

## Section 2 Trends in export and investment control policies by major countries

Amid heightened global uncertainties, awareness about economic security is growing, so countries are stepping up relevant activities. This section provides an overview of the recent trends in export control, investment control, and other policies related to economic security. Recent trends in industrial policies adopted by countries will be discussed mainly in the next section.

### 1. Trends in the United States

While the Biden administration, which was inaugurated in January 2021, has advocated collaboration with allied countries, it has maintained or tightened the additional tariffs, export controls, and other measures imposed against China under the previous Trump administration. In September 2022, the Biden administration announced that it would maintain the additional tariffs on products of Chinese origin based on Section 301 of the Trade Act,<sup>37</sup> and as of March 2024, the levying of the tariffs was continuing.<sup>38</sup> As Assistant to the President (National Security Advisor) Jake Sullivan stated in a speech in April 2023,<sup>39</sup> the Biden administration has adopted the approach of strict, targeted control (“small yard, high fence”) with respect to technologies critical for national security. Moreover, regarding the relationship with China, the Biden administration is promoting derisking (risk reduction), rather than decoupling (separation). Since May 2023, ministerial dialogue between the United States and China has resumed, and in November, a U.S.-China summit meeting was held for the first time in about one year.

#### **(1) Export control policy**

Under the Export Control Reform Act (hereinafter “ECRA”), enacted in August 2018, export control of dual-use cargoes, which may be used for either military or civilian purposes, has been enforced. The ECRA, enacted as part of the National Defense Authorization Act for Fiscal Year 2019 (NDAA2019), which gives budgetary authority to the Department of Defense, has added “emerging technologies” and “foundational technologies” to the scope of export control.<sup>40</sup> Furthermore, the Export Administration Regulations (hereinafter “EARs”), which are subordinate to the ECRA, include a list of products designated by the U.S. government as dual-use items that may be converted to military use (Commerce Control List; hereinafter “CCL”) and the Entity List. The export control is applicable to exports and reexports of products of U.S. origin.

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<sup>37</sup> See the website of JETRO (<https://www.jetro.go.jp/biz/areareports/special/2023/0904/1b192c85ee3a2de6.html>).

<sup>38</sup> On May 14, 2024, President Biden directed the U.S. Trade Representative to raise the rates of the additional tariffs imposed against China based on Section 301 of the U.S. Trade Act of 1974 (Section 301 tariffs) in strategic sectors, such as electric vehicles (EVs), semiconductors and medical products. The tariff rate will be raised from 25% to 100% for EVs, from 25% to 50% for solar cells and semiconductors and up to 25% for steel and aluminum, among other items. See the website of the U.S. White House (<https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/14/fact-sheet-president-biden-takes-action-to-protect-american-workers-and-businesses-from-chinas-unfair-trade-practices/>).

<sup>39</sup> See the website of the U.S. White House (<https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/04/27/remarks-by-national-security-advisor-jake-sullivan-on-renewing-american-economic-leadership-at-the-brookings-institution/>).

<sup>40</sup> On May 23, 2022, the policy of describing all those technologies as “Section 1758 technologies” without distinguishing emerging technologies and foundational technologies was announced.

The Entity List (EL) enumerates companies and other entities designated for listing due to national security or foreign policy concerns. Exporting to companies on the list requires applying for and obtaining prior permission from the U.S. Department of Commerce. In recent years, the number of Chinese companies listed on the EL has increased rapidly—for example, major Chinese semiconductor companies have been added to the EL one after another, with the additions including JHICC in October 2018, Huawei and affiliated companies in May 2019 and August 2020, SMIC in December 2020, and YMTC in December 2022. In May 2020, the Foreign Direct Product Rules (FDPR), which is a kind of reexport regulation, was applied for the first time to Huawei and its group companies. Under the FDPR, the exporting of products that have been manufactured outside the United States but which use U.S. technology or software is subject to U.S. export control.

