

Establishing an Export Control System:

## Challenging Issues in Korea

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### I. Introduction

As Korean enterprises move toward higher levels of technological proficiency, implementing export controls has become one of the most urgent issues facing the nation.

During the Cold War, the Republic of Korea(ROK) generally prohibited commercial contact with North Korea and other communist countries, so it had little need for a sophisticated export control system until Korean industries began producing items in demand even in the Eastern Bloc with the advent of a new era.

After all, the Korean government modified its Foreign Trade Act in 1989 to promote closer multilateral cooperation regarding export control shortly after signing of Memorandum of Understanding on the Protection of Strategic Goods and Technology with the United States.

With a view to establishing a more systematic export control system, the ROK government set up a task force to study the guidelines, regulations and actual operation of leading countries in the field in early 1990s. As a result of these efforts, the Public Notice on Export and Import of Strategic Items('Public Notice') was enacted on July 1, 1993.

In an effort to follow the international guidelines, the domestic guidelines set forth in the new Public Notice were almost identical to those of each non-proliferation export control regime at the time, even before the ROK was not admitted to any of international export control regime.

Today, the Korean government officials are acutely aware of the proliferation threat posed by North Korean conventional and WMD

programs. To some degree, these threats, rather than wider non-proliferation concerns, have prompted greater attention to export control issues in South Korea. Since 2001, the ROK has held the membership in all the international export control regimes.

It is also undeniable that the security alliance with, and pressure from, the United States have also led Korean officials to give non-proliferation export controls greater attention.

As will be seen in the following, however, awareness of non-proliferation export controls among the private sector is far behind the public sector, which is by nature one of imminent challenging issues that Korean export control system has to tackle in the days to come.

## II. Overview of Korean Export Control System

### 1. *Legal framework*

Korea's major laws and regulations for export control include Foreign Trade Act, Technology Development Promotion Act, Atomic Energy Act, Defense Industry Act, South-North Exchange and Cooperation Act and their related regulations. Especially, the Combined Notice of Export/Import of Strategic Items and Technologies provides for detailed export control regulations, controlled items, classification of the export regions, export control guides, etc.

In actuality, Strategic materials (goods, software, technology) are subject to different laws, ministries and government agencies depending upon where the materials are applied for use.

*Foreign Trade Act:* Goods and software for general industry (Ministry of Commerce, Industry and Energy)

*Nuclear Energy and Technology Development Act:* Goods and technology about nuclear energy (Ministry of Science and Technology)

*Special Act for Defense Industry:* Weapons and radiation materials  
(Ministry of National Defense)

*Inter-Korea(North-South) Cooperation Act:*

Arrived/delivered materials to and from North Korea

(Ministry of Unification)

Lastly, it is noteworthy that the "Catch-all" system, which controls the export of uncontrolled items and technologies that would be used to develop Weapons of Mass Destruction, has been in force since January 2003.

## *2. Licensing*

If certain items are categorized as non-controlled items under the Combined Notice, they can be exported without an export license. On the other hand, export goods judged as controlled items require an export license from the pertinent government agencies as the above.

Details about export license on strategic materials are clearly stated in the Export and Import Notification Act on Strategic Materials and Technology. Ministry of Commerce, Industry and Energy(MOCIE), Ministry of Science and Technology(MOST), Ministry of National Defense(MND), and Ministry of Unification(MOU) issue licenses for their respective strategic materials.

Export approval of strategic items may either be 'individual approval' and 'comprehensive approval.' In particular, comprehensive approval is further classified into three different types such as *general approval, specific approval, and commissioned processing approval.*

▲ Individual export approval: In this type of approval, a chief officer of the government agency concerned approves the export of certain strategic items whose quantity is confirmed individually.

▲ General comprehensive approval: In this type of approval, the agency concerned allows a qualified trader to export certain items and products(other than 'sensitive items' designated in each international export

control regime) for a certain period to almost all the countries on the globe, provided such export to those regions does not endanger international peace and security. During the specified period, the trader can export products at his/her own discretion. This is actually the most favored condition rendered for qualified traders who have a certain internal compliance program(ICP) endorsed by the MOICE.

