

A Study on the Conclusion of a Protocol to Suspend Trilateral Safeguards Transfer Agreement in Korea

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1. Introduction

As a member state of the IAEA and NPT, Korea concluded a fullscope safeguards agreement with the IAEA to cover all the nuclear activities in the nation. By implementing the fullscope safeguards in Korea, there arose an issue on the application of safeguards other than those of the IAEA. In this article, the process between Korea and the US to clear up the issues on the US safeguards right which stems from a bilateral nuclear cooperation agreement is analyzed..

2. Status of the Safeguards Agreements in Korea

In a bilateral nuclear cooperation agreement, both parties agree on the scope of the cooperation as well as the rights of the supplier country and the obligations of the recipient country. Prior consent right and right of return are major components of the supplier's rights whereas an assurance on peaceful usage and safeguards implementation are those of the recipient's obligations.

Korea concluded its first bilateral nuclear cooperation agreement with the US (hereinafter referred to as the Agreement for Cooperation) in 1956 to introduce research reactors in Korea. In the agreement, the US described its safeguards rights as a supplier country. In 1968, the US safeguards rights were transferred to the IAEA by the conclusion of an agreement between the IAEA, Korea and the US for the application of safeguards (hereinafter referred to as the Safeguards Transfer Agreement). In section 6 of the Safeguards Transfer Agreement, the US agreed to suspend its safeguards rights while

items subject to the Agreement for Cooperation are listed in the inventory for Korea being established and maintained by the IAEA [1]. In 1972, the Agreement for Cooperation was fully revised to introduce power reactors in Korea. In the revised Agreement for Cooperation, the US described in detail its safeguards rights on the transferred items including the derived ones through the Agreement for Cooperation. However, in article 12 of the Agreement for Cooperation, the US agreed to suspend its safeguards rights while it also agreed that the need to exercise such rights is satisfied by the Safeguards Transfer Agreement or a new safeguards agreement pursuant to Article 3 of the Treaty on the Non-proliferation of Nuclear Weapons (hereinafter referred to as the NPT) [2]. In 1975, Korea concluded with the IAEA an agreement for the application of safeguards in connection with the NPT pursuant to article 3 of the Treaty (hereinafter referred to as the Treaty Safeguards Agreement). Accordingly the safeguards pursuant to the Safeguards Transfer Agreement were substituted by those from the Treaty Safeguards Agreement. Article 23 of the Treaty Safeguards Agreement describes that the application of the IAEA safeguards in Korea under other safeguards agreements with the IAEA shall be suspended while it is in force [3]. As the inventory pursuant to the Safeguards Transfer Agreement is no longer maintained under the Treaty Safeguards Agreement, the US interprets that its safeguards rights pursuant to the Agreement for Cooperation is no longer suspended and can be implemented if necessary. It could be understood that the US insists on the revival of its safeguards rights despite the Treaty Safeguards Agreement, to prevent a

military application of the US supplied items pursuant to the Agreement for Cooperation. Article 14 of the Treaty Safeguards Agreement describes the procedures when Korea intends to exercise its discretion to use nuclear material in a nuclear activity which does not require the application of the safeguards. The US position for the application of article 14 of the Treaty Safeguards Agreement is that Korea has to satisfy the US that none of the items pursuant to the Agreement for Cooperation is involved in such military use. To secure a guarantee from Korea, the US suggests issuing a unilateral diplomatic note to suspend the US safeguards rights with a condition of concluding a protocol to satisfy the US (hereinafter referred to as the Suspension Protocol) when the event to apply the article 14 happens [4].

3. Foreign Cases

The US has already concluded such protocols with several countries and continues its efforts to conclude the same kind of protocol with other countries. It could be understood that the US decision on the conclusion of such a protocol can be determined by the contents of existing bilateral nuclear cooperation agreements with other parties. Since the 1980s, the US has suggested its so-called Model Agreement to revise existing agreements or to conclude a new nuclear cooperation agreement. The Model Agreement contains more strengthened provisions about the US safeguards rights than the Agreement for Cooperation.

The US revised its nuclear cooperation with Japan in 1987. In the revised cooperation agreement, the US included the spirit of the Model Agreement. Especially to ensure the prohibition of a military use, both countries agreed to exchange annually the inventory of material, nuclear material, equipment and components subject to the cooperation agreement in an agreed minute. Thus the provisions which were included in the safeguards transfer agreement between the US,

Japan and the IAEA had been reflected in the revised cooperation agreement. Consequently, the transfer agreement expired in 1988.

4. Conclusion

The existing Agreement for Cooperation is valid till 2015. When it comes time to revise the agreement, the US is expected to suggest its so-called Model Agreement. Till that time, the US will continue to conclude the Suspension Protocol to ensure the obligations of Korea in that they are not using the items subject to the Agreement for Cooperation for a military use. The conclusion of the Suspension Protocol can be considered as a matter of mutual confidence between the two countries. It could be interpreted that the US action towards the protocol is to arouse the attention on the prohibition of a military application by using the US supplied nuclear items. The consent by Korea, if given, should be understood as an action to reaffirm its support of the US position. It would be desirable to establish a firm national position through closer discussions by related organizations to strengthen the confidence in national nuclear diplomacy.

References

- [1] Agreement between the IAEA, Korea and the US for the Application of Safeguards (1968)
- [2] Nuclear Cooperation Agreement between Korea and the US (1972)
- [3] INFCIRC/236, The text of the Agreement of 31 October 1975 between the Republic of Korea and the Agency for the Application of Safeguards in Connection with the Treaty on the Non-proliferation of Nuclear Weapons, 16 June 1976, IAEA
- [4] Summary Record on the Joint Standing Committee on Nuclear Energy Cooperation between Korea and the US (2004)