Under the Biden administration, U.S. control of exports to China has been targeted at all Chinese companies in general. In particular, regarding semiconductors, a foundational technology, the policy approach has shifted from securing relative superiority to absolute superiority.<sup>41</sup> In October 2022, the Bureau of Industry and Security (BIS) announced new export controls concerning semiconductors used for artificial intelligence (AI) processing and supercomputers and for advanced semiconductor manufacturing equipment and other items used for the manufacturing of advanced semiconductors that are exported to China. The scope of those export control measures is broad, subjecting to export control some types of semiconductors used for supercomputers with a higher performance than a certain level and semiconductor manufacturing equipment and other items that are used for production lines of semiconductors with a higher performance than a certain level. In addition, U.S. persons are obligated to obtain permission before conducting support activity for development or production in those sectors in China. In October 2023, BIS partially revised export control regulations concerning semiconductors bound for China. The revision aims to strengthen export controls by responding to the development of products intended to evade the abovementioned export control measures introduced in October 2022 and by preventing indirect exports to China via third countries. The revision addresses the risk of evasion via indirect export by expanding the scope of items subject to control to include semiconductor-manufacturing equipment and advanced computing semiconductors and by expanding the scope of destinations subject to control beyond China and Macau.

## **(2) Investment control policy**

With respect to the regulation of inward foreign direct investment, the Committee on Foreign Investment in the United States (CFIUS), acting as an inter-department/agency organization with the authority to review inward foreign direct investments, makes decisions on matters that may affect U.S. national security. Under the Foreign Investment Risk Review Modernization Act of 2018, which constitutes part of the NDAA2019, the CFIUS's investment review authority has been strengthened. Specifically, regarding inward foreign direct investments related to emerging technologies and critical

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<sup>41</sup> In his speech in September 2022, Assistant to the President Sullivan stated that it was necessary to rethink the approach of maintaining “relative superiority against competitors with respect to export controls on critical technologies. See the website of the U.S. White House (<https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/09/16/remarks-by-national-security-advisor-jake-sullivan-at-the-special-competitive-studies-project-global-emerging-technologies-summit/>).

infrastructure, a prior review has become mandatory in the case of investments that are made by investors who are under the influence of foreign governments and that may affect business management. In September 2022, an executive order that defines the sectors and factors on which the CFIUS should follow up as priority matters was issued. In October, the Department of Treasury announced the guidelines on enforcement and penalty. In this way, enforcement has been strengthened.<sup>42</sup>

Moreover, discussions are underway on the regulation of outward foreign direct investments as a means to complement existing export controls and the regulation of inward foreign direct investment. Regarding outward foreign direct investment, discussions have already been held on legislation, leading to the submission of a bipartisan bill to the Congress,<sup>43</sup> for example. In August 2023, the executive order concerning the regulation of outward foreign direct investment was issued.<sup>44</sup> The executive order provides for the regulation of investment in particular countries of concern in three technology sectors—(i) semiconductors and microelectronics, (ii) quantum information technologies, and (iii) artificial intelligence (AI), designating China (including Hong Kong and Macau) as a country of concern. The U.S. Department of Treasury has issued a prior notice of the proposed regulation and is scheduled to announce a finalized regulation later, after a public comment procedure.<sup>45</sup> The CHIPS and Science Act, enacted in August 2022, includes a so-called guardrail provision and imposes restrictions on fund recipients' direct investments related to advanced semiconductor manufacturing infrastructure in particular countries of concern, such as China.

## **2. Trends in Europe**

In Europe, in June 2023, the European Commission announced the European Economic Security Strategy, the first strategy of its kind for the European Union.<sup>46</sup> This strategy proposes the introduction of a comprehensive strategic approach to economic security in the EU and presents a common framework for achieving EU economic security. It calls for the European Commission and EU member countries to work together to identify and assess economic security risks with respect to four risk areas ((i) risks related to the resilience of supply chains, including energy security, (ii) risks related to critical infrastructure, (iii) risks related to technology leakage, and (iv) risks related to economic dependencies and economic coercion) and aims to reduce those risks through a three-pronged approach of promoting the EU's competitiveness, protecting the EU from economic security risks, and partnering with countries sharing concerns about and interest in economic security. As specific measures, the strategy calls for revising the Foreign Direct Investment Screening Regulation and considering measures to improve export controls of dual-use items at the EU level and measures to address security risks related to controls on outward foreign direct investment.