▲ Specific comprehensive approval: In this type of approval, the agency concerned allows a qualified trader to export specific items and products for a certain period to the specified destinations. This approval is made on the condition that traders' specific items should be exported to the same importer more than three times over two year period in the recent past.

▲ Commissioned-processing comprehensive approval: In this type of approval, the agency concerned allows a qualified trader to export the strategic items brought into the country and processed based on a commissioned-processing contract with a foreigner to the destinations designated by the commissioner for a certain period, provided such export does not endanger international peace and security.

In addition to the above, a re-export license is required for the re-export of imported strategic items (products of non-Korean origin) to a 3rd country and such re-export requires the consent of the original exporter and a license from the relevant government agencies listed in the Public Notice. The purpose of this regulation is to prevent proliferation of WMD via illegal re-export.

### *3. Enforcement and penalties*

Exporters should report the results of customs clearance to the licensing agencies when the approved items were cleared. In case of comprehensive export license, export result should be reported on a semi-annual basis.

Those who received the export license using forged documents or in other unlawful ways, or those who exported strategic items to regions subject to export control without getting an export license shall be sentenced up to five years in prison or shall be fined up to three times the value of exported or imported goods.

In case the MOCIE recognizes necessity of imposing restriction on export and import of strategic items, those who violated international export control guidelines shall be prohibited from exporting and importing strategic items within the period of 1 year.

#### *4. Internal compliance program(ICP)*

The internal compliance program refers to a system in which companies manage strategic items by themselves and comply with the regulations by running their own systems in charge of export control of strategic items. It is also called EMS(Export Management System).

Introduction of compliance program for manufacturing and trading companies is essential for determining whether their items are included in the controlled items or following the licensing procedure. Especially, it is regarded as a risk management system of protecting companies from putting themselves in an unexpected jeopardy. In order to promote and establish ICP among businesses, the Korean government provides a guideline on the ICP in the Combined Notice of Export/Import of Strategic Items and Technologies (Combined Notice). The government also runs a designation program for voluntarily compliant traders to assist them in export control in business.

Thus, those who want to be designated as 'voluntarily compliant traders'(VCT) must submit a company introduction, organizational chart of the voluntary compliance management setup, regulations for voluntary

compliance management and a plan for linking their system with the Strategic Trade Information System (STIS) on-line.

The Ministry of Commerce, Industry and Energy (MOCIE) may designate applicants as VCT after considering the linkage between the STIS and the applicants' computer systems as well as the budget and personnel in charge of developing and operating the voluntary compliance system.

Companies designated as VCT should regularly report production and export results of strategic items, operating status of the voluntary compliance system and other matters to the MOCIE.

### III. Recent Developments

#### 1. *Beginning of 'on-line' information system and others*

The Ministry of Commerce, Industry and Energy (MOCIE) set up its Strategic Items Control Division in February 2004 to reinforce the export control of strategic items.

Furthermore, the Strategic Trade Information Center(STIC), a private organization annexed to the Korea International Trade Association was established in August 2004 to help companies manage business involving strategic items. The STIC is entrusted by the government with the task of making predetermination of strategic items. It operates on-line Strategic Trade Information System(STIS) jointly with the MOCIE to help companies exercise export control voluntarily by providing relevant on-line information regarding predetermination, export licensing procedures, global trends and domestic regulations governing strategic items.

The Strategic Trade Information Center(STIC) has been recently reorganized into a new, independent organ, the Korea Strategic Trade Institute(as of June 14, 2007).

Meanwhile, the Ministry of Commerce, Industry and Energy(MOCIE) inaugurated in February 2005 the Strategic Trade Information System(STIS)([www.yestrade.go.kr](http://www.yestrade.go.kr)) to make pre-determination and issue export licenses on-line, minimizing the burden on companies.

In other words, the STIS is intended to allow registered users easy access to information and thereby increase the efficiency and accuracy of Korea's export control system. By utilizing a specialized search engine, Korean companies are now able to request and receive approvals for exports online, minimizing administrative paperwork, which in turn reduces the amount of time required to approve export licenses.

Additionally, a standardized 10-digit commodity description and coding system for parts and materials has been designed to ease the processing of export applications and decrease application errors. Previously, exporters had to refer to a 500-page manual when applying for export licenses. Korean companies complained that the manual was unmanageable and difficult to use. As a result, South Korean companies have reportedly shipped controlled items inadvertently without proper authorization, leaving themselves open to punitive actions by the government.

## *2. Strengthened penal clause*

As of January 3, 2007, the Korean government strengthened the penal clause(Article 53) of the Foreign Trade Act to the effect that any trader who unlawfully transfers strategic items "with a purpose of proliferating WMDs" shall be sentenced up to seven years in prison or shall be fined up to five times the value of exported or imported goods.

## IV. Challenging Issues

### *Case 1: Lack of Outreach Efforts*

The ROK has a fairly well organized infrastructure for now, so far as export control mechanism is concerned. Yet, awareness for that matter among trading companies and their employees, not to mention the general public, is considerably low on our export control system.

In a recent sample survey of 618 companies, the MOICE found that 71 percent neglected to check which items fell under the category of strategic goods. Of the 29 percent that did check, only 7.8 percent sought approval for export. The other 92.2 percent either were unaware of the notion of strategic materials export regulations or thought they would not face any problems. (*Korea Herald*, June 5, 2005)

According to another survey, strategic items or materials with the potential to contribute to foreign military or WMD programs accounted for about 40 percent of Korea's total exports (US\$254 billion). However, only about five percent of Korean strategic export items received government approval.

This means that there should be more industry outreach efforts on the part of Korean government which in fact has been doing its role in one way or another. The MOICE provided domestic industries and trading companies with various export control programs including seminars, training and presentation meetings across the nation totalling almost 25 different occasions in 2006.

In this respect, it seems to me that domestic industry's poor record in export licensing process is partly due to the financial crisis inertia where the Korean government was under high pressure for the last decade to promote the nation's exportation and Korean industries used to be familiar with the Government's "Export first!" slogan thereof.

Despite the fact mentioned above, we can not overemphasize the importance of our industry outreach efforts to enhance awareness of export control regulations among trading business people in particular.



It should be also noted that in order for us to have a well-organized, systematic outreach program substantiated, the present manpower in public sector(government and its agencies) is not sufficient, when comparing with other Western countries of advanced export control system such as the United States and some EU member states. Thus, personnel in the public sector should be supplemented in the first place.

### *Case 2: Kaesung Industrial Complex*

Kaesung Industrial Complex near ROK/DPRK border opened on December 15, 2004, and the first products were shipped from the Kaesong Industrial Complex to South Korea. The complex, located in the North Korean city of Kaesung about 10 km north of the Military Demarcation Line, is a joint project of North Korea's Asia-Pacific Peace Committee and South Korea's Hyundai Asan Company and the Korea Land Corporation.

The project is a result of the June 2000 summit in Pyongyang between former South Korean President Kim Dae Jung and North Korean leader Kim Jong Il. The two sides agreed to establish the economic project as part of peace and reconciliation efforts between the two Koreas. The pilot phase of the three-phase project includes 15 South Korean firms that are primarily engaged in labor-intensive manufacturing. The first phase of the Kaesung project is scheduled for completion in 2006, and approximately 2,000 enterprises are expected to have set up operations in the industrial complex when the final phase is completed in 2012.

Many U.S. officials have been concerned that the Kaesong Industrial Complex could become a transit point for the transfer of strategic materials to North Korea, and in 2004, the United States and South Korean governments held talks over this issue. In order to ensure compliance with South Korean and international export control regulations, the South

government reviews all investment applications for the Kaesung project and the Ministry of Unification grants final approval for all equipment transfers.

#### Following South

Korea's inter-agency approval process, the Ministry of Unification and the ROK Ministry of National Defense also consults with the United Nations Military Armistice Commission, which controls the transit of people and materials across the Demilitarized Zone to North Korea.

The Bush Administration has been trying to deter the influx of militarily convertible materials and technologies heading to rogue states such as North Korea, strengthening the implementation of such domestic laws.

Currently, the U. S. categorizes Pentium-III or more advanced computers and precision instruments as 'strategic items.'

