

13th National People’s Congress Announces Export Control Law of the People’s Republic of China

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On October 17, 2020, the “Export Control Law of the People’s Republic of China” (hereinafter referred to as the “Export Control Law”) was passed at the 22nd session of the 13th National People’s Congress (NPC) Standing Committee. The Export Control Law will come into force on December 1, 2020 as a basic legal framework for China’s export control regime.

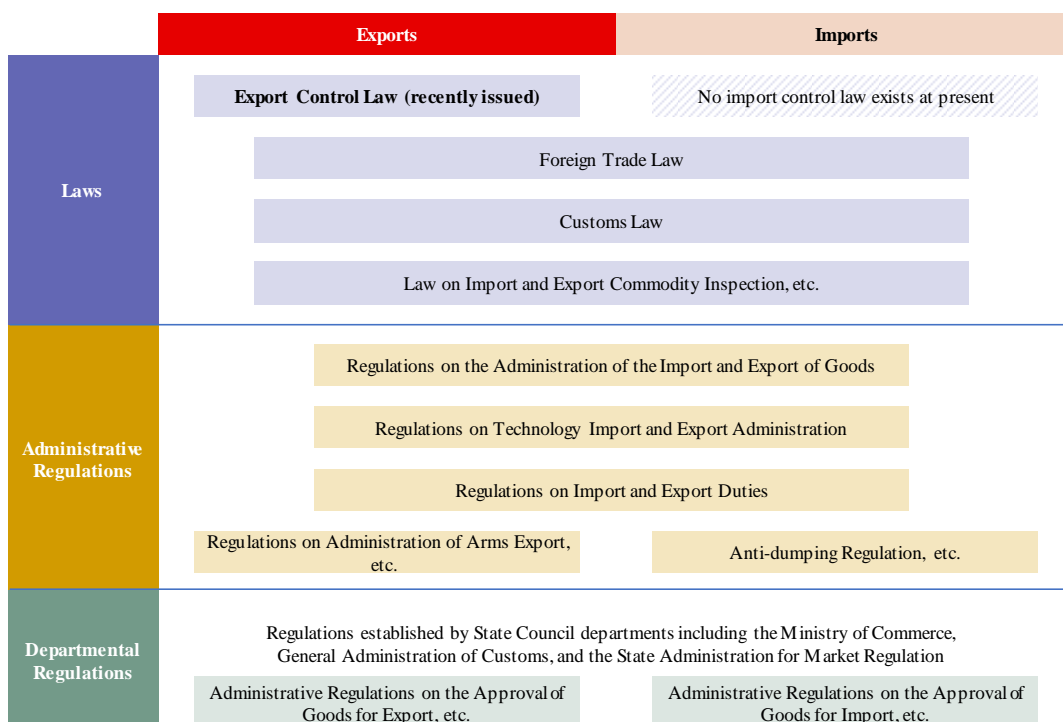
Key Takeaways

- **Multiple categories of controlled items for export shall be managed by the Export Control Law.**
- **Relevant departments shall issue control lists for controlled export items and a restricted list for restricted importers and end users.**
- **Companies must re-evaluate their own export management risk and establish an appropriate internal compliance system.**

1. Background of the Regulations

China’s legal system for foreign trade ([Fig. 1]) consists of **laws** such as the “Foreign Trade Law,” “Customs Law,” and the “Law on Import and Export Commodity Inspection,” **administrative regulations** such as the “Regulations on the Administration of the Import and Export of Goods,” the “Regulations on Technology Import and Export Administration,” and “Regulations on Import and Export Duties,” and **departmental regulations** such as the “Administrative Regulations on the Approval of Goods for Import” and the “Administrative Regulations on the Approval of Goods for Export.”

[Fig. 1] China’s Legal System for Foreign Trade



2. Main Contents of the Regulations

1) Definition

“**Export control**” refers to prohibition or restriction measures taken by the PRC for the export of, deemed export of, and other actions relating to controlled items.

[Fig. 2-1] Controlled Export Actions	
Export	The transfer of any controlled item from within the territory of the PRC to outside the PRC.
Deemed export	The provision of any controlled item by any citizen, legal entity or non-legal organization of the PRC to any foreign organization or individual.
Other related actions	The transit, transshipment, through-transport, or re-export of any controlled items, or the export of any controlled item from regulated bonded places such as regulated export warehouses and bonded logistics centers, as well as bonded areas, export processing zones and other areas specially regulated by Customs.

