



China's export control law

What it will mean for exporters



On October 17th, 2020, the Standing Committee of China's National People's Congress ("NPC") passed the Export Control Law of the People's Republic of China ("ECL") which will take effect on December 1, 2020. The law's passage is notable as it is the country's first comprehensive framework for controlling exports of military, dual-use items and technology for national security and public policy reasons.

While increased controls around exporting from China will not occur overnight, companies should be aware that exports of goods, technology and technical data will be subject to increased scrutiny and, ultimately, enhanced oversight. It will be important for Chinese exporters to closely follow regulatory developments to identify restricted products and implement processes and procedures that support compliant exportation.

What does the law regulate?

The ECL has broad coverage and regulates dual-use items with both civil and military applications, military arms & goods, nuclear items as well as any other item necessary for "safeguarding national security and interests." Further, it specifies that "controlled items" includes technical data. The bifurcation of "national security" and "interests" suggests that the Chinese government will take an expansive view of the potential impact of an export, and whether it may impede any policy goals. Additionally, the law has wide applicability by reaching citizens, corporations, unincorporated organizations who provide controlled products to foreign organizations or individuals. It further allows China to retaliate in instances when it believes it is facing discriminatory export control policies abroad.

Violations of the ECL can incur a wide range of penalties depending on the nature of the prohibited activity. Financial penalties may be up to RMB \$5 million or ten times the illegal gains of the transaction. Additional sanctions include imprisonment, license withdrawal, business suspension and loss of ability to export.

Although in some respects, the law mirrors other jurisdictions' export control regimes, there are a few significant departures that may, in the long term, present challenges for exporters. These include:

- The requirement that exporters assess whether a proposed export should be controlled and proactively apply for a license even in instances where the product or technology is not included on the export control list;
- Deemed export provisions regarding controlled items;
- Temporary controls over goods, technologies and services not included on the export control list may be applied for a period up to two years; and
- The ECL is extraterritorial and may apply to companies or individuals violating its provisions outside of China.

What happens next?

The implementation of the ECL is notable as China's first comprehensive export regime and will likely complicate the export landscape for many companies. However, there are a number of steps that must be taken to administer this new law. One of the main actions will be the promulgation of regulations, including a control list defining the items and technologies that are restricted. Further, the language of the law appears to indicate that ECL administration will remain decentralized with the State Council and Central Military Commission executing the export control law based upon their current responsibilities. However, the law also calls for the establishment of an "export control coordination mechanism," requiring that the State Council departments share information. It does not appear that there is a time frame in which export control guidelines must be issued, requiring only that they are issued "in due course." In short, it is not yet clear how the day-to-day legal requirements will be administered.

How companies can prepare

While it may seem like there is little companies can do while administrative responsibilities are being determined, being proactive now will enable organizations to adjust quickly once additional information is released. A good first step is gathering product specifications to identify those exports that are most likely to be controlled. In conjunction with obtaining product information, validating that there is transparency in the exportation process supported by documented procedures will help companies identify potential risk areas.

Our Global Export Controls & Sanctions practice has the deep technical knowledge and the global reach to help you prepare for China's Export Control Law. Not only can we help make sure you are compliant today, but we can team with you to prepare for tomorrow.



Contact us

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