The percentiles reflected in the summary of the answers may not be fully representative of JMC member company views because of the relatively low response rate.

## Questions and Responses

### Category No.1

a: Questions to those who have procured US-origin parts or components in the past.

- (1) 27% of the respondents had elected non-US items when they found the US-origin items required an export license from BIS. (Question 1-a-1)
- (2) 21% of the respondents had elected non-US items without classifying the US items in order to save the time and cost associated with commodity - classification. (Question 1-a-3)

b: Questions to those who have not procured US origin parts or components, and those who have had no choice but elect US origin items.

- (1) 70% of the respondents answered that they would have elected non-US items if the US-origin items had required an export license and corresponding non-US items had been available at the same time. (Question 1-b-1)
- (2) 40% of the respondents answered that they would have elected non US items instead of classifying the US items if non US items had been available. (Question 1-b-3)

### Category No.2

Questions regarding the customers in third countries.

- (1) 65% of the respondents answered that their customers in third countries seemed to implement export controls in accordance with the US regulations, but 17% of the 65% of the respondents above experienced cases in which buyers refused to purchase their products. 13% of the 65% above had experienced cases in which

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they were asked to replace US-origin items with non-US items. (Question 2-a, 2-b-1, and 2-b-2)

## Category No.3

Please refer to the attached "Detailed summary of the survey".

## Category No.4

Questions regarding the economic impact.

- (1) 47% of the respondents answered that they would increase the procurement of US origin items if the extraterritorial application of the US export control regulations were removed. (Question 4-a-1)
- (2) 73% of the respondents answered that they have incurred additional costs for complying with the US export control regulations. For 24% of respondents, these additional costs account for 11%-40% of the company's total export control costs. (Question 4-b-1, 4-b-2)

## Category No.5

A General Question

- (1) 21% of the respondents have encountered some advertising or marketing efforts that indicated as a selling point the absence of US-origin items or the existence of exemptions from US export controls. (Question 5-a)

## Category No.6

Questions asking the respondents' views about the US export controls.

- (1) 53% of the respondents agreed that the US government should stop the extraterritorial application of the export control regulations for the reason that it violates the international law. (Question 6-a)
- (2) While 79% of the respondents agreed that the countries participating in the international export control regimes should be exempted from the extraterritorial application of the US export control regulations, 6% of the respondents agreed that the extraterritorial application of the US export control regulations is rather necessary considering the fact that there are many countries that have not implemented effective export controls yet. (Question 6-b, 6-e)

Excerpt from the Comments responded to Question 6-f

(The respondents who came up with following comments are also members of CISTEC, and they sent same comments also to CISTEC)

- (1) The US Government should abandon the extraterritorial application of the export control regulations since it violates the international law, and in addition, it

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imposes duplicative burden on non-U.S. exporters.

- (2) Alternatively BIS should implement its export control regulations consistently within the internationally agreed framework for export controls, and should stop its unilateral approach to export controls.
- (3) If BIS still continues the extraterritorial application as it is, it should take the following measures immediately.
  - ① The countries participating in the multilateral export control regimes should be exempted from the extraterritorial application of the US regulations because those countries, including Japan, are considered to be capable of implementing national export controls at the same level with the U.S.
  - ② It must be made mandatory for U.S. exporters to provide their foreign importers with right ECCNs relevant to the products exported from the US.
  - ③ The complicated regulations of the EAR have to be simplified and streamlined so that everyone can understand them without difficulty.
  - ④ The present multi-agency regulatory system, where different sets of regulations are intertwined, has to be reformed into one single set of regulations that should be administered under single authority.

## Conclusion

We hereunder sum up our findings derived from our survey relating to the question as to whether U.S. export controls influence manufacturers' decisions to use or not use U.S. origin parts and components in commercial products.

- (1) There is a propensity among the Japanese exporters to avoid US-origin parts and components and to elect non-US origin parts and components due to the extraterritorial application of the US export control regulations. There is also a propensity among the importers in the third countries to avoid US origin products for the same reason above.

Theses propensities above could undermine the competitiveness and viability of the US industry without improving the effectiveness of the US export controls. This seems to be particularly significant considering the current economic crisis.

