

An Overview of China's New Export Controls Regime

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New Export Control Law Effective in China

On October 17, 2020, China's Standing Committee of the National People's Congress approved a new [Export Control Law](#) ("ECL"). This law became effective on December 1, 2020. The new law constitutes a comprehensive framework that addresses many dimensions of export controls including licensing, enforcement with hefty penalties, end use and end user certificate requirements, and systems for proactive compliance. In many ways, the Chinese law is similar to U.S. export controls under the Export Administration Regulations ("EAR") and the International Traffic in Arms Regulations ("ITAR"). China's comprehensive new export control framework replaces a [decades-old collection](#) of regulations, rulings, and guidelines. By unrolling this framework, China is implementing a systematic and organized framework for addressing its export control concerns. Additionally, the framework provides a mechanism to respond tit-for-tat to export control actions by foreign governments that it considers an abuse of those countries' export controls.

Enforcing Agencies

The ECL was approved by the [Standing Committee](#) of the National People's Congress ("NPCSC"). The NPCSC is the permanent organ of China's National People's Congress and is indirectly elected by the National People's Congress.

The ECL is jointly enforced by the [State Council](#) and the [Central Military Commission](#) ("CMC") ("enforcing agencies"). The State Council is the chief administrative authority of the Chinese government and the CMC is the agency in charge of China's armed forces.

Mechanics of the Export Control Law

Expansive Scope

The scope of the ECL is expansive in both the products and technologies covered, and in its territorial jurisdiction. The controlled items include a) listed items, b) temporarily listed items, and c) unlisted items.

- **Listed Items** – Article 2 of the ECL defines controlled items to include dual-use items, military items, nuclear items and other goods, technologies, services and items relating to the maintenance of national security and national interests, and performance of nonproliferation and other international obligations.
- **Temporarily Listed Items** – In addition to the listed controlled items, the enforcing agencies have the authority to temporarily control exports over items not specifically listed.

The enforcing agencies also have the authority to expand the control list with temporarily listed items after two years of imposing temporary export restrictions.

- **Unlisted Items** – In addition to listed and temporarily listed items, the enforcing agencies control for items that are not listed but (1) potentially endanger the national security or national interests; (2) could be used for designing, developing, producing, or using weapons of mass destruction; or (3) may be used for terrorism purposes.

Extraterritorial Jurisdiction

The ECL explicitly notes that individuals and entities outside of the territory of the People's Republic of China who endanger the national security and interests of China shall be subject to liability under the ECL.

Specifically, [Article 44](#) of the ECL states:

*“An organization or individual outside of the territory of the People’s Republic of China that violates the provisions of this Law in relation to administration of export control, endangers the national security and national interests of the People’s Republic of China, [and] hinders the performance of non-proliferation and other international obligations, shall be subject to **investigation and legal liability** in accordance with the law.”*

Penalties

The enforcing agencies can penalize offenders significantly for violations of the ECL. According to articles 33-44 of the ECL, penalties can include:

- A civil fine
- Revocation of export privileges
- Suspension of a business
- Criminal investigation

With regard to a civil fine, [Article 33](#) of the ECL states:

“If an export operator engages in any export of Controlled Items without obtaining the qualifications for export operations with respect to relevant Controlled Items, [the authorities shall] issue a warning, order that the violation be stopped, confiscate any illegal income, and impose a fine that is greater than five times of an small than ten times of the illegal turnover if the illegal turnover is more than RMB 500,000, or a fine that is greater than RMB 500,000 and smaller than RMB 5 million if there is no illegal turnover, or the illegal turnover is less than RMB 500,000.”

According to currency exchange rates at the time of this writing, 500,000 RMB is equal to approximately [78,140 USD](#) and 5 million RMB is equal to approximately [781,408 USD](#). Similarly, a range of other penalties for various violations are included in the ECL.

Licensing System

Like in U.S. export controls, China's ECL includes a licensing system. If exporters believe a license is required, the exporter should apply for an export license. A license could be required for listed, temporarily listed, or unlisted items when there is a likelihood that the export may endanger national security, be used to develop a weapon of mass destruction, or be used for terrorism purposes. The enforcement agencies may grant general licenses permitting all exports of a certain category to facilitate that company's export activities if an exporter develops a sufficiently effective export compliance system.

Key licensing factors include:

- Nature of the particular technology
- End-use
- End-user
- Entity's social credit rating

End-Use and End-User Certificates

As part of its license application, exporters must submit information on the end-use and end-user for the item. Generally, exporters provide documentation demonstrating the end-use of the export and clearly identifying the end-user. In its license application, exporters agree not to change the end-use or end-user without obtaining authorization from the enforcing agencies.

Social Credit System

China's "social credit" system is a mechanism that standardizes the economic and social reputation of individuals and entities. According to a [2015 government document](#), the social credit system is "an important component of the Socialist market economy system and the social governance system" which ensures that "keeping trust is glorious and breaking trust is disgraceful." The social credit system has important export control implications, as well. An entity's social credit rating is a [key licensing factor](#).

Proactive Compliance Mechanism

On April 28, 2021, China's Ministry of Commerce ("MOFCOM") issued [Announcement No. 10](#) "Guiding Opinions of Ministry of Commerce on Establishing the Internal Compliance Program for Export Control by Exporters of Dual-Use Items."

The compliance guidelines identified nine elements of a good compliance system. These nine elements are:

1. Drafting a policy statement
2. Establishing an organizational structure
3. Conducting a comprehensive risk assessment
4. Creating review procedures
5. Developing emergency measures

6. Providing effective training
7. Improving compliance audits
8. Adequate recordkeeping
9. Preparing management manuals

Describing the new compliance guidelines, a [MOFCOM spokesperson](#) said:

“It is a common practice globally to institute compliance guidelines for export control. According to China’s Export Control Law, “the export control administrative department issues export control guidelines, guides exporters to establish and improve the internal compliance mechanism for export control and regulates their operations... We hope to guide exporters to establish and improve an effective internal compliance system, improve the consistency between their export behavior and laws and regulations, and work towards the sound and orderly development of companies.”

The MOFCOM guidance is similar to [compliance guidelines](#) offered by the Bureau of Industry & Security.

Geopolitical Implications and Outlook for U.S. Businesses

In recent years, U.S. export controls towards China have [increased significantly](#) both under the Trump and Biden administrations. For example, [significant recent actions](#) include the Military End-User List and continued expansion of sanctions on Chinese military companies and the addition of many entities to the Consolidated Screening List. Additionally, significant discussions at the G7 summit in June 2021 have focused on China, the U.S. has signaled closer trade ties with Taiwan, U.S. Customs enforcement has increased in many areas including [Enforce and Protect Act](#) investigations and [Forced Labor](#), and at the time of this writing a [sweeping bill](#) has passed the U.S. Senate that focuses on improving U.S. competitiveness vis-à-vis China.

In response, China is deploying various trade tools and the new ECL is an important component of that response. The ECL contains a mechanism to respond tit-for-tat to export control actions by foreign governments that China considers an abuse of those countries’ export controls. In doing so, the ECL challenges global norms and may lead to increased collaboration among other nations with longstanding export controls practices (such as under the Wassenaar Arrangement).

The two-way market for goods, technology, and services controlled by U.S. export control laws or that of China’s ECL is quickly evaporating. China’s ECL can make it very difficult for U.S. importers of goods controlled by the ECL to import such goods. Conversely, increasing U.S. export controls with regards to China in recent months has caused some U.S. exporters to find it increasingly difficult to export controlled items to China. Because the ECL is new, there is not yet sufficient understanding of how ECL enforcement trends will manifest. Furthermore, the trade community will have to monitor enforcement in the coming months to understand if/how the penalties will be mitigated. U.S. importers of sensitive products from China should consider screening goods against the ECL to proactively predict the ECL implications of their imports and may also consider developing or updating their compliance program to include the ECL.