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<sup>42</sup> See the website of JETRO (<https://www.jetro.go.jp/biz/areareports/special/2023/0904/1d4f22adbd9e3a7b.html>).

<sup>43</sup> See the website of JETRO (<https://www.jetro.go.jp/biz/areareports/special/2023/0904/a0f26d952d2127ea.html>).

<sup>44</sup> See the website of the U.S. Department of Treasury (<https://home.treasury.gov/policy-issues/international/outbound-investment-program>).

<sup>45</sup> By the September 28, 2023 submission deadline of public comments, 61 comments were submitted.

<sup>46</sup> See the website of the European Commission ([https://ec.europa.eu/commission/presscorner/detail/en/IP\\_23\\_3358](https://ec.europa.eu/commission/presscorner/detail/en/IP_23_3358)).

In accordance with the strategy, in October, the European Commission announced recommendations concerning the joint implementation of risk assessment regarding the leakage of critical technologies to countries outside the EU area with member countries. The European Commission selected 10 critical and emerging technologies<sup>47</sup> that may be used for civil-military fusion or human rights violation and recommended the completion of risk assessment by the end of 2023 with respect to four technology areas that pose particularly imminent risks, namely, advanced semiconductors, artificial intelligence (AI), quantum technologies and biotechnologies.<sup>48</sup>

In January 2024, the European Commission announced an economic security policy package comprised of five initiatives in order to propose additional specific activities in view of the Economic Security Strategy.<sup>49</sup> The five initiatives are (i) revising the Foreign Direct Investment Screening Regulation, (ii) stepping up EU-level discussions on export controls on dual-use items, (iii) holding consultations on potential risks related to outward foreign direct investments, (iv) supporting research and development involving technologies with dual-use potential, and (v) enhancing research security.

### **(1) Export control policy**

In the EU, in September 2021, the export control regulation concerning dual-use items was revised to strengthen controls on civilian-use products and technologies that may be used for military and security purposes, such as cyber-surveillance technology, and introduce control measures regarding exports of cyber surveillance items that may be used to infringe human rights.<sup>50</sup> The regulation allows member countries to implement their own measures, so the Economic Security Strategy pointed out an urgent need for quicker and more collaborative actions at the EU level in the field of export control. In September 2023, the Netherlands put into force a domestic law related to the enhancement of export controls on advanced semiconductor-manufacturing equipment (lithography equipment and deposition equipment). In addition, export control measures concerning critical and emerging technologies over which an agreement has not been reached under the international export control regime were also implemented by other European countries in recent years, specifically, by Spain in June 2023, by France in March 2024, and by the United Kingdom in April 2024.

The white paper on export controls,<sup>51</sup> published in January 2024, presented four proposals for improving EU-level coordination in the development and execution of export control policies. The proposed short-term actions were: (i) uniform EU controls on items that would have been adopted as items subject to control if some particular countries have not blocked the adoption under the multilateral

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<sup>47</sup> The 10 critical and emerging technologies are advanced semiconductors technologies, artificial intelligence technologies, quantum technologies, biotechnologies, advanced connectivity, navigation, and digital technologies, advanced sensing technologies, space and propulsion technologies, energy technologies, robotics and autonomous systems, and advanced materials, manufacturing and recycling technologies.

<sup>48</sup> See the website of the European Commission ([https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_4735](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4735)).

<sup>49</sup> See the website of the European Commission ([https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_363](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_363)).

<sup>50</sup> See the website of the European Commission ([https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_4601](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_4601)).

<sup>51</sup> European Commission (2024), “WHITE PAPER on Export Controls” (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2024:25:FIN>).

regime; (ii) establishment of a forum for political coordination between EU member countries and the European Commission to accelerate the fostering of common EU positions on export controls; and (iii) establishment by summer 2024 of a mechanism for member countries preparing to take own measures to engage in prior coordination with other member countries and the European Commission. The proposed medium-term action was (iv) evaluating the Dual-Use Regulation in the first quarter of 2025 and making, as necessary, proposals to improve the efficiency and effectiveness of the current regulatory regime. This evaluation will be implemented based on the results of an investigation to be conducted by the end of 2024 and an ongoing risk assessment concerning critical technologies.

## **(2) Investment control policy**

In the EU, in October 2020, the Foreign Direct Investment Screening Regulation was fully applied.<sup>52</sup> Under the regulation, direct investments in the EU from outside the area are screened for approval or disapproval in order to ensure security and protect public order. Decisions on whether or not to introduce investment regulations and the specifics thereof are left to member countries. According to the annual report published in October 2023, 21 member countries have introduced an investment screening system.<sup>53</sup> Meanwhile, under the National Security and Investment Act, put into force in January 2022, the United Kingdom has separated its investment screening regarding national security from the examination based on the Companies Act and strengthened enforcement.

The draft revised Foreign Direct Investment Screening Regulation,<sup>54</sup> announced in January 2024, would make the introduction of a foreign direct investment (FDI) screening system, which has until now been introduced by EU member countries on a voluntary basis, a mandatory step for all EU member countries, promote the harmonization of member countries' screening systems to improve the mechanism for EU-level cooperation, and add intra-EU transactions conducted by foreign companies' subsidiaries located in the EU area to the scope of screening. Going forward, the draft revision will undergo deliberation by the EU Council and the European Parliament through the usual legislative procedure.

Moreover, regarding controls on foreign direct investment, under the Economic Security Strategy, the European Commission will consider what risks may result from such investment and study possible measures to address security risks related to such investment. In the white paper on outward foreign direct investment published in January 2024,<sup>55</sup> the European Commission announced the start of the process of collecting data and evidence concerning potential risks related to such investment (particularly the risk of leakage of knowhow and technology). The white paper calls for member countries to monitor outward direct investment for a 12-month period starting in summer 2024 and,

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<sup>52</sup> EU (2019), "Official Journal of the European Union" (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0452>).

<sup>53</sup> See the website of the European Commission ([https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_5125](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5125)).

<sup>54</sup> European Commission (2024), "Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL" ([https://eur-lex.europa.eu/resource.html?uri=cellar:272e2bb6-bb7c-11ee-b164-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:272e2bb6-bb7c-11ee-b164-01aa75ed71a1.0001.02/DOC_1&format=PDF)).

<sup>55</sup> European Commission (2024), "WHITE PAPER on Outbound Investments" (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52024DC0024>).

based on the results of the monitoring, assess the risks that such investment may pose to the security of the EU. Following those procedures, the need for actions to address risks will be considered.

### **3. Trends in China**

In China, the development of systems related to export and investment controls has made progress in recent years.

#### **(1) Export control policy**

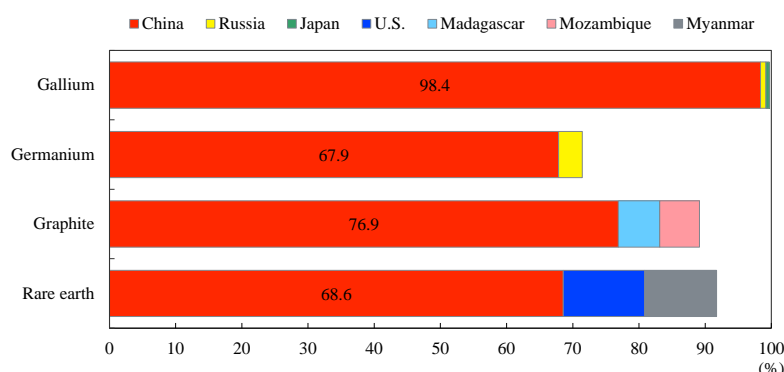
Recently, China has been strengthening export controls. For example, in December 2020, the Export Control Law was put into force. From the viewpoint of security control, this law comprehensively provides for export controls on dual-use items, military products, nuclear equipment, and related technologies, calling for the compilation of a list of items subject to control, the introduction of a list of entities to which the export of particular items is prohibited, the introduction of control of deemed export and reexport and prescribing the principles for extraterritorial application and retaliatory measures. The development of relevant laws and regulations and the establishment of enforcement practices are now ongoing. In April 2022, the draft export control regulation for dual-use items (for public comments) was published.