- (2) The extraterritorial application of the US export control regulations has imposed additional and duplicative costs on Japanese exporters because they must comply with both Japan's national export control regulations and the US regulations. The additional costs account for a significant share of a company's total compliance costs.
- (3) Many respondents argue that BIS should scrap the extraterritorial application of the export control regulations. They think the legitimacy of the extraterritorial application of the regulations is questionable in light of the principle of International Law.

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- (4) If BIS, however, has to even continue the extraterritorial application as it is, the respondents suggest that BIS consistently implement its export control regulations within the internationally agreed frameworks for multilateral export control regimes, and that BIS exempt the countries participating in those regimes from the extraterritorial application of US export control regulations.
- (5) One of the biggest troubles for the Japanese exporters in complying with the US regulations is that the US exporters can't provide their foreign importers with ECCNs relevant to the products exported from the US in many cases. Many of the respondents request BIS to make it mandatory for the US exporters to provide the Japanese exporters with ECCNs.

ECCNs are indispensable data in order for re-exporters to comply with the US export control regulations. Some respondents pointed out existence of the US exporters who do not have basic knowledge about EAR. Those US exporters seem to cause Japanese exporters further troubles in obtaining ECCNs.

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## Detailed Summary of the survey

Category No. 1: Questions regarding the controls of US-origin items in your company	
<b>a</b>	Please answer the following questions a-0 through a-6, if you have ever procured or have considered procuring US-origin parts or components for their incorporation into your products.
<b>a-0</b>	<p>Your company has ever considered procuring or designing-in US-origin parts or components. (Please check "No" in the case you had no choice but using US-origin items for a technological reason, etc.)</p> <p>Yes : 22 (65%)    No: 10 (29%)    N/A : 2 (6%)</p>
<b>a-1</b>	<p>You have ever elected non-US items because the US-origin items were listed on the CCL and required a license from BIS for your exports of the products. (This includes the case you designed out the US-origin items.)</p> <p>Yes : 9 (27%)    No: 18 (55%)    N/A : 6 (18%)</p>
<b>a-2</b>	<p>You have ever elected non-US items even in the case that the US-origin items were listed on the CCL but no license was required since the items were non-controlled for the destination or a License Exception was applicable, because you considered you would</p> <p>Yes : 7 (21%)    No: 20 (61%)    N/A : 6 (18%)</p>
<b>a-3</b>	<p>You have simply elected non-US items disregarding the classification of the US-origin items, etc. because you thought it's more efficient and cost effective. (This includes the case you designed out the US-origin items.)</p> <p>Yes : 7 (21%)    No: 22 (67%)    N/A : 4 (12%)</p>
<b>a-4</b>	<p>You have ever elected non-US items even in the case that you came to know that the US-origin items were non-CCL items as a result of the classification you conducted or because the supplier so informed to you, considering that the US controls would possib</p> <p>Yes : 4 (12%)    No: 23 (70%)    N/A : 6 (18%)</p>

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Category No. 1: Questions regarding the controls of US-origin items in your company	
a	Please answer the following questions a-0 through a-6, if you have ever procured or have considered procuring US-origin parts or components for their incorporation into your products.
a-5	<p>If you answered "Yes" to either of the questions a-1 through a-4 above, please outline the case as far as possible, including the following elements. (If there are more than one case for one question, we would also appreciate it if you would outline all of the cases. )</p> <p>(i) Generic name of the US-origin items. (You do not have to state any proprietary name of the items or manufacturer's name)</p> <p>(ii) Name of your end-products that incorporate US-origin items (You do not have to state any proprietary name of the items.)</p> <p>(iii) Export destinations</p> <p>(iv) The reason for your choice of non-US items, and others if any</p>
	Comments to 1- a-5
	Please refer to the responses indicated in the comments from CISTEC with regard to this 1-a-5 question in order to avoid duplication.

Category No. 1: Questions regarding the controls of US-origin items in your company	
a	Please answer the following questions a-0 through a-6, if you have ever procured or have considered procuring US-origin parts or components for their incorporation into your products.
a-6	With regard to the cases other than those described in the questions a-1 through a-4 above, please state if you had instances in which the US export controls influenced your decision whether to procure US-origin items, regardless of its final outcome.
	Comments to 1-a-6
	Please refer to the responses indicated in the comments from CISTEC with regard to this 1-a-6 question in order to avoid duplication.



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Category No. 1: Questions regarding the controls of US-origin items in your company	
b	<p>Please answer the following questions b-1 through b-4, if you have never encountered the cases of the questions in part (a) since you had no necessity at all of procuring US-origin items, or since you had no choice but using US-origin items you procured.</p> <p>Suppose you intend to procure US-origin parts and components while having another option to elect non-US items instead;</p>
	<p>b-1 You would elect non-US items in case the US-origin items were listed on the CCL and the intended export required a license. (This includes the case you would design out the US-origin items.)</p> <p>Yes : 7 (70%)    No: 0 (0%)    N/A : 3 (30%)</p>
	<p>b-2 You would elect non-US items even in the case that the US-origin items were listed on the CCL but no license was required since the items were non-controlled for the destination or a License Exception was applicable, because you would possibly export the</p> <p>Yes : 6 (60%)    No: 1 (10%)    N/A : 3 (30%)</p>
	<p>b-3 You would simply elect non-US items disregarding the classification of the US-origin items, etc. because you think it's more efficient and cost effective. (This includes the case you would design out the US-origin items.)</p> <p>Yes : 4 (40%)    No: 5 (50%)    N/A : 1 (10%)</p>
	<p>b-4 You would still elect non-US items even if you came to know that the US-origin items were non-CCL items as a result of the classification you conducted or because the supplier so informed to you, considering that the US controls would be intensified even</p> <p>Yes : 3 (30%)    No: 3 (30%)    N/A : 4 (40%)</p>

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Category No. 2: Questions regarding the control of US-origin items by your customers					
<p>The questions of category No. 1 asked you about the controls of US-origin items in your company. Here in category 2, we ask you about the control status of your customers to whom you sell US-origin items or products that contain US-origin items. Your “cus</p> <p>(i) Your overseas customers (excluding those in the US) in case you export your products from Japan, or  (ii) Your domestic customers in case you sell your products in Japan knowing that those will be exported from the customers.</p>					
a	<p>It seems your customers are not implementing any controls based on the US regulations, since you have never been asked from them whether those are US-origin or not.</p> <p>Yes : 9 (26%)    No: 23 (66%)    N/A : 3 (9%)</p>				
b	<p>Please answer the following questions (b-1) and (b-2), if you answered “No” to the above question (a).</p> <table border="1"> <tr> <td>b-1</td> <td> <p>Your customers have refused to buy your products because they are of US-origin.</p> <p>Yes : 4 (17%)    No: 19 (83%)    N/A : 0 (0%)</p> </td> </tr> <tr> <td>b-2</td> <td> <p>Your customers have asked you to change your US-origin products to those of non US-origin.</p> <p>Yes : 3 (13%)    No: 20 (87%)    N/A : 0 (0%)</p> </td> </tr> </table>	b-1	<p>Your customers have refused to buy your products because they are of US-origin.</p> <p>Yes : 4 (17%)    No: 19 (83%)    N/A : 0 (0%)</p>	b-2	<p>Your customers have asked you to change your US-origin products to those of non US-origin.</p> <p>Yes : 3 (13%)    No: 20 (87%)    N/A : 0 (0%)</p>
b-1	<p>Your customers have refused to buy your products because they are of US-origin.</p> <p>Yes : 4 (17%)    No: 19 (83%)    N/A : 0 (0%)</p>				
b-2	<p>Your customers have asked you to change your US-origin products to those of non US-origin.</p> <p>Yes : 3 (13%)    No: 20 (87%)    N/A : 0 (0%)</p>				
Category No. 2: Questions regarding the control of US-origin items by your customers					
c	<p>If you answered “Yes” to either of the questions b-1 and b-2 above, please outline the case as far as possible, including the following elements. (You may state more than one case for one question.)</p> <p>(i) Generic name of the US-origin items. (You do not have to state any proprietary name of the items or manufacturer’s name)  (ii) Name of your end-products that incorporate US-origin items  (iii) Export destinations  (iv) The reason for your choice of non-US items, and others if any</p>				
	Comments to 2-c				
	Please refer to the responses indicated in the comments from CISTEC with regard to this 2-c question in order to avoid duplication.				

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Category No.3: Questions regarding the location of your company's overseas manufacturing sites	
(a)	<p>Do you have facilities in non-US countries where you manufacture any list-controlled items?</p> <p>Yes : 10 (29%)    No: 19 (56%)    N/A : 5 (15%)</p>
(b)	<p>Please answer the following questions (b-1) through (b-3), if you answered "Yes" to the above question (a).</p>
(b-1)	<p>You have never considered establishing your manufacturing sites in the US.</p> <p>Yes : 3 (27%)    No: 3 (27%)    N/A : 5 (45%)</p>
(b-2)	<p>You have considered the US as a country of your manufacturing sites, but have never put each country's export control laws and regulations into consideration.</p> <p>Yes : 3 (27%)    No: 3 (27%)    N/A : 5 (45%)</p>
(b-3)	<p>The US was one of the options. One reason for ruling it out was the existence of its strict export controls.</p> <p>Yes : 1 (9%)    No: 3 (27%)    N/A : 7 (64%)</p>

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## Category No.4: Questions regarding the impact on the economy

(a-1)	Do you think that the amount of US-origin items you procure will increase if the extraterritorial application of the US regulations is removed? Yes : 16 (47%)    No: 12 (35%)    N/A : 6 (18%)				
(a-2)	Please state, if possible, the ballpark amount of your procurement of US-origin items per year.  No answer responded to this question				
(b-1)	Do you incur additional costs for complying with the US export control regulations? Yes : 24 (73%)    No: 7 (21%)    N/A : 2 (6%)				
(b-2)	If so, please state their estimated percentage to the whole cost of your corporate export controls.				
	1%—10% : 6 (18%)	11%—20% : 3 (9%)	21%—30% : 3 (9%)	31%—40% : 2 (6%)	41%— : 0

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Category No.5: General questions	
	<p>(a) Have you ever encountered any advertising or marketing efforts by a third party that use the absence of US-origin components or exemption from US export controls as a selling point?</p> <p>Yes : 7 (21%)      No: 27 (79%)      N/A : 0 (0%)</p>
	<p>(b) If you answered "Yes" to the above question (a), please state the details as far as possible.</p>
	Comments to 5-b
	Please refer to the responses indicated in the comments from CISTEC with regard to this 5-b question in order to avoid duplication.

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## Category No.6: Questions regarding your thoughts about the US reexport controls

Please check the agreeable response to each one of the five comments stated below.

**a** The US Government should stop the extraterritorial application of its export controls since it's a violation of the International Law.

(1) We agree.	18 (53%)
(2) We'd rather agree.	11 (32%)
(3) Difficult to judge.	4 (12%)
(4) We'd rather disagree.	0 (0%)
(5) We disagree.	1 (3%)

**b** For a reason of diversion concerns, the extraterritorial application of the US export controls is rather necessary to the countries who have no export control laws and regulations, but not necessary to Japan where export controls are implemented as strict

(1) We agree.	27 (79%)
(2) We'd rather agree.	5 (15%)
(3) Difficult to judge.	1 (3%)
(4) We'd rather disagree.	0 (0%)
(5) We disagree.	1 (3%)

**c** The current system would rather exclude US-origin items—even non-sensitive ones—from non-US companies' transactions simply because they are of US-origin.

(1) We agree.	16 (47%)
(2) We'd rather agree.	11 (32%)
(3) Difficult to judge.	6 (18%)
(4) We'd rather disagree.	1 (3%)
(5) We disagree.	0 (0%)

**d** The extraterritorial application of the US export controls is giving not only a negative impact on the US economy but also a negative image of the US itself to foreign countries.

(1) We agree.	9 (26%)
(2) We'd rather agree.	17 (50%)
(3) Difficult to judge.	6 (18%)
(4) We'd rather disagree.	1 (3%)
(5) We disagree.	1 (3%)

**e** The extraterritorial application of the US export controls is rather necessary because export controls are still insufficient in many countries.

(1) We agree.	2 (6%)
(2) We'd rather agree.	2 (6%)
(3) Difficult to judge.	16 (47%)
(4) We'd rather disagree.	9 (26%)
(5) We disagree.	5 (15%)

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Category No.6: Questions regarding your thoughts about the US reexport controls	
f	Please state any other comments, if any, in regard to the US export controls.
	Comments to 6-f
	Please refer to the responses indicated in the comments from CISTEC with regard to this 6-f question in order to avoid duplication.