2) Controlled Items

Controlled items include **dual-use items, military items, nuclear items, and other goods** ([Fig. 2-2-1]) deemed as **goods, technologies, services or items** (including **data containing relevant technical information, etc.**) that pertain to the preservation of national security and national interests, and/or the performance of non-proliferation or other international obligations.

The State Export Control Administrative Departments (SECADs) publish a list of export controls on controlled items (including temporary control).

[Fig. 2-2-1] Controlled Items	
Dual-use items	Goods, technologies, services and items that can be used for not only existing civil purposes but also military purposes, or that are helpful to enhance military potential, especially those can be used for the design, development, manufacturing or use of weapons of mass destruction and their delivery vehicles.
Military items	Equipment, specially produced equipment and other related goods, technologies and services used for military purposes.
Nuclear items	Nuclear materials, nuclear equipment, non-nuclear materials for nuclear reactors, and related technologies and services.
Others	Goods, technologies, services and items that pertain to the preservation of national security and national interests, and/or the performance of non-proliferation or other international obligations.

Below are the current administrative regulations for the export control of the above controlled items.

[Fig. 2-2-2] Administrative Regulations for the Export Control of Controlled Items		
No.	Issuing Department(s)	Administrative Regulation(s)
1	State Council	Regulations on Administration of Chemicals Subjected to Supervision and Control
2	State Council	Regulations on Export Control of Dual-Use Biological Agents and Related Equipment and Technologies
3	State Council, Central Military Commission	Regulations on Administration of Arms Export
4	State Council	Regulations on Export Control of Missiles and Missile-related Items

		and Technologies
5	State Council	Regulations on Control of Nuclear Export
6	State Council	Regulations on Export Control of Dual-Use Nuclear Items and Related Technologies, etc.

3) Regulations for Exporters*

[Fig. 2-3] Regulations for Exporters

Qualifications for the export of controlled items	The exporter must obtain qualifications where qualifications for export of the related controlled items are required by law.
Approval for the export of control-listed items	Exporters shall apply for a license for the export of controlled items listed on a control list, or of items subject to temporary control.
Approval for the export of non-listed controlled items	For the export of any good, technology or service that is not listed on an export control list or subject to temporary control , if an exporter is, should be aware of, or is notified by the SECADs of any of the following risks, the exporter must apply for a license to the SECADs: <ul style="list-style-type: none"> ✓ Endangering national security and interests; ✓ Being used for the design, development, production, or use of weapons of mass destruction and/or their delivery vehicles; or ✓ Being used for the purpose of terrorism.
Confirmation of and consultancy on controlled items	If an exporter is unable to confirm whether any good, technology or service to be exported is a controlled item under the Export Control Law, it may consult the SECADs on the matter.
Establishment of internal compliance systems for export control	If an exporter establishes a properly functioning internal compliance system for export control , the SECADs may provide facilitations such as the issuance of an all-inclusive license.
Submission of documents certifying end users and end use	An exporter must submit to the SECADs documents certifying the end users and end use of the controlled items . These certifying documents are to be issued by a national or local government agency in the place where such end use or end users are located.
Reporting of possible change of end-users or end use	If an exporter or importer becomes aware of any possible change to the end users or end use, it shall immediately report to the SECADs as required by these regulations.
Transactions with importers or end users included in the restricted list	Exporters must not enter into any transactions with any importer or end user that is included on the restricted list of importers and end-users that have violated of the rules . If an exporter has a genuine need to enter into a transaction with an importer or end user on the restricted list, it may submit an application to the SECADs.

4) Regulations for Importers and End Users

[Fig. 2-4] Regulations for Importers and End Users

Prohibition of changing the end use of controlled	The end-users of controlled items shall promise that they will not change the end use of the related controlled items or assign the controlled items to any
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items or assigning them to third parties without approval	third party without the approval of the SECADs.
Restricted list	<p>The SECADs shall establish a restricted list for importers and end-users that:</p> <ul style="list-style-type: none"> ✓ Violate the requirements regarding the management of end-users and end uses; ✓ May endanger national security and interests; or ✓ Use controlled items for the purposes of terrorism. <p>If an importer or end user that is included in the restricted list takes measures to cease to have the first situation again, it may submit an application to the SECADs to be removed from the restricted list.</p>

5) Regulations for Shippers, Customs Brokers, and Other Export Service Providers

[Fig. 2-5] Regulations for Shippers, Customs Brokers, and Other Export Service Providers

Shippers and customs brokers	When a shipper or customs broker of export goods seeks to export any controlled goods, it shall submit licensing documents issued by the SECADs to Customs for verification, and follow customs procedures in accordance with applicable government policies.
Other export service providers	No organization or individual shall provide any agency, shipping, delivery, customs clearance, third-party e-commerce trading platform, or financial services for any exporter engaging in any export control violations.

6) Supervision and Administration

[Figure 2-6] Supervision and Administration

Investigation of suspected violation of the regulations	<p>The SECADs may take the following measures for a suspected violation of any provision of the Export Control Law:</p> <ul style="list-style-type: none"> ✓ Entering and conducting investigation of the business site of or any other site relevant to a person under investigation; ✓ Interviewing a person under investigation, persons of interest, or other relevant organizations or individuals, and requesting them to provide explanations relating to the matters under investigation; ✓ Examining and making copies of certificates, agreements, accounting books, business correspondence and other documents and information belonging to a person under investigation, interested parties or other relevant organizations or individuals; ✓ Checking the delivery vehicles used for exports, preventing the loading of suspicious export items, and ordering the return of illegally exported items; ✓ Confiscating and seizing items relevant to the investigation; and ✓ Examining the bank accounts of a person under investigation.
Official advice and warning letters	The SECADs may take measures such as providing official advice or issuing warning letters.
Reporting of suspected violations	Any organization or individual has the right to report any suspected violation of the provisions of this law to the SECADs.

7) Legal Liability

[Figure 2-7] Legal Liability

Where an exporter violates any of the following nine provisions in the Export Control Law, the authorities are to **confiscate any illegal income and impose a fine that is 20 times of the highest amount of illegal earnings**. The exporter is also to be **issued a warning, ordered to suspend business, or have its export qualifications revoked** as punishment. Such violations shall be **included in the exporter’s credit record**.

- ① Exporting controlled items without obtaining the relevant qualification for export operations relating to the controlled items.
- ② Exporting any controlled items without approval.
- ③ Exporting any controlled items outside of the approved scope specified in the export license.
- ④ Exporting any controlled items that are prohibited from being exported.
- ⑤ Obtaining or illegally transferring an export license for controlled items through fraud, bribery or other improper means.
- ⑥ Falsifying, altering or trading an export license for controlled items.
- ⑦ Providing any agency, shipping, delivery, customs clearance, third-party e-commerce trading platform, financial, and other services for any exporter under the knowledge that the exporter has engaged in export control violations.
- ⑧ Entering into any transactions with any importer or end user that is included in the restricted list for violating the provisions of this law.
- ⑨ Refusing or obstructing any regulatory inspection.

Any party that engages in the above violations may be **investigated for criminal liability** under the provisions set forth not only in this Export Control Law, but also **in other relevant laws and administrative regulations**. Moreover, **any foreign organization and individual** that violates these export control provisions may be subject to a legal process and investigated for legal liability.

3. Impact on Companies

The Export Control Law was designed to prohibit or restrict the export of any controlled items by exporters, shippers, customs brokers, and other export service providers in China, and the import of such items by foreign importers and end users.

Many companies are not involved in the export of controlled items (goods, services, and technologies) on their daily business. Therefore, the issuance of the Export Control Law will only have a limited impact on them. However, companies likely to be involved in the export of controlled items need to take a closer look at the **control lists** of export items, the **restricted list** of importers and end users, and the **export control guidelines** for the applicable industries, all of which will be issued by the relevant departments in the future.



We advise you to immediately consult with relevant departments in your company to confirm any involvement with controlled items. Companies are also advised to re-evaluate their export risk and establish sound internal compliance systems for export control and proper operations based on the Export Control Law

as soon as possible. Foreign companies in particular are recommended to have comprehensive discussions with relevant parties (parent companies, affiliated companies, importers, end users, etc.) to examine the possible impact and redesign their export strategy to be appropriate to the current situation.

We will continue to follow up on relevant information and provide details as they come.

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