

A Comparative Analysis Between NSG Guidelines and Korean Export Control System: Retransfer

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1. Introduction

The Nuclear Suppliers Group (NSG), as a pivot of an international nuclear export control regime, has made an effort to achieve the goal of nuclear nonproliferation. NSG Participating countries have updated or modified their national laws, regulations and license requirements based on the NSG guidelines, as appropriate, in order to increase the effect of export control. These countries do not necessarily apply the guidelines to their legal system at the same level because NSG is not a legal binding organization. It is, however, important for them to understand exactly the Guidelines and articulate their national export control legal system, to avoid undue or lowered export control.

This paper analyzes the differences between the Guidelines and the Korean export control system on a retransfer and the implications from the perspective of export control implementation in Korea.

2. A Comparative Analysis Between NSG Guidelines and Korean Export Control System: Retransfer

2.1 Retransfer in the NSG Guidelines

According to paragraph 9(a) of the NSG Guidelines, suppliers should transfer trigger list items or related technology only upon the recipient's assurance that in case of (1) retransfer of the trigger list items or related technology, or (2) transfer of the derived items¹, the recipient of the retransfer or transfer will have provided the same assurances as those required by the supplier for the original transfer[1]. In accordance with paragraph 9(b), the supplier's consent should be also required for (1) any retransfer of trigger list items or related technology and any transfer of the derived items referred to under paragraph 9(a) (2) from any state that does not require full scope safeguards, (2) any retransfer of enrichment, reprocessing or heavy water production facilities, equipment or related technology, and for any transfer of the derived facilities or equipment, and (3) any retransfer of heavy water or material usable for nuclear weapons or other nuclear explosive devices. In addition, government to government assurances will be

¹ 'The derived items' mean trigger list items derived from facilities originally transferred by the supplier, or with the help of equipment or technology originally transferred by the supplier.

required for any relevant original transfer to ensure the consent right as defined under paragraph 9(b).

This means that all recipients under paragraph 9(a) should provide the supplier with their assurance, and that the recipient, which is not a party to the NPT under paragraph 9(b) (1) or a Nuclear Weapon State as a party to the NPT (NWS), will accept the consent right of the supplier, for the retransfer and any transfer of the derived items to the third party.

In other words, the NSG Guidelines require the supplier's consent as an additional condition of supply for the transfer and any derived item if the recipient is not a party to the NPT or a NWS.

2.2 Retransfer in Korean Export Control System

The relevant provision of export control on the retransfer or any derived transfer in Korea is articulated in the Foreign Trade Act[2] and Notice on Trade of Strategic Items[3] (hereafter, the Notice).

With regard to the retransfer, the Notice is the same as the NSG Guidelines except one. The difference is that the Notice requires the supplier's consent right for a retransfer even if the recipient is a party to the NPT as a Non-Nuclear Weapon State (NNWS) which is applied to full scope safeguards. Therefore, all recipients, regardless of the party to the NPT, should provide the supplier with its assurance and accept the supplier's consent for the retransfer.

2.3 A comparative Analysis between NSG Guidelines and Korean Export Control

In the case of a retransfer and the derived transfer referred to under paragraphs 9(a) and 9(b), the NSG Guidelines consist of two kinds of export control that require the assurance of all recipients and the supplier's consent from a non-party to the NPT and a NWS. The Notice, however, requires the assurance of, and the supplier's consent from, all recipients including a NNWS.

In this meaning, Korean export control has a more strengthened legal system than the NSG Guidelines in relation with a retransfer. This analysis is summarized in Table 1.

Table 1 A Comparison between the NSG Guidelines and Korean Export Control for the retransfer

| | NSG Guidelines | Korean export control System |
|--|----------------|------------------------------|
| | | |

| | | |
|-----------|---------------------------------------|--------------------------------------|
| Assurance | All recipients | All recipients |
| Consent | From a Non-party to the NPT and a NWS | From All recipients including a NNWS |

As of December 2016, the Korean government has concluded a Nuclear Cooperation Agreement (NCA) with 29 countries[4]. As the NCA includes the provision of the supplier's consent right for a retransfer, it is consistent with the Notice. To satisfy the supply condition of the Notice for a retransfer, the Korean government should also secure the consent right as well as the assurance from a country (recipient) that has not concluded an NCA with the Korean government, even if the country is a NNWS.

In this context, some explanations on a strengthened export control policy and the legal system of Korea for a retransfer are needed to avoid an unnecessary misunderstanding of the recipient as a party to the NPT.

3. Conclusions

For control on the retransfer of the trigger list items or related technology and any derived items, the NSG Guidelines for effective export control consists of two kinds of export control that require the assurance of all recipients and the supplier's consent from a non-party to the NPT or a NWS as a party to the NPT. The Korean Notice on Trade of Strategic Items, however, requires the assurance of, and the supplier's consent from, all recipients including a party to the NPT as a NNWS. This means that Korean export control has more a strengthened legal system than the NSG Guidelines in relation with a retransfer.

As the Korean standardized-model NCA basically includes the provision of the supplier's consent right for a retransfer, it is consistent with the Notice. To cooperate with a country, as a recipient, which doesn't have an NCA with the Korean government, the consent right from, as well as the assurance of, the recipient including a party to the NPT as a NNWS, should be required for the retransfer to satisfy the Notice. In this regard, appropriate explanations will be needed to avoid an unnecessary misunderstanding.

REFERENCES

- [1] IAEA, Communication received from the Permanent Mission of the Republic of Korea to the International Atomic Energy Agency regarding Certain Member States' Guidelines for the Export of Nuclear Material, Equipment and Technology, INFCIRC/254/Rev.13/Part1, Nov. 8, 2016.
- [2] Korea Ministry of Government Legislation, Foreign Trade Law, No. 11958, 2013(search date: Mar. 5, 2018).
- [3] Korea Ministry of Government Legislation, Notice on Trade of Strategic Items , No. 2017-24, 2017(search date: Mar. 5, 2018).
- [4] Ministry of Science and ICT, 2017 White Paper on Nuclear Energy, Jun. 13, 2017.