Export bans and restrictions on general technologies are provided for under the Regulations of the People's Republic of China on the Import and Export Control of Technologies, which is subordinate to the Foreign Trade Law, and controls on the items subject to the law are based on the Catalogue of Technologies Prohibited and Restricted from Export. In August 2020, this catalogue underwent major revisions for the first time in 12 years, with technologies related to artificial intelligence (AI), cryptography/IT security, biotechnology, machine tools/plants, and aerospace added as new items against the backdrop of China's recent technological advances and from the security perspective. In December 2022, a proposal to add solar panel silicon manufacturing technology and genetic engineering technologies, such as gene analysis and gene editing, was published, and in December 2023, based on public comments, the revised version of the Catalogue of Technologies Prohibited and Restricted from Export was published.

Recently, export controls on critical materials have also been strengthened. In August 2023, items related to gallium and germanium (single elements and compounds), which are used mainly as semiconductor materials, were added to the scope of export control. This measure is intended to protect national security and national interests. In December, export controls on items related to graphite, which are used as materials of batteries for electric vehicles, were put into force, targeting items whose properties meet certain criteria. In addition, in November of the same year, the export of rare earths was added as an item requiring a notification. Moreover, China added some rare earth-related technologies, such as technologies for manufacturing rare earth metals and rare earth magnets, to the abovementioned revised version of the Catalogue of Technologies Prohibited and Restricted from Export, thereby prohibiting or restricting the export of those technologies. China has a large share in the production of those minerals, so it is necessary to closely watch the situation, including as to whether the enforcement

of Chinese export controls is consistent with international rules, such as the WTO rules<sup>56</sup> (Figure II-1-2-1).

**Figure II-1-2-1. Shares in the production of critical minerals**



Note: The data on germanium is as of 2021, and the data on the rest of the critical minerals is as of 2023.  
Source: United States Geological Survey.

## (2) Investment control policy

In China, the broad framework of the system of security screening of foreign investment has been set by the Foreign Investment Law, which was put into force in January 2020, and in January 2021, the Measures on National Security Review of Foreign Investment, which lay down the details of the security review system, were put into force. The sectors subject to review include not only military-related sectors but also critical agricultural products, critical infrastructure facilities, critical technologies, and other items that may affect national security. As for investments that lead to the acquisition of effective management control, filing a prior application with the National Development and Reform Commission is mandatory. Permission for inward foreign direct investment in China is granted if it has been judged as a result of a review that there is no risk of national security being affected.

## (3) Countermeasures against foreign sanctions, etc.

In response to the sanctions imposed by the United States and other countries, China has enacted a series of laws to implement countermeasures against the foreign sanctions. It put into force the Unreliable Entity List in September 2020 and the Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures in January 2021. Organizations and individuals registered with the Unreliable Entity List are subject to prohibition or restriction on such activities as trade, investment, entry, and stay. In the first case of application of this list, in February 2023, two U.S.

<sup>56</sup> At a regular press conference on September 21, 2023, regarding items related to gallium and germanium, the Ministry of Commerce stated that it has already granted permission to several export applications that it has judged to conform to the relevant regulations and that licenses for the export of dual-use items and technologies have been issued to relevant companies. Regarding items related to graphite, at a regular press conference on December 14, 2023, the ministry stated that it has already granted permission to several export applications that it has judged to conform to the relevant regulations. See “Trends in the enforcement of the Chinese export control system (as of December 2023)” by the Beijing Office of JETRO ([https://www.jetro.go.jp/ext\\_images/\\_Reports/01/9e1980f0250a4eb1/20230034.pdf](https://www.jetro.go.jp/ext_images/_Reports/01/9e1980f0250a4eb1/20230034.pdf)).

