

A Study on Improvement of Export Control law's understanding for nuclear control items' exporters in Rep. of Korea

Dong-hyuk Lim*, Sun-do Choi, Seung-hyo Yang

Korea Institute of Nuclear Nonproliferation and Control (KINAC), 573 Expo-Ro, Yusung-Gu, Daejeon 305-348, Korea (Corresponding author: dhlm@kinac.re.kr)

1. Introduction

According to export of UAE commercial reactor and JRTR(Jordan Research and Training Reactor) in 2009, Korea's international prestige has enhanced and it has been more important for researcher in charge of export control to understand and carry out duties on export control by obeying Nuclear Suppliers Group(NSG) Guidelines. Currently, the NSG tries to prevent the proliferation of nuclear weapons by harmonising export control systems of participating countries in relation to trade with nuclear commodities and nuclear-related dual-use materials, equipment, software and technology. In addition, through the implementation of two sets of Guidelines for nuclear exports and nuclear-related exports, the NSG aims to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons or other nuclear explosive devices, and that international trade and cooperation in the nuclear field is not hindered unjustly in the process. However, there is still not a little confusion of export businesses owing to lack of understanding of nuclear items in Korea. Therefore, by correctly understanding export control systems, permits and licenses, ITT and persistingly communicating with export businesses, Researchers in charge of export control are able to eliminate confusion of production businesses regarding export and establish a export control culture.

2. Major Contents of NSG Guidelines

In this section, descriptions of NSG, export control systems, permits and licenses, ITT are mentioned.

2.1 Guidelines of the Nuclear Suppliers Group

The NSG seeks to contribute to the non-proliferation of nuclear weapons through the implementation of two sets of Guidelines for nuclear exports and nuclear-related exports. NSG participants pursue the aims of the NSG through adherence to the NSG Guidelines, which are adopted by consensus, and through an exchange of information, notably on developments of nuclear proliferation concern. The first set of NSG Guidelines was published in 1978 and governs the export of items that are especially designed or prepared for nuclear use. These include: (i) nuclear material; (ii) nuclear reactors and equipment therefore; (iii) non-nuclear material for reactors; (iv) plants and equipment for the reprocessing,

enrichment and conversion of nuclear material and for fuel fabrication and heavy water production.

The second set of NSG Guidelines was published in 1992 and governs the export of nuclear-related dual-use items and technologies, that is, items that can make a major contribution to an unsafeguarded nuclear fuel cycle or nuclear explosive activity, but that have non-nuclear uses as well, for example in industry. The NSG Guidelines facilitate the development of trade in this area by providing the means whereby obligations to facilitate peaceful nuclear cooperation can be implemented in a manner consistent with international nuclear non-proliferation norms. The commitment of NSG participants to rigorous conditions of supply, in the context of the further development of the applications of nuclear energy for peaceful purposes, makes the NSG one of the elements of the international nuclear non-proliferation regime. Currently, NSG participants as of march 2011 are shown as table.

Table I: NSG participants

Argentina	China	Finland	Ireland	Portugal	Swiss
Australia	Croatia	France	Italy	Romania	Turkey
Austria	Cyprus	Germany	Japan	Russian	Ukraine
Belarus	Czech Rep.	Greece	Kazakhstan	Slovak	UK
Belgium	Denmark	Hungary	Korea	Slovenia	USA
Brazil	Estonia	Iceland	Latvia	South Africa	
Bulgaria	Lithuania	Malta	Norway	Spain	
Canada	Luxembourg	Netherland	Poland	Sweden	

2.2 Export control systems

Export control systems comprise measures taken to control the transfer of certain items through a system of permits and licenses to ensure that their transfer does not pose an unacceptable risk. Export control systems are not embargoes, and the fact that a permit or licence is required before certain items can be exported does not mean that exporting countries requiring such permissions are attempting to deny or limit legitimate trade. Export control systems provide national governments with an effective means of achieving a wide range of goals, including, but not limited to, non-proliferation. Such systems provide a means to:

* Facilitate a level of scrutiny by government over exports, thereby allowing exporting countries to make an informed choice as to whether or not an export should be allowed to proceed;

*Meet obligations under international conventions, treaties or agreements (e.g., the NPT, United Nations

sanctions and Security Council Resolutions);

- *Gather trade statistics to assist in the development of government policy (e.g., balance of trade figures); and
- *Help demonstrate that the country is a trusted trading partner for legitimate transfers of dual-use items.

2.3 Permits and licenses

A system of permits or licenses is required to assist in controlling and monitoring the trade of NSG-listed items. A system of permits and licences provides the permit issuing and enforcement authorities with the means to determine if the export is legitimate and clearly sets out the parameters of what goods and technology may be exported. A permit defines the parameters that describe what may be exported, the quantities that may be exported and the consignees and end users who may be involved in the transaction. A permit should have an individual tracking number and convey at a minimum the following information (the commencement and expiry dates of the permit, the full name of the exporter, the consignee/s and final destination, Any intermediate consignee, etc.). To a large extent, NSG participants have harmonised their export control systems in order to prevent diversion or transshipment of controlled commodities for unauthorised end uses or to unauthorised destinations. In some cases, government-to-government assurances may be necessary. In order to expedite export applications, exporters should be encouraged to obtain appropriate end-use assurances from the importers well in advance of applying for an export permit. This ensures that applications are processed with minimal delays. However, such assurances do not eliminate the need for risk analysis; rather, the information provided in assurances should be used as part of the assessment of the proliferation risk posed by a proposed export. A number of different end-user assurances appear in several internationally recognised forms. These include:

- * International Import Certificates;
- * End-Use Certificates and/or Import Licenses;
- * End-Use Statements; and
- * Delivery Verification Certificates [pre-export application and post-export application].

Integrity checks are a series of structured questions asked by permit issuing agencies to evaluate the legitimacy of the particular transaction under scrutiny. Particular care should be taken to establish the bona fides of first time exporters and buyers, while variation from the usual commodity or method of transport of established exporters may also indicate further scrutiny is required. This scrutiny is often referred to as end-use/end-user analysis, which is a method of assessing proliferation risks posed by the transaction. Common questions to ask during this assessment are represented by the diagram in Figure 1, which demonstrates considerations for both the goods or technology transferred and all parties to the proposed transaction.

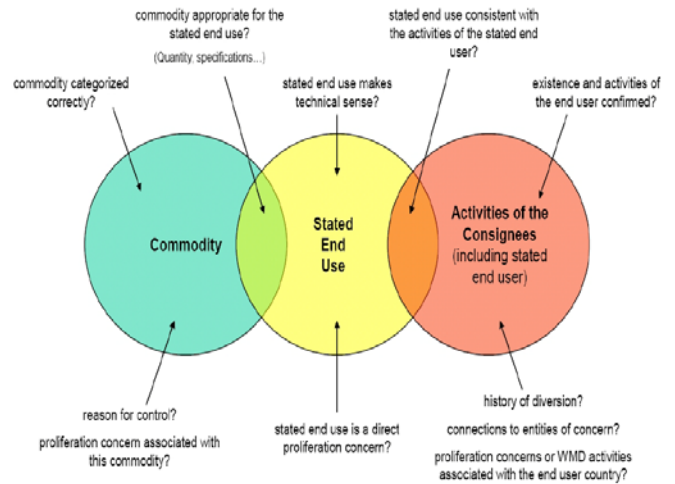


Fig. 1. Questions to ask during end-use/end-user analysis

2.4 Intangible transfers of technology(ITT)

The NSG Guidelines define technology as “specific information required for the ‘development’, ‘production’ or ‘use’ of any item on the list.” It further states “the information may take the form of ‘technical data’ or ‘technical assistance’.” “Technical data” may take forms such as blueprints, plans, diagrams, models, formulae, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.; “technical assistance” may take forms such as instruction, skills, training, working knowledge, consulting services.” Technology that is “in the public domain” – i.e., that has been made available without restrictions upon its further dissemination – is not subject to controls. Controls also do not apply to “basic scientific research.”

3. Conclusions

Korea has been solidifying its position as 5th nuclear country through making an export agreement on commercial and research and training reactor with UAE and Jordan. However, there is still not a little confusion of nuclear control items’ exporters owing to lack of understanding of export control law. Therefore, Researchers in charge of export control will be able to eliminate confusion of production businesses regarding export more and more by educating the exporting and reexporting community about the EAR and how to avoid and present violations through company outreach visits, regular seminars, workshops, other publicity. Also, by persistently communicating with various law enforcement partners about an interagency basis both domestically and internationally, researchers can accomplish enforcement mission and establish an export control culture.

REFERENCES

- [1] <http://www.nuclearsuppliersgroup.org/Leng/03-member.htm>
- [2] <http://www.nuclearsuppliersgroup.org/Leng/02-guide.htm>