

A Study on the Implementation Procedures of Export/Import Controls pursuant to a Bilateral Nuclear Cooperation Agreement

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1. Introduction

The Agreement for Cooperation between the Government of the Republic of Korea (ROK) and the Government of the United States of America (U.S.) Concerning Peaceful Uses of Nuclear Energy (hereinafter referred to as the "Agreement") was concluded on 15 June 2015 and entered into force in 25 November 2015. The Nuclear Safety and Security Commission (NSSC) and the U.S. Department of Energy (DOE) agreed to make the Administrative Arrangement (hereinafter referred to as the "Arrangement") to facilitate the implementation of the Agreement by providing detailed implementation process and procedures. Accordingly, the Agreement along with the Arrangement brought new perspectives in the area of nuclear export and import controls.

Under this new nuclear cooperation framework, a more systematic and efficient measures are required in order to fully implement the export/import controls-related regulations. This paper is designed to find out the implication of the Agreement on the export and import controls, to identify different ways of implementation by specific conditions. Through this work this paper also seeks, if necessary, how to complement and further strengthen the current relevant domestic laws by reflecting the new Agreement.

2. Nuclear Cooperation Agreement

According to the Agreement (Article 2.2), transfer of information, nuclear material, moderator material, equipment and components may be undertaken through authorized persons. In addition, the aforementioned items become subject to the Agreement upon their entry into the territorial jurisdiction of the recipient if the shipping country notifies the receiving country in writing of the intended transfer and the recipient acknowledges in writing the receipt of such notification.

The Agreement allows the retransfer of nuclear material, moderator material, equipment, components and any special fissionable material produced through the use of the abovementioned items. If both Parties agree, these items may also be transferred beyond the territorial jurisdiction of the recipient. In this case, the Agreed Minute subordinated to the Agreement stipulates that the retransfer of unirradiated low enriched uranium, unirradiated source material,

equipment and components may be undertaken to third countries or destinations identified on the list attached to the Agreed Minute.

Irradiated nuclear material transferred and produced through the use of nuclear material, moderator material, or equipment transferred may be transferred to a third country as agreed by two countries. According to the Agreed Minute, irradiated nuclear material may be transferred for storage and reprocessing to France, the United Kingdom, and any other country as agreed upon in writing by the Parties.

3. Implementation Procedures

3.1 Import of Items Subject to the Agreement

Import of the obligated items subject to the Agreement follows the procedures bellows. First, the DOE/National Nuclear Security Administration of the U.S. (hereinafter referred to as the "DOE/NNSA") sends a prior notification to the NSSC of the ROK. Then the NSSC reviews the purpose of import and requests the importer to submit a written pledge. After receiving necessary documents, the NSSC provides the DOE/NNSA with an acknowledgement of receipt. After shipment, the DOE/NNSA sends a written confirmation of shipment to the NSSC. After receiving obligated items, the importer reports to the NSSC and the Commission provides the DOE/NNSA with a written confirmation of receipt. As a final step, the NSSC adds the imported items to a database that manages obligated items pursuant to the Agreement.

3.2 Export of Obligated Items to the U.S.

In case of exporting obligated items, the exporter requests the NSSC to classify whether the exporting item would be part of the items subject to the Agreement. If the item turns out to be obligated, the exporter applies for an export license. Then, the NSSC sends a prior notification to the DOE/NNSA before shipping and the DOE/NNSA provides an acknowledgement of receipt. Once the NSSC issues an export license, the exporter reports to the NSSC regarding the shipment. The NSSC provides the DOE/NNSA with a written confirmation of shipping and the DOE/NNSA sends a written confirmation of receipt to the NSSC. To conclude the process, the DOE/NNSA adds the item to its database.

To implement this procedures, several points should be taken into account. First, a new classification process dedicated to the Agreement needs to be devised since there might be a case that an item belongs to the Agreement, but not included in the Trigger List items. The Foreign Trade Act of the ROK covers strategic items defined by the international Export/Import regimes. Accordingly, U.S. obligated items are supposed to be regulated by the Nuclear Safety Act. Considering the Act does not specify details about implementation procedures, the Act and its subordinated regulations need to be amended.

3.3 Retransfer to Third Countries with Prior Consent

The process for the retransfer to third countries with prior consent basically adopts a similar process of the direct transfer. The exporter that plans to export a U.S.-origin item to the third country applies for an export license to the NSSC. The Commission provides the information on proposed shipments for retransfer to the DOE/NNSA before shipping. The DOE/NNSA contacts the third country which has to have a bilateral nuclear cooperation agreement with the U.S. to inform that a U.S.-origin item will be transferred, which generates a responsibility for the third country to control the item transferred in accordance with the bilateral agreement. Then the DOE/NNSA provides the NSSC with a written confirmation, which leads the NSSC to issue an export license. After shipment, the exporter reports to the NSSC and the Commission sends a written confirmation of shipment. In this case, considering there is no process for the NSSC to confirm the receipt of the U.S.-origin item from the third country, an appropriate procedure for the exporter should be set up for the purpose of managing the database controlling U.S. obligated items.

3.4 Retransfer to Third Countries without Prior Consent

When an exporter retransfers a U.S.-origin item to third country without prior consent, the NSSC is required to request the DOE/NNSA a prior consent for retransfer. Then, the DOE/NNSA decides whether the Administration approves the retransfer after reviewing the domestic laws and regulations. In this case, the third country of recipient is unlikely to have a bilateral nuclear cooperation agreement with the U.S. Therefore, the U.S. might demand that the third country concludes a bilateral nuclear cooperation agreement with the U.S. according to the Section 123 of the U.S. Atomic Energy Act. If the U.S. recognizes that it is not a viable option, the retransfer could be difficult to be carried out.

4. Case Study–Export of Obligated Items to Third Country

Four different ways of implementation in terms of direct transfer or retransfer of U.S. obligated items

subject to the Agreement were examined. Based on this understanding, this paper applies this framework to a retransfer case to seek the best possible way to enhance the current export and import controls system. If a Korean company plans to fabricate items by importing U.S. obligated items from Europe, the DOE/NNSA sends prior notification to the NSSC and the Commission provides the DOE/NNSA with a written acknowledgement. After receiving the U.S.-origin nuclear items, the NSSC sends a notification of a receipt to the DOE/NNSA. If this company plans to export these fabricated items to third country without prior consent, the NSSC requests the third country to issue a governmental assurance and also requests the U.S. to provide a prior consent for the retransfer. Once the DOE/NNSA offers a written consent, the NSSC issues an export license and after shipment the Commission provides the DOE/NNSA with information on shipments to third country. However, if the third country is included on the list of prior consent, the request for consent to retransfer will be replaced by the prior notification for retransfer. By doing so, the administrative process becomes much simplified, which enables efficient use of related resources.

5. Conclusion

To comply with the responsibilities imposed by the Agreement in a sincere manner could enhance mutual trusts between two countries. This endeavor would ultimately empower both countries to facilitate export/import activities, which conforms not only the bilateral Agreement, but also the international export controls regimes. Based on the analysis of four different export/import controls measures in accordance with the Agreement, this paper clarified obligations pursuant to the Agreement as well as seeking ways to complement and further reinforce the existing domestic laws and regulations.

REFERENCES

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