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China releases new export control law

By Sascha Matuszak

China released a final draft of its new Export Control Law (ECL),^[1] a sweeping piece of legislation that has many similarities with the United States' Export Administration Regulations while also containing very important differences. The law was announced Oct. 17 and goes into effect Dec. 1.

The law is in many respects a response to the U.S.-China trade conflict, in which the U.S. has refined various export control lists and pursued other legislation^[2] that targeted Chinese chipmakers and other technology companies, most notably Huawei Technologies Co. The law expressly states that China has the right to take reciprocal measures against any country abusing export controls to endanger China's national security and interests, which, to many commentators, sounds directed at the United States. It also established a list that works together with the Regulations on the Unreliable Entity List^[3] to target specific entities for violations.

This changes the export landscape once again for companies engaging in international trade: China now has a whole new set of requirements and the tools to enforce those requirements. It is critical for companies engaged in global trade, or companies with supply chains in China, to understand the new requirements and how they mesh with existing Chinese regulations.

The basics

The ECL governs the export of controlled items from China to destinations outside of China, as well as the transfer or release of controlled technology by any Chinese individual, legal entity or any other organization to any foreign individual or entity. As such, it affects all companies doing business in China or with Chinese entities.

Below are a few key features^[4] of the law:

- China will develop a list of "civil-and-military 'dual-use' items, military items, nuclear items, and other goods, [and] technology...deemed important to China's national security and other policy interests."
- "Persons seeking to export or re-export controlled items may need to obtain specific licenses from the Chinese government."
- "'Deemed exports' (transfers of controlled technology to a non-Chinese national, even wholly within China) will be...potentially subject to licensing or other restrictions."
- Chinese authorities will maintain a list of restricted importers and entities. This list works together with the recently published "Regulations on the Unreliable Entity List" to provide China with the ability to sanction or otherwise censure individual companies and entities, much like the U.S. does with its sanctions lists.
- "Violation of the ECL will carry administrative and criminal penalties."

The ECL also gives China the power to impose temporary restrictions on a product. The temporary restrictions are no different from restrictions that would apply to products or technology on the Control List. In order to export items from the Control List or items under a temporary restriction, companies may have to obtain a license. That license will be evaluated based on the following factors:

- “National security and interests;”
- “International obligations and external commitments;”
- “Type of export;”
- “Sensitivity of the controlled item;”
- “Export destination country or region;”
- “End user and end use;”
- “Relevant credit records of the export business operator; and”
- “Other factors provided by laws and regulations

Another important feature is the provision that an importer “‘knows or should have known’” that a particular item or technology was restricted because it may “(i) endanger China’s national security and interests; (ii) be used for designing, developing, manufacturing, or utilizing weapons of mass destruction or the vehicles to transport the same; or (iii) be used for the purpose of terrorism.”

The new ECL is a gamechanger in international trade. It gives China the same powers that the U.S. and the European Union currently exercise, introducing more complexity and risk into global trade.

Takeaways

- China has established an export control framework to rival the U.S. framework.
- The Export Control Law imposes new burdens of information on companies engaged in international trade. The chance is high that China will be exercising its authority under the ECL soon.

1 Zhonghua Renmin Gonghe Guo Chukou Guanli Fa (《中华人民共和国出口管制法》) [Export Control Law] (promulgated by the Standing Comm. Nat’l People’s Cong., October 17, 2020, effective December 1, 2020), <https://bit.ly/3jXIPw4> (China).

2 Sascha Matuszak, “US confronts China with broad-based China Initiative,” *Report on Supply Chain Compliance* 2, no. 1 (January 11, 2019), <http://bit.ly/2VqKf7I>.

3 Bu Kekao Shiti Qingdan Guiding (《不可靠实体清单规定》) [Order No. 4 of 2020 on the List of Unreliable Entities] (promulgated by the Ministry of Commerce, September 19, 2020, effective September 19, 2020), <https://bit.ly/367jrPG> (China).

4 Scott Flicker, Haiyan Tang, John Tso, and Lanxin Zhang, “China Enacts New Export Control Law – Global Businesses Take Heed,” Paul Hastings, November 2, 2020, <https://bit.ly/3n2giam>.

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