In short, the U. S. is worried that North Korea might misuse the Kaesung Industry Complex Project in order to get strategic materials and technologies. Namely, it will try to obtain strategic materials and technologies covertly through South Korea's companies located in the Kaesung Industry Complex, camouflaging them with civilian use.

Given that backdrop, experts suggested that in order to solve the problem, the business in Kaesung complex should be first focused on labor-intensive industry, which doesn't require use of strategic items and technologies. Actually, the South Korean firms already began to produce cheap, labor-intensive products in Kaesung complex.

This situation has eventually led South Korea to a dilemma where the inter-Korean economic cooperation stemmed from so-called 'Sunshine Policy' would have its own limitation. Because the ultimate goal that through a whole range of bilateral economic cooperation including information technology, South Korea assists to build the North's infrastructure for future unification of the divided nation will be hard to be realized.

What is worse, the Kim Jung Il regime does not want the labor-intensive, declining industry, instead it prefers the South's IT and high-tech industry in Kaesung complex.

### Case 3: Mixed Feelings on Foreign Export Controls

Besides the episode of Kaesung Industrial Complex, there are two more export control-related events occurred recently, which is viewed with mixed feelings in Korea.

One is regarding a Russian export control episode vis-a-vis South Korea. The fact of the matter is as follows. It is about Russian scientist charged with selling dual-use materials to South Korea.

On March 2, 2005, Oskar Kaybyshev, a physicist and director of the Russian Academy of Sciences Institute of Metals Superplasticity Problems (IPSM) located in Ufa, Bashkortostan, was officially charged with illegally selling a titanium alloy to the South Korean tire producer Artisan Spirited Alloy (ASA), a subsidiary of Hankook Tire, which is based in Seoul.

The sale took place in 2003. The metal was produced using a method known as superplasticity that the Russian Federal Security Service (FSB) said constitutes a state secret. The charge of revealing state secrets was later found groundless by the Russian Academy of Science.

The other one is about the military sale of the United States to South Korea. The ROK Defense Ministry recently discussed with Bush administration officials the possibility of buying four Global Hawk unmanned aerial vehicles as part of a multi-billion dollar arms package. The idea of the sale was initially raised at a session of an annual defense meeting between the two countries, called the Security Consultative Meeting, held in Hawaii in June 2005.

However, the United States has turned down a bid from South Korea to buy cutting-edge high-altitude “Global Hawk,” under the pretext that the sale was “inappropriate at this time,” and in June, 2005 the U.S. approved the sale of Global Hawk to Japan, though.

It is reportedly known that the U.S. move to sell unmanned reconnaissance aircraft to South Korea is facing opposition from Russia and other member countries of the Missile Technology Control Regime (MTCR).

At the request of South Korea, the United States has pushed to revise the MTCR regulations to allow the sale of the Global Hawk to Korea. But some member nations were concerned about the possible spread of advanced technology regarding unmanned aerial vehicles (UAVs). The Global Hawk is classified as category 1 under the MTCR of which South Korea is also a member.

These two episodes eloquently testify that 'export control' is another means of a major power by which it maximizes its own national interest.

## V. Conclusion

The ROK set out to create an export control system compatible with systems in Japan and the United States. Throughout the 1990s up until 2007, it has developed a largely compatible nonproliferation export control system, although a few significant gaps in certain elements and in implementation remain.

Its special interest in the DPRK heightens yet narrows the focus of its nonproliferation concerns, but the ROK has taken steps to address the broader nonproliferation concerns raised in the supplier arrangements and by the United States, its staunch ally. With its economic and political interests, as much as its military security interests, set squarely with the overall nonproliferation community, the ROK has moved beyond rhetoric to begin to apply its resources to nonproliferation export controls.

As is known well, the purpose of export control is to prevent sensitive equipment and technologies from being delivered into the wrong hands. Export control is not designed to impose any restraints on legitimate transfers for peaceful purposes.

But in reality, as shown above, the "way of doing business" in export control regimes does not seem to live up to the regimes spirit and principle, which in turn may as well bring forth adverse effects among other export control regime participants.

Anyhow, we would like all the countries especially in the Asia-Pacific region to implement effective export controls in their entirety. I also hope this seminar will provide a precious opportunity to help better understand the role of export control and improve its system and implementation in one way or another.