companies were put on the list and were subjected to such measures as the prohibition of export/import and monetary penalty.<sup>57</sup> In June 2021, the Anti-Foreign Sanctions Law, which, as a national statutory law, is superior to the existing rules, was put into force. Based on this law, sanctions against U.S. individuals, government agencies, and companies have been announced one after another in response to the sanctions imposed by the United States against the Chinese authorities and other entities. One recent example is the announcement in January 2024 of the sanctions imposed against five U.S. companies for selling weapons to Taiwan.<sup>58</sup>

#### **4. Trends in Japan**

In Japan, the framework of export and investment controls has been set by the Foreign Exchange and Foreign Trade Act and is revised as appropriate in light of the security environment. The new National Security Strategy, which was authorized upon a Cabinet decision in December 2022, positions the promotion of economic security policy as a major policy measure and calls for considering the further enhancement of investment screening and export controls, among other measures. Described below is an overview of recent revisions.

##### **(1) Export control policy**

In May 2022, Japan clarified the enforcement of controls on “deemed export,” so as to subject to control the provision of controlled technologies to residents who are under the strong influence of non-residents. In July 2023, in order to maintain international peace and security, Japan strengthened export controls on advanced semiconductor-manufacturing equipment and added the export of 23 types of semiconductor-manufacturing equipment to all regions to the scope of control based on the Foreign Exchange and Foreign Trade Act.

The Ministry of Economy, Trade and Industry has been holding discussion on reforming the export control system at the Subcommittee on Security Export Control Policy under the Industrial Structure Council in view of the changes in the international security environment and the growing risk of diversion of dual-use technologies to military application. In April 2024, the subcommittee published an interim report.<sup>59</sup> The interim report recommended that a new approach should be considered with respect to items other than sensitive items with a particularly high potential for diversion to military application (items subject to the so-called list control) and that efforts should be made to realize effective security export controls. Specifically, the interim report presented recommendations regarding the following points: (i) review the complementary approach to the list control to address the growing potential for diversion to military use of dual-use items and technologies; (ii) establish a new dialogue framework on technology transfer between public and private sectors by taking advantage of some mechanisms under the Foreign Exchange and Foreign Trade Act; (iii) explore multilayered international collaboration for agile and effective export control; and (iv) streamline and prioritize export control

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<sup>57</sup> See the website of JETRO (<https://www.jetro.go.jp/biznews/2023/02/ac9dbb6d2bab4f0d.html>).

<sup>58</sup> See the website of JETRO (<https://www.jetro.go.jp/biznews/2024/01/425f35faf3aa2803.html>).

<sup>59</sup> A press release published by the Ministry of Economy, Trade and Industry on April 24, 2024 ([https://www.meti.go.jp/english/press/2024/0424\\_004.html](https://www.meti.go.jp/english/press/2024/0424_004.html)).



systems and implementations in accordance with the respective levels of security concerns, etc. Going forward, necessary revisions of Cabinet and ministerial orders will be made.

## **(2) Investment control policy**

Regarding investment control, Japan conducts strict screening based on the Foreign Exchange and Foreign Trade Act from the viewpoint of the risk of undermining national security, among other factors. Through the revisions made in 2019, the threshold for the acquisition of shares in a listed company subject to prior notification has been lowered (from 10% to 1%), and a system of prior notification at the time of action and a system of exemption from prior notification have been introduced. As a result, regarding specified industries, foreign investors may be exempted from submitting a prior notification when acquiring shares and be allowed to make investment with only an ex-post notification required, on condition that they comply with certain criteria. In view of the changes in the business environment surrounding Japanese companies, the list of designated industries for which a prior notification is required has been revised as necessary. Among the additions to the list in recent years are industries related to cybersecurity, added in August 2019, industries related to pharmaceuticals and specially controlled medical devices, added in June 2020, and industries related to critical minerals, etc. (e.g., rare earths), added in October 2021. In May 2023, in view of the designation of “specified critical products” based on the Economic Security Promotion Act, relevant industries were added to the list from the viewpoint of securing supply chains and responding to the risks of technology leakage and diversion to military application.