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Government of India
(Bharat Sarkar)
Department of Atomic Energy
(Parmanu Oorja Vibhag)
Mumbai, the February 01, 2006

RESOLUTION

Subject : Guidelines for Nuclear Transfers (Exports)

Under the provisions contained in clause (f) and (g) of Sub-Section (1) of Section 2 and Section 3 of the Atomic Energy Act, 1962 (No.33 of 1962), the Department of Atomic Energy has notified the revised list of 'Prescribed Substances, Prescribed Equipments and Technology' vide S.O. No.61(E) dated 20th January, 2006. Further, to regulate the exports of these items the Department of Atomic Energy has formulated a set of 'Guidelines for Nuclear Transfers (Exports)'.

Export of prescribed substances, prescribed equipment or transfer of related technology to any country will be governed by the following guidelines and export controls shall apply to nuclear transfers to any country

Notes:

Prescribed substance means any substance or material, including any mineral, which the Central Government may, by notification, prescribe being a substance which, in quantity or in concentration or both, in excess of the limits prescribed in this behalf in that notification, is or may be used, for the production or use of atomic energy or research into matters connected therewith. Prescribed substances contain source material, special fissionable material, and non-nuclear materials for nuclear reactor e.g. nuclear grade graphite and heavy water, and also include certain other materials (dual-use materials).

Prescribed equipment means any property which the Central Government may, by notification, prescribe, being a property which in its opinion is specially designed or adapted or which is used or intended to be used for the production or utilisation of any prescribed substance, or for the production or utilisation of atomic energy, radioactive substances, or radiation, but does not include mining, milling, laboratory and other equipment not so specially designed or adapted and not incorporated in equipment used or intended to be used for any of the purposes aforesaid. Prescribed equipment includes nuclear reactors, fuel reprocessing plants, fuel fabrication plants, uranium enrichment plants, uranium & plutonium conversion facilities, heavy water production plants, and associated equipment specially designed, prepared, adapted or used or intended to be used in such plants / facilities, and also includes nuclear related dual-use equipment and components.

Technology means any information (including information embodied in software) other than information in the public domain, that is capable of being used in –

(i) the development, production or use of any goods or software;

(ii) the development of, or the carrying out of, an industrial or commercial activity or the provision of a service of any kind.

Explanation: When technology is described wholly or partly by reference to the uses to which it (or the goods to which it relates) may be put, it shall include services which are provided or used, or which are capable of being used, in the development, production or use of such technology or goods.

Exporter may refer to the Government of India notification on the prescribed substances and prescribed equipment for details.

A: SPECIFIC GUIDELINES

1. Prohibition of export for development of nuclear explosives

- (a). Export of any prescribed substance, prescribed equipment or related technology, to any country, for the development of nuclear explosive device or use in a nuclear explosive device shall be prohibited.
- (b). Export of any prescribed substance, prescribed equipment or related technology shall not be authorized when there is an unacceptable risk of diversion to the development of nuclear explosive device or use in a nuclear explosive device, or to acts of nuclear terrorism.

(c). Transfer of the following items (prescribed substances and prescribed equipment) and related technology shall be authorized only upon formal governmental assurances from recipients explicitly excluding uses, which would result in any nuclear explosive device.

- (i). source material, special fissionable material, nuclear grade graphite and heavy water;
- (ii). nuclear reactors, fuel reprocessing plants, fuel fabrication plants, uranium enrichment plants, uranium & plutonium conversion facilities, heavy water production plants, tritium recovery plants and associated equipment specially designed or adapted or used or intended to be used in such plants / facilities.

(For detailed clarification on items indicated in c(i) and c(ii), exporters may refer to Government of India notifications on prescribed substances, prescribed equipment and related technology)

2. Physical protection

- (a) All materials and facilities referred to under paragraph 1(c)(i) and 1(c)(ii) should be placed under effective physical protection to prevent unauthorized use and handling. The levels of physical protection to be ensured in relation to the type of materials, equipment and facilities, shall be as per the recommendations of Government of India or as agreed upon in the international conventions, to which India is a party.
- (b) The implementation of measures of physical protection in the recipient country is the responsibility of the Government of that country. However, the levels of physical protection on which these measures have to be based, shall be the subject of an agreement between the supplier and the recipient.
- (c) In each case special arrangements shall be made for a clear definition of responsibilities for the transport of items referred to under paragraph 1(c)(i) and 1(c)(ii).

3. Safeguards

- (a) IAEA safeguards should be applied to any material or equipment referred to under paragraph 1(c)(i) and 1(c)(ii) or related technology proposed to be exported to any country. Government of India shall authorize export of such items only when the IAEA safeguards arrangements are made or assured by the recipient country.
- (b) Transfer of items referred to in paragraph 1(c)(i) and 1(c)(ii) or related technology shall be authorized only when covered by IAEA safeguards as indicated in paragraph 3(a) above with duration and coverage provisions in the agreement as follows-
 - (i). The duration of the agreement shall be related to the period of actual use of the item in the recipient State; and
 - (ii). That the provisions for terminating the agreement shall be formulated in such a way that the rights and obligations of the parties continue to apply in connection with supplied source material and special fissionable material and with special fissionable material produced, processed or used in or in connection with supplied source material and special fissionable material, equipment, facilities or non-nuclear material, until such time as the IAEA has terminated the application of safeguards thereto.

