

A Study on the Improvement of Regulations on Economic Counterintelligence

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Abstract

Although the National Intelligence Service Act has been amended considering the growing importance of economic counterintelligence, a clear interpretation of certain provisions and improvement of the effectiveness of economic counterintelligence are required. This article presents some suggestions for regulations on economic counterintelligence. Firstly, the meaning of the term "disturbance of economic order in connection with foreign powers" will become clear by interpreting it with the terms of the Counterintelligence Duty Regulation and by setting categories referring to the U. S. regulations. Secondly, counterintelligence authorities' request for cooperation may be reinforced by amending relevant regulations or by applying a special procedure for the acquisition of data. Finally, strengthened punishment for activities in connection with foreign powers may improve the efficiency of counterintelligence. For these reasons, this paper aims to present a direction for the future, focusing on this new economic counterintelligence.

Keywords: *Economic Counterintelligence, Economic Espionage, Counterintelligence, Trade Secret, Industrial Technology*

1. INTRODUCTION

In the past, countermeasures in the Cold War era were mainly aimed at responding to enemy intelligence activities contrary to the national security of the country. However, as competition between the U.S. and China intensifies after the end of the Cold War, the current counterintelligence is broadening its scope not only in response to enemy activities against national security but also to foreign activities against economic security and interests. Accordingly, Korea also revised the National Intelligence Service Act to remove restrictions on counterintelligence, which had been regarded as domestic information activities, and to lay the groundwork for economic counterintelligence activities as a response to the activities of foreign forces. However, there is no new definition of "obstruction of overseas-linked economic order" when the law was revised, raising the need for interpretation, and there is a growing demand to come up with measures to increase the effectiveness of economic espionage activities. This paper intends to make suggestions for problem solving under this perception. It is expected that this paper dealing with this problem will be helpful for future research at a time when related research is not yet active since the law has been revised. In the following, after reviewing previous studies, the meaning of economic countermeasures is identified based on laws and regulations, and the U.S. economic countermeasures law is outlined, and based on this, suggestions are made to improve economic

Manuscript received: October 31, 2022 / revised: November 25, 2022 / accepted: December 3, 2022

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countermeasures laws.

2. SUMMARY OF PREVIOUS RESEARCH

Previous research on economic espionage can be classified into comparisons of counterintelligence laws, measures to remedy trade secrets and technology violations, criminal countermeasures such as punishment for trade secrets and technology violations, revision of laws on trade secrets and technology violations, and research on counterintelligence activities.

The main content of the comparative study of counterintelligence legislation is to compare and analyze the laws of major countries such as the U.S. and Japan, which govern trade secrets and economic spies [1], and research on the content of counterintelligence and remedies for infringement is to theoretically investigate the legal standards for interpretation of trade secrets and technology infringement. On the other hand, there is also a study that focuses on criminal legal response to preventing infringement through punishment for the infringement itself instead of relieving damage caused by trade secrets and technology infringement acts [3]. Research on policy countermeasures against trade secrets and technology violations suggests policies for institutional development such as security awareness, policy program operation, public-private cooperation, corporate support, and manpower development. Research on legislation and duties related to counterintelligence activities analyzes the issues of the law on the basis of counterintelligence activities and the authority to perform counterintelligence duties [6].

The results of the preceding studies mainly discuss comparative legal analysis of counterintelligence legislation, confidentiality and technological violations that require economic countermeasures, and revision of laws to punish economic espionage for foreign countries. This paper is meaningful in that it interprets the meaning of unclear phrases in the economic counterintelligence regulation, which are not covered by existing studies, and considers ways to secure the effectiveness of economic counterintelligence activities.

3. THE MEANING OF ECONOMIC COUNTERINTELLIGENCE

In Korea, counterfeits are stipulated in Article 4 of the National Intelligence Service Act, and the scope of counterfeits includes measures against leakage of industrial economic information, disturbance of overseas-linked economic order, and defense industry infringement. This article does not define counterintelligence, but exemplifies the scope of counterintelligence. Before the amendment, counterintelligence was considered a field of "domestic security information" and reflected the recognition that the scope of counterintelligence was limited and the discipline was insufficient. However, since there is no definition of "economic order disturbance" linked to foreign countries, the problem may arise that the scope of this counterintelligence activity is unclear.

