China's New Export Control Law: An Overview

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Authors:

Joseph J. Dehner
Haifeng Hong

On October 17, 2020, the Standing Committee of the 13th National People's Congress promulgated the Export Control Law of People's Republic of China (ECL), the first comprehensive set of export control laws in China. The ECL becomes effective on December 1, 2020. It creates a framework for control of exports that China considers a matter of national security that restricts or prevents export of such goods and services.

The ECL applies to the export of items for military and nuclear applications as well as for dual-use (i.e., used for both civilian and military purposes). It will apply to other exports of goods, technologies, and services as China decides are needed to safeguard national security and to implement international obligations such as non-proliferation. Under the ECL, China will adopt prohibitive measures and restrictive measures in the export context involving either the transfer of the controlled items out of China or the provision (a concept that appears to be similar to "deemed export") of the controlled items by Chinese nationals and entities to their foreign counterparts. China's State Council and Central Military Commission are the "State Export Control Administrative Agency" (the "Agency") that will be jointly in charge of the implementation and enforcement of the ECL.

Export Control Item List

The ECL authorizes the Agency to promulgate an "export control item list" for controlled items. The Agency may also publish a separate "interim list" that may include those items that are not on the "export control item list" but nevertheless are subject to a temporary control period of up to two years for national security and international obligation fulfillment reasons. Under the ECL, the Agency may ban export of specific items to any destination, or may ban the export of specific items to designated countries, regions, organizations, and individuals.

Export License

Exporters will need to apply for an export license for items subject to both the "export control item list" and the "interim list." With respect to goods, technologies, and services beyond the "export control item list" and the "interim list," an exporter will be required to apply for a license if the exporter knows should know, or has received notification from the Agency, that the items to be exported have the risk of being used (i) to compromise national security and interest, (ii) to design, develop, manufacture and apply mass destruction weapons and their transportation tools, or (iii) for terrorism purposes. As a part of the export license application, exporters must submit documents regarding end-users and their contemplated uses of the controlled items. The end-users will need to certify that they will not change the declared uses of the controlled items or transfer the controlled items to third parties.

Blacklist

The ECL requires the Agency to promulgate an export control blacklist that includes the importers and end-users that (i) have violated the ECL, (ii) may compromise China's national security and interest, or (iii) may use the controlled items for terrorism purposes. The Agency may prohibit or restrict transactions involving the blacklisted entities and individuals. Exporters will be generally prohibited from engaging in any transactions with the importers and end-users on the blacklist, though they may apply with the Agency for an export license under special circumstances. Importers and end-users on the blacklist may apply for removal from the list if they can show the basis for being included on the blacklist no longer exists.

Penalties

Exporters that violate the ECL will be subject to warnings and penalties that include an order to cease illegal activities, confiscation of illegal gains, fines, suspension of business license, revocation of export license, and ineligibility to apply for future export licenses. Individuals who are directly responsible for an exporter's violation may face criminal liability and may be banned from engaging in export activities.

Enforcement of the ECL is designed to have an extraterritorial effect for items on the control lists. Under the ECL, organizations and individuals outside of the territory of China are subject to liability if they violate the export control laws (e.g., by changing the declared uses of the controlled items or transferring the controlled items to third parties), and threaten China's national security and interests, or hinder the implementation of China's international obligations such as non-proliferation.

Much remains to be implemented before the ECL becomes developed and enforced. Multinational companies with Chinese subsidiaries or other sources should monitor how China rolls out its control lists, the documentation it will require for export licenses and end-user certifications. Businesses that rely on goods, technologies, or services from China should evaluate supply chain risks in light of the ECL and its implementation. Businesses doing trade with China should develop compliance programs to comply with the new law and minimize risk.