A Study on the Status of the Internal Compliance Programs and the Operational Plan for Trigger List Items

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Keywords: Export-Control, ICP (Internal Compliance Programs), Trigger List Items

1. Introduction

The Yoon administration has announced a policy to expand the use and export of nuclear power plants (hereinafter referred to as "NPPs") as one of its major national agenda and is discussing various measures to support export control regulations in order to support the export of nuclear projects, including NPPs.

Therefore, in order to establish an efficient export control regulatory system and support exports, the implementation of an Internal Compliance Programs (hereinafter referred to as "ICP") is needed for Trigger List items. The ROK has implemented the ICP for dual-use items through Article 22(Self-Compliance Traders) of the Foreign Trade Act (hereinafter referred to as "CP system") [1]. However, it has not yet to be implemented for trigger-list items.

This paper investigated the current status of the ICP in various states and analyzed the domestic CP system to study the methods for implementing the ICP for trigger list items.

2. Investigate and Analysis of the ICP

2.1 Status of the ICP

The ICP for strategic items means an internal program that implements self-regulating export management, such as classifying the strategic items and applying for export licenses by establishing a system of organization, regulations, transaction review, education, and audit necessary for the export management of strategic items in order to comply with export control laws and regulations.

In 2011, the Wassenaar Arrangement (WA), the international export control regime for conventional arms, emphasized the importance of exporters' voluntary export controls and adopted and recommended to member states best practices for compliance, which include the following basic elements: commitment to compliance, structure and responsibility, export screening procedures, shipment control, performance review, training, record keeping and reporting, and corrective action [2].

In the U.S., the Department of Commerce (DOC) under the Bureau of Industry and Security (BIS) has developed a guideline for the ICP. It encourages exporters to build and operate compliance regimes tailored to their circumstances [3].

In the EU, the ICP guidance for export control of dual-use items was published in 2019, and the EU's dual-use items include trigger list items [4]. Therefore, the EU applies the ICP to the trigger list items.

In Japan, the law was amended in 2010 to require institutions handling strategic items to establish and comply with voluntary export management internal regulations [5]. The above-mentioned strategic items also include the trigger list items, and Japan operates the ICP for the trigger list items. However, apart from the operation of the ICP, the self-compliance trader system, which allows for the use of the comprehensive license system, is selected and operated through a review after application to the Ministry of Economy, Trade and Industry (METI).

As mentioned in the introduction, the ROK also encourages institutions to manage the export of strategic items voluntarily through the CP system.

Many states, including the ROK, implement the ICP for dual-use items. However, there are few examples of the trigger list items. The Nuclear Suppliers Group (NSG), the international export control regime for nuclear weapons, adopted the ICP best practice for nuclear-related dual-use items in 2012. However, the introduction of the ICP for the trigger list items has only recently been discussed [6].

2.2 Analyzing the domestic CP system

The domestic CP system categorizes exporters into five types, which can be divided into three categories based on the nature of the exporter: manufacturing companies, logistic-trade companies, and academic-research institutes. Manufacturing and logistic-trade companies are further divided into two categories based on the number of employees, annual sales, and capitalization.

Table 1. The types of Self-Compliance Traders

Category	Exporters
Category 1	Manufacturing Companies - More than 1,000 employees and 150 billion annual sales - More than 1,000 employees and 100 capitalizations

Category 2	Manufacturing Companies - not included in Category 1
Category 3	Logistic-Trade Companies - More than 1,000 employees and 150 billion annual sales - More than 1,000 employees and 100 capitalizations
Category 4	Logistic-Trade Companies - not included in Category 3
Category 5	Academic-research institutes

When designating exporters' grades, the indicators in Table 2 are set as the criteria for the designation, and only manufacturing and logistic-trade companies that actually export goods are reviewed by adding the indicator of shipment management [7].

Table 2. Indicators of designating for exporters grades

No.	Indicators
1	Export control organizations and regulations
2	Compliance commitment of CEO(President)
3	Review of export(transfer)
4	Shipment management ※Manufacturing and logistic-trade companies
5	Educating
6	Audit
7	Documents management
8	Reporting violation and corrective action
9	Information security management

There are three grades of self-compliance traders (A, AA, AAA), each with different incentives. The incentives include exemptions from review, document submission, export licensing, and reporting deadlines depending on grade are also differentiated [8].

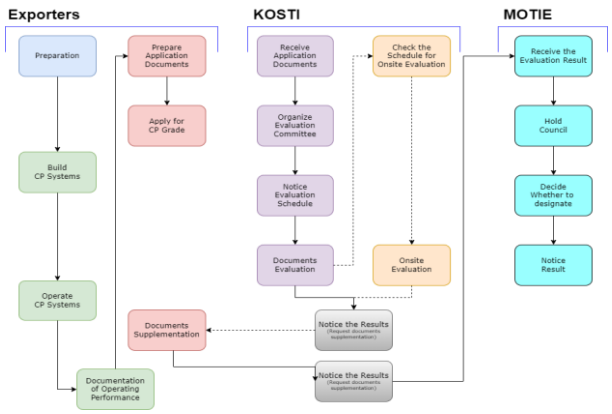

Figure 1. Procedure for Self-Compliance Trader [9]

3. The ICP implementing methods for the trigger list items

Applying the CP system for dual-use items to trigger list items is difficult. As for the criteria for classifying exporters, some institutes dealing with the trigger list items already use the CP system; therefore, it is not impossible to apply the same criteria. The number of exporters of dual-use items is currently around 2,000 per year, and the CP system's exporter classification and grading criteria are based on this. However, the number of exporters of the trigger list items is around 20 per year, and the major exporters are public enterprises or public institutions. Therefore, given the number and nature of exporters dealing with the trigger list items, it may be efficient to operate a single class of self-compliance traders without the classification criteria of exporters.

In addition, the current CP system's export license incentives are specialized for dual-use items, and the comprehensive export license does not cover the trigger list items. Therefore, incentives specific to the trigger list items should be developed and operated separately. Currently, self-classification is not allowed for the trigger list items, and incentives could include allowing self-classification only for the self-compliance traders or exempting them from the Government-to-Government Assurance (GTGA) required for export licenses. Since the comprehensive export license does not cover the trigger list items, alternative incentives should be developed, such as using an urgent transfer system or extending the reporting deadline in the nuclear plant technology export license.

4. Conclusions

This paper investigated the current status of the ICP and analyzed the domestic CP system to study the considerations for implementing the ICP for the trigger list items. Considering the major exporters and export license characteristics of dual-use items and the trigger list items, it is not easy to apply the current domestic CP system to the trigger list items. Therefore, it is necessary to develop and apply a specific operation plan that considers the characteristics of exporters and export licenses of the trigger list items.

In addition, this paper focused on the operation of the ICP for the trigger list items. However, it is also necessary to study the revision of the law to introduce the ICP and develop a computerized system for its operation.

ACKNOWLEDGE

This work was supported by the Nuclear Safety Research Program through the Korea Foundation Of Nuclear Safety (KoFONS) using the financial resource granted by the Nuclear Safety and Security Commission (NSSC) of the Republic of Korea. (No. 064010)

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