On the other hand, the definition of counterintelligence and the scope of counterintelligence work are stipulated in the counterintelligence regulations of the National Intelligence Service Act. According to Article 2 of the counterintelligence regulations, such as North Korea, foreign, foreign organizations, transnational actors, etc. The counterintelligence regulations are also meaningful in that the scope of counterintelligence activities was expanded by expanding the scope of counterintelligence activities to foreign countries, away from restricting information collection activities directly conducted by foreign governments, organizations, or foreigners.

Therefore, the National Intelligence Service Act included leakage of industrial economic information, disturbance of overseas-linked economic order, and infringement of defense industry as an example regulation, and the contents of the National Intelligence Service Act and Counterintelligence Regulations. In addition, since the leakage of industrial economic information is an exemplary regulation, it is reasonable to interpret

that all activities of foreign countries contrary to Korea's economic security and economic interests are included in the subject of economic countermeasures.

4. ECONOMIC COUNTERINTELLIGENCE LEGISLATION AND COUNTERINTELLIGENCE GOALS IN THE UNITED STATES

4.1 Economic Counterfeiting Legislation

Counterintelligence activities in the United States are governed by several sections of Title 50 of the U.S. Code, of which the National Security Act of 1947, the Economic Espionage Act of 1996, and the Foreign Investment Risk Review Modernization Act of 2018. The National Security Act can be said to be the basic law of U.S. counterintelligence activities, and has been revised since it was enacted in 1947. The definition of intelligence and counterintelligence in the United States is defined by the National Security Act, which means foreign government and institutions, foreign organizations, foreign terrorist organizations, foreigners, spies, or other espionage activities. In addition, intelligence-related to national security refers to information related to U.S. government agencies, including threats to U.S. property and U.S. interests, including development, proliferation, and other issues concerning U.S. soil security (50US Code 3003). Meanwhile, U.S. law includes groups related to international terrorism, organizations related to the international spread of WMDs in foreign forces (50 U.S. Code O 1801), and U.S. National Intelligence: An Overview 2011 states that U.S. intelligence activities include "conduct to block hostile activities against the U.S." In the end, U.S. law could include transnational actors such as WMD proliferation forces in addition to foreign and international terrorists, and espionage, other intelligence activities, destruction, or assassination can be seen as examples of hostile activities affecting U.S. security.

The Economic Espionage Act of 1996 was enacted in 1996 to strengthen the protection of intellectual property rights such as technology in the United States, and punishes foreign governments or companies or employees in the United States for violating trade secrets. The Economic Spy Act divides trade secrets into two types depending on whether they are related to foreign countries, and the first type refers to theft, concealment, acquisition, copying, photographing, downloading, destroying, receiving, and purchasing trade secrets (18 U.S. Code 18 1831). The second type of trade secret infringement, trade secret theft, is the act of stealing, concealing, acquiring, copying, receiving, and purchasing trade secrets to benefit people other than the trade secret owner without asking foreign governments to benefit them (18 U.S. Code 18 1832). Among the types of infringement of trade secrets, economic espionage will be subject to espionage. On the other hand, in the case of economic espionage, it is difficult to prove its relevance to foreign governments, etc., so the case suspected of economic espionage may be prosecuted as a theft of trade secrets [8].

The Foreign Investment Risk Review Modernization Act of 2018 is a law that checks and controls foreign investment in the United States to prevent U.S. security-related information from being leaked to foreign countries through acquisitions of U.S. companies. Section 721 has since been revised to expand and strengthen CFIUS' authority through the Foreign Investment and National Security Act of 2007 (FINSNA) and the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (50 U.S. Code 45 4565). In other words, FIRRMA allows CFIUS to examine and reject foreign investment that does not involve acquiring management rights for specific industries and foreigners' rights to real estate adjacent to important U.S. infrastructure, specific regions, and military facilities.

4.2 Counterintelligence Goals in the United States

In the United States, there are a number of intelligence agencies in each field, and Office of the Director of

National Intelligence (ODNI) oversees and coordinates them. ODNI established and announced the National Intelligence Strategy 2019, a U.S. information strategy, which sets the mission goals of U.S. intelligence agencies and presents tasks to achieve them, and counterintelligence is one of the tasks to achieve them. Among them, looking at economic espionage, the goal of counterintelligence is to track, understand, deter, destroy, and defend threats from foreign intelligence agencies and insiders to protect economic security in the United States [9]. Meanwhile, the National Counterintelligence Strategy 2020-2022 announced by the Counterintelligence and Security insiders, responding to espionage and assassination attempts by foreign intelligence agencies, and (3) sensitive and secretive U.S. intelligence activities.

5. ECONOMIC COUNTERINTELLIGENCE LEGISLATION AND COUNTERINTELLIGENCE GOALS IN THE UNITED KINGDOM

5.1 Economic Counterfeiting Legislation

Representative anti-counterfeiting laws in the UK are specified in Official Secret Act 1989 1(3) as follows: It shall also be the function of the Service to safeguard the economic well-being of the United Kingdom against threats posed by the actions or intentions of persons outside the British Islands. In the following act (2), The establishment of The Government Communications Headquarters (GCHQ) is stipulated and the scope of its duties is specified. GCHQ's duties include (1) national security interests related to British government foreign and defense policies, (2) interests in British economic well-being related to British outsiders' actions or intentions, and (3) supporting the prevention or tracking of serious crimes.

5.2 Counterintelligence Goals in the United Kingdom

In the case of counterintelligence activities in the UK, it is divided into the Security Service (MI5) in charge of domestic information and the Secret Intelligence Service (MI6) in charge of foreign information. Since the annual report containing the details of MI5's activities is not disclosed to the outside world, it is difficult for researchers to confirm whether they are performing duties similar to 'a countermeasure against disturbance of overseas-linked economic order' under the National Intelligence Service Act. However, the British Intelligence Service Act 1994 3(2)(b) was enacted for a purpose similar to the National Intelligence Service Act, 'in the interests of the economic well-being of the United Kingdom'

It includes the phrase, which includes: 1. Insecurity outside of the UK, where the UK's significant economic interests are at stake; 2. In case of crisis or great difficulty in the continuous supply of daily necessities; and 3. In case of UK intelligence, it can investigate the parts that protect the national economy from overseas development and threaten economic welfare. Due to the nature of intelligence agencies, which are bound to vaguely define the duties of intelligence agencies, the scope and limitations of intelligence agencies' performance can always be controversial. Regarding the limitations of intelligence agencies' performance, the European Court of Human Rights did not mention the scope of the so-called "Big Brother" case [10], but it concluded that British intelligence agencies violated their privacy rights because they lacked sufficient supervision and protection. Since the revision of the National Intelligence Service Act may raise controversy over the scope of duties, it can be confirmed again that the acquisition of intelligence agencies' information is always necessary to ensure the adequacy of future duties.

6. RECOMMENDATIONS FOR THE IMPROVEMENT OF THE ECONOMIC COUNTERINTELLIGENCE ACT

6.1 Counterintelligence Business Regulations: Meaning of Disturbance in Economic Order Related to Foreign Countries

As previously seen, the meaning of "disruption of overseas-linked economic order" subject to counterfeiting is a problem because there is no clear definition in our counterfeiting laws, so it is necessary to clarify its meaning in the counterfeiting regulations. However, since there is no research on this yet, the meaning will be clarified based on the legal regulations below. First of all, for "foreign linkage," counterintelligence activities are targeted at acts such as foreign countries, so it is considered that it can be inferred from the "foreign, etc." of counterintelligence laws. In other words, overseas linkage can be interpreted as meaning North Korea, foreign and foreigners, foreign organizations, transnational actors, or Koreans linked thereto. An important point in relation to overseas linkage is that foreign forces should actually manipulate and support the disturbance of economic order. Therefore, even if the direct economic order disturbance is a Korean, if foreign forces actually manipulate and support the economic order disturbance behind the scenes, it will be subject to countermeasures as an overseas-linked economic order disturbance. On the other hand, regarding "economic order disturbance", the meaning can be clarified through the interpretation of "economic order" appearing in other laws and regulations. First of all, Article 119 of the Constitution stipulates the basis for regulation and adjustment of the market economy order of the Republic of Korea and the economy of the country. Article 63-2 of the Enforcement Decree of the Framework Act on National Taxes stipulates real estate speculation, hawking, and data-free transactions, and Article 136 of the Customs Act stipulates economic order disturbances, and Article 1 of the Act on the Aggravated Punishment, etc. of Specific Economic Crimes. When the provisions of these individual laws and regulations are summarized, "disrupting economic order" is an act of denying the system established based on the principle of market economic order under the constitution. Therefore, it will be possible to extract and categorize the "economic order disturbance" of individual laws and regulations, and based on this, "economic order disturbance" can be newly established in the definition clause of the counterintelligence business regulation.

6.2 Improving the Performance of Economic Counterintelligence Activities: The Right to Request Cooperation and Permission

Following the clarification of the meaning of "obstruction of overseas-linked economic order," which is the subject of economic countermeasures, measures are needed to increase the effectiveness of economic countermeasures activities. Under the current laws, economic espionage activities by requesting cooperation are possible, but there are many limiting factors, reducing the effectiveness of counterintelligence activities. In order to carry out counterintelligence activities, cooperation between other government agencies and the private sector is necessary. Alternatively, it may be possible to consider introducing a separate permit system for counterintelligence activities. For example, U.S. law allows a court to file a warrant for electronic surveillance (50U.S. Code § 1804-1805), and the FBI can file a submission order (50U.S. Code § 1861) to investigate foreign intelligence activities or counter international terrorism. In addition, Article 7 of the Communications Secret Protection Act stipulates that the head of an intelligence investigation agency can impose restrictions on communication with the permission of the court or written approval of the president, and Article 132 of the Patent Act implements a data submission order.

6.3 The Enactment of the Economic Spy Act

In Korea, economic spies are regulated and punished through the Unfair Competition Prevention and Trade

Secret Protection Act and the Industrial Technology Leakage Prevention and Protection Act. The Unfair Competition Prevention and Trade Secret Protection Act has been revised to expand the scope of trade secrets to management secrets, acquire and use trade secrets, expand the scope of trade secrets violations, and introduce a confidentiality order system in the litigation process[11]. In addition, in the case of the Act on the Prevention and Protection of the Leakage of Industrial Technology, it is necessary to accurately identify the scope of national core technology and consider the subject and subject of technology leakage.[12]. Like the U.S. Economic Spy Act, it would be possible to consider enacting a law that punishes acts that violate trade secrets while intending or knowing to benefit foreign governments, etc[13].

7. CONCLUSION

In this paper, we summarize as follows to present some improvement plans in the future by examining the importance and improvement measures of the Economic Countermeasures Act. First, our law stipulated 'obstruction of overseas-linked economic order' in relation to the scope of economic spies, but its meaning was not clear, so it could be clarified by referring to the counterintelligence regulation law, individual law, US law, and UK law. Second, in order to increase the efficiency of economic counterintelligence activities, a legal amendment or a data acquisition permission procedure was proposed to strengthen the right of counterintelligence agencies to request cooperation. Finally, in order to double the effectiveness of economic espionage activities, a plan was proposed to introduce a system to strengthen punishment for foreign-led activities. We believe that this improvement in legislation on economic measures will be an excellent way to prevent various threats and disturbances based on the preparation of strong sanctions.

ACKNOWLEDGEMENT

This work was supported by 2022 Hankuk University of Foreign Studies Research Fund.

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