4. Government of India reserves the right to apply additional conditions of supply as a matter of national policy.

5. Special controls on sensitive exports

Government of India shall exercise restraint in the transfer of sensitive facilities, technology and material usable for nuclear weapons or other nuclear explosive devices.

6. Special controls on export of enrichment facilities, equipment and technology

With regard to a transfer of an enrichment facility, or technology therefor, the recipient nation should agree that neither the transferred facility, nor any facility based on such technology, will be designed or operated for the production of greater than 20% enriched uranium without the consent of the Government of India.

7. Controls on supplied or derived material usable for nuclear weapons or other nuclear explosive devices

Government of India shall in order to advance the objectives of these guidelines and to provide opportunities further to reduce the risk of proliferation, include, whenever appropriate and practicable, in agreements on supply of source material or special fissionable material or of facilities which produce material usable for nuclear weapons or other nuclear explosive devices, provisions calling for mutual agreement between the Government of India and the recipient on arrangements for reprocessing, storage, alteration, use, transfer or retransfer of any material usable for nuclear weapons or other nuclear explosive devices involved.

8. Controls on retransfer

(a) Government of India shall authorize the transfer of items referred to under paragraph 1(c)(i) and 1(c)(ii) or related technology only upon the recipient's assurance that in the case of:

- (i). retransfer of such items or related technology, or
- (ii). transfer of items indicated at 1(c)(i) and 1(c)(ii) derived from facilities or the materials originally transferred by the supplier, or with the help of equipment or technology originally transferred by the supplier;

the recipient of the retransfer or transfer will have provided the same assurances as those required by the supplier for the original transfer.

(b). In addition the consent of the Government of India should be required for:

- (i). any retransfer of items referred to under paragraph 1(c)(i) and 1(c)(ii) or related technology.
- (ii). any retransfer of enrichment, reprocessing or heavy water production facilities, equipment or related technology, and for any transfer of facilities or equipment of the same type derived from items originally transferred by the supplier; or
- (iii). any retransfer of heavy water or material usable for nuclear weapons or other nuclear explosive devices.

(c). To ensure the consent right as defined under paragraph 8(b), government to government assurances will be required for any relevant original transfer.

9. Non-proliferation Principle

Notwithstanding any other provisions of these Guidelines, Government of India shall authorize transfer of items or related technology identified in the lists only when the Licencing Authority is satisfied that the transfers would not contribute to the development of nuclear weapons or other nuclear explosive devices or be diverted to acts of nuclear terrorism.

B: GENERAL GUIDELINES

1. Export of any prescribed substance, prescribed equipment or related technology shall be permitted only against an export licence issued in this behalf unless export is prohibited. Each and every application shall be scrutinized on case-by-case basis and on the merit of each case.
Notwithstanding the specific guidelines as applicable, the general guidelines will be applicable in all the cases and following relevant factors shall be taken into consideration while examining the applications for export licences.
2. Whether the recipient state has a relevant IAEA safeguards agreement in force;
3. Whether the equipment, materials, software, or related technology to be transferred is appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;
4. Whether the equipment, materials, software, or related technology to be transferred is to be used in research on or development, design, manufacture, construction, operation, or maintenance of any reprocessing or enrichment facility;
5. Whether governmental actions, statements, and policies of the recipient state are supportive of nuclear non-proliferation and whether the recipient state is in compliance with its international obligations in the field of nuclear related activities;
6. Whether the end-user has been engaged in clandestine or illegal procurement activities; and
7. Whether a transfer has not been authorized to the end-user or whether the end-user has diverted for purposes inconsistent with the Guidelines any transfer previously authorized.
8. Whether there is reason to believe that there is a risk of diversion to acts of nuclear terrorism.

C: CONDITIONS FOR TRANSFERS

In the process of determining that the transfer will not pose any unacceptable risk of diversion, exporter should obtain the following from the recipient and furnish the same along with export licence application to the Licencing Authority in the Department of Atomic Energy, Government of India:

- a. a statement from the end-user specifying the end-uses;
- b. a statement from the end-user specifying that the proposed transfer will be used only for the stated end-use;
- c. a statement from the end-user specifying end-use locations of the proposed transfers; and
- d. a statement from the end-user that neither the items, nor replicas, nor derivatives thereof shall be retransferred without the consent of the Government of India,
- e. an assurance explicitly stating that the proposed transfer, or any replica or derivatives thereof will not be used in the production, development or use in nuclear explosive device.
- f. a statement from the end-user specifying that he shall facilitate such verifications as are required by the Government of India. If an end-user refuses to allow such verifications, export licences to that end-user will be denied until such time as such verifications are conducted.

(V.P. RAJA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA