



Mobility Legal Updates

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LIN's Mobility Team monitors legal and regulatory trends in the automotive industry and periodically sends newsletters to our clients.

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LIN's Mobility Team closely monitors not only domestic regulatory trends in industries such as automotive, energy, and AI, but also U.S. policies that may directly or indirectly impact these sectors. In January 2025, towards the end of the Biden administration's term, the U.S. Department of Energy (DOE) included South Korea in its 'Sensitive and Other Designated Countries List (SCL)', and this measure took effect as scheduled on April 15, 2025. As this designation as a sensitive country is expected to affect the U.S. market entry and technological cooperation of domestic companies and research institutions, this issue report aims to examine the meaning of the sensitive country designation, its impact on businesses, response strategies, and implications.

1. Significance of the Sensitive Country Designation¹

The U.S. DOE internally maintains and regularly updates the Sensitive Country List (hereinafter "SCL") based on concerns related to national security, nuclear non-proliferation, and support for terrorism, imposing restrictions on research cooperation and technology sharing with those

¹ Legal Basis: ① Order concerning the Unclassified Foreign National Access Program (DOE Order O 142.3B), ② 50 U.S. Code § 2652 - Restrictions on access to national security laboratories by foreign visitors from sensitive countries, which stipulates: "The Secretary of Energy and the Administrator may not admit to any facility described in paragraph (3) of subsection (c) other than areas accessible to the general public any individual who is a citizen or agent of a covered foreign nation or a nation on the current sensitive countries list unless the Secretary or Administrator first completes a background review with respect to that individual."

countries listed. In the latest SCL, the DOE classified countries such as North Korea and Iran as 'State Sponsors of Terrorism,' countries such as China and Russia as 'Countries of Concern,' and South Korea, Taiwan, and Israel into the lowest tier, 'Other Designated Countries.'² South Korea has been re-included in the SCL after 30 years, having previously been listed for approximately 13 years from 1981 to 1994.

Once designated as a sensitive country, ① the sharing of advanced technology information, such as nuclear energy and artificial intelligence (AI), with the U.S. may be restricted, and ② researchers from the designated country must undergo enhanced special approval procedures, including submitting background check documents at least 45 days prior to visiting DOE-affiliated research facilities. Furthermore, stricter security standards apply when DOE employees or related researchers visit or interact with South Korea.

2. Potential Impact on Businesses and Research Institutions

The DOE has not yet officially disclosed the specific reasons for designating South Korea as a sensitive country. However, the DOE maintains that this measure was taken as part of strengthening technology security and is unrelated to foreign policy.³

Therefore, with the SCL taking effect, the immediate surface-level impact is likely limited to restricting domestic companies' access to DOE facilities. However, if the designation is not lifted and becomes prolonged, reduced cooperation and decreased national credibility could lead to various regulations and restrictions in areas such as contractual relationships with U.S.-based companies, technology transfer and joint research, personnel exchange, export controls, M&A, and compliance.

A. Increased Overall Contract Risk

Inclusion in the SCL may lead to decreased national credibility and potentially hinder cooperation between companies or institutions. This could result in disadvantages during

2 As the SCL is not publicly available information, the specific countries and the exact number within each tier cannot be officially confirmed. However, it is currently understood that the list includes a total of 25 countries. Among these, six countries (North Korea, Iran, Syria, Libya, Sudan, and Cuba) are designated as State Sponsors of Terrorism, and two countries (China and Russia) are separately designated as Countries of Concern, while countries such as South Korea, Taiwan, and Israel are understood to be classified as Other Designated Countries.

3 Regarding the controversy over South Korea's addition to the sensitive countries list, Acting U.S. Ambassador to South Korea Joseph Yun reportedly explained that the designation stemmed from incidents last year where some among approximately 2,000 South Korean nationals (including students, researchers, and public officials) visiting multiple DOE-affiliated laboratories inappropriately handled sensitive information, including at facilities dealing with export-sensitive items. He further stated that the measure stems from technical and procedural issues related to handling sensitive information and clarified that it is not expected to significantly impact the overall ROK-U.S. alliance.

contract negotiations with U.S. companies regarding terms such as performance conditions or confidentiality clauses. Particularly in technology transfer and joint research projects within the energy, nuclear, and advanced technology sectors, the sensitive country designation could cause delays in contract performance or make concluding contracts more difficult. This is because psychological uncertainty stemming from concerns about heightened U.S. regulations might lead to hesitation in entering new contracts. Furthermore, there could be associated risks, such as liability for damages arising from non-performance of contracts.

A prime example is the potential difficulty in concluding the Reciprocal Defense Procurement (RDP) Agreement, often referred to as the FTA for the defense industry between the U.S. and South Korea, which has been under preparation for a long time. While some view that the sensitive country designation could negatively impact small modular reactor (SMR) development projects or the ongoing efforts to conclude the nuclear power plant export contract with the Czech Republic, the prevailing view is that these projects are unlikely to be significantly affected by the designation at present.

B. Restrictions on Personnel Exchange

Sending domestic research personnel and technical experts to U.S. research institutions for assignments or training may become difficult, and visits by U.S. experts to South Korea could also face constraints due to enhanced security procedures. It cannot be ruled out that the designation as a sensitive country might influence decisions when selecting international students or visiting researchers from South Korea, or negatively impact the standing of South Korean researchers within U.S. research institutions. Consequently, companies may face challenges in securing key personnel, and there are concerns that long-term technological cooperation and innovation between the two countries could be hampered.

C. Export Controls

The SCL is linked to U.S. national security policies and export control regulations.⁴ Therefore, cooperation with domestic institutions in research areas such as nuclear energy, high-performance computing, and dual-use (civilian and military) technologies may potentially be restricted. While the SCL itself does not directly regulate exports, individuals and institutions from sensitive countries may be subject to additional screening under U.S. export control laws.

Additionally, screening for exports of specific technologies and equipment between South Korea and the U.S. could be tightened, and obtaining export licenses for technologies related to U.S. national security might be delayed. Notably, given that most major South Korean defense export products utilize U.S.-made components, there is a possibility of disruptions in U.S. export approvals for products incorporating these components.

⁴ The institutional origins of the sensitive country designation lie in the Export Control Reform Act (ECRA) and the Export Administration Regulations (EAR). This framework originates from regulations restricting exports when strategic materials or dual-use technologies usable for military applications are judged to pose a risk of diversion overseas.

D. Other Impacts

The sensitive country designation could indirectly affect cooperation not only with the DOE but also with other U.S. government agencies. Furthermore, it might raise concerns about South Korea's overall technology security and reliability, leading to increased compliance burdens, such as requirements for higher security standards. Moreover, beyond export controls, difficulties in U.S. market entry could arise, such as restrictions on equity investments in U.S. companies in advanced technology fields like energy, AI, and semiconductors, or more stringent procedures for establishing corporations, obtaining business approvals, or other verification processes within the U.S.

3. Response Strategies and Implications

Admittedly, the sensitive country designation itself seems unlikely to directly impact domestic corporate activities immediately. However, since it is uncertain when the designation will be lifted,⁵ proactive measures are necessary while the designation is in effect to minimize potential risks.

Primarily, domestic technology companies should continuously monitor diplomatic policy developments between South Korea and the U.S. and government responses. They must also meticulously review the contents of existing contracts or those currently under negotiation with U.S. companies to preemptively identify potential dispute factors related to the sensitive country designation, such as technology access rights, security and confidentiality clauses, grounds for contract termination or modification, and damage compensation clauses. Additionally, it is crucial to strengthen internal compliance and security systems to prevent devaluation of corporate value due to the sensitive country designation, thereby thoroughly preparing for future partnerships or M&A activities with U.S. companies.

Today, the mobility industry, led by electric and smart vehicles, has become inextricably linked with the AI and energy industries. Correspondingly, technological cooperation with the U.S. plays a vital role in the development and commercialization of autonomous driving and AI technologies. Therefore, if tensions in technological cooperation between South Korea and the U.S. intensify, it could become a significant obstacle to the advancement of the domestic mobility industry.

LIN's Mobility Team will closely monitor these internal and external changes surrounding the mobility industry, promptly diagnosing potential legal risks companies may face and proposing optimal response strategies.

⁵ In the past, after South Korea's request to be removed from the sensitive country designation was accepted in December 1993, the designation was lifted in July 1994. However, even after the removal request was accepted, it took approximately 7 months until the actual removal occurred.

LIN has extensive experience in providing advisory and litigation services in the mobility industry, particularly in areas such as administrative regulations and patent and trade secret disputes related to motor vehicles. Our Mobility Team consists of attorneys and experts with a distinctive interest and passion for automobiles.

Should you wish to learn more about this newsletter or have any other inquiries, please do not hesitate to contact our firm's **Mobility Team**:

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