

# China's Export Control Law

## practical fact-sheet

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# The ECL: A Game Changer

- China's new Export Control Law (ECL) took effect from **1 December 2020**. Highlighting the government's **national security** concern, the ECL affects businesses with national security implications in both the conventional sense and increasingly relating to **emerging technologies**
- The Law builds on the existing extensive industry-specific lists, affecting companies in **nuclear, chemicals, biology, missiles**, and **dual-use items**, and more
- The ECL adds uncertainty to **exporters** in China, overseas **importers** and **end-users**, as well as **service providers** in transactions, shipping, and more, by assuming companies should know items already under control as well as those should be
- The ECL may constantly **change the rules by issuing temporary lists** against items, **foreign countries/regions**, as well as **entities/individuals**, while shifting compliance responsibility to enterprises
- The ECL enhances law enforcement by **granting authorities increased** and **coordinated power** and encouraging the public to blow the whistle

# Before ECL: Various Regulations

Industry-Specific measures & Lists were issued by various ministries since 1980s, regulating the following sectors and affecting respective enterprises

**Chemicals**  
MOFCOM

Controlled Chemicals **Measures and List** 1995

Certain Chemicals and Related Equipment & Technologies Export **Control Measures and List** 2002

**Dual-use items**  
MOFCOM  
MIIT  
SASTIND

**Dual-use items & technologies**  
Management Measures 2005 and List 2006

**ECL**  
NPC

**Missiles**  
MOFCOM

Missiles and Related Items and Technologies Export Control **Measures and List** 2002

**Nuclear**  
SASTIND  
MOFCOM

Nuclear Materials Control Regulations 1987 and Implementation 1990

Nuclear Export Control Regulations 1997

Nuclear Dual-Use Items and Technologies **Measures and List** 1998

**Military materials**  
EDD of CCP  
SASTIND

Military Products Export **Control Measures and List** 1997

**Biology**  
MOFCOM

Dual-Use Biological Agents and Equipment and Technologies Export Control **Measures** 2002

**Others**  
MOFCOM  
MOST

Measures on Export and Import of Technologies 2001

Measures/Catalogue on Technologies Prohibited/Restricted for Export 2001

Catalogue of Goods Prohibited from Export 2001

# The New ECL: More controls, lists and licenses

## More Controls

- From Goods & Technology to **Services & Data** (Art. 2)
- From cross-border movements to **in-country transfer** (“Provision” clause of Art. 2)
- **All aspects** of export activities such as transit, transshipment, and across special customs supervision zones, etc (Art. 2)

## More Lists

- Controlled item lists (Art. 4)
- Temporarily controlled item lists (Art. 9)
- Blacklists against exporters (Art. 39)
- ‘Control list’ against importers and end-users (Art. 18)
- Embargo lists against foreign countries/regions, and entity/individuals (Art. 10)

## More licenses and duties

- Mandatory permits will apply to **all items including uncertain ones** to firms (Art. 12)
- Internal compliance auditing department will be encouraged for exporters (Art. 5)
- End-use and end-user certification will remain (Art. 15)



# The New ECL: Obligations and Liabilities

## Exporters (Gate Keepers)

### Exporters assume

#### many responsibilities as gatekeepers

- Require official documents on end-users and end uses (Art. 15)
- Report, if noticing irregularity in end uses or users (Art. 16)
- Consult with officials if unsure of items (Art. 12)
- Not deal with any blacklisted entities (Art. 18/37)
- Observe permitted activities strictly without discretion (Art. 11)
- Collaborate fully while under investigation (Art. 28)

## Importers

- Verify the authenticity of end-use document (Art. 16)
- Report, when detecting fraud or irregularity (Art. 16)

## Service providers (Shipper, Customs Broker...)

- Present official documents (Art. 19)
- Verify products and translations (Art. 36)
- Pledge no any illegal dealings (Art. 20)

## End-users

- Secure and provide official certificates on end-use (Art. 15)
- Pledge no transactions or repurposes of controlled items (Art. 16)

Permits are still needed for uncontrolled items WHEN enterprises **know or should know items** may impose national security risk or could be used for creation or transportation of weapons of mass destruction, or be subject to terrorist activity (Art. 12)

# The New ECL: Enhanced Enforcement

The ECL grants authorities increased power in enforcement and demands collaboration of other agencies, elevating law enforcement to a new level. The ECL also encourages whistle blowers to take initiatives and promises protection of their identities.

## Passive law enforcement

- GAC will verify export permits from exporters

## Active law enforcement

- GAC could question exporters regarding shipments
- GAC could hold shipments during verification and confirmation
- Authorities could enter operation sites, and review corporate books, correspondents, and bank accounts
- Authorities could inspect transportation vehicles

## Proactive law enforcement

- Authorities could issue warning and interview enterprises
- Authorities encourage the public to give tips and report law violations

# The new ECL: What to do now?

- Watch out for industry-specific guidelines
- Watch out for updates/ revisions of existing measures and lists
- Be prepared that temporary control lists and other lists to become new norm

- Seek advice proactively, from authorities whenever unsure
- Pursue internal auditing of activities involving controlled items of any form
- Pursue risk evaluation of products, activities, and suppliers
- Set up red-flag warnings against abnormal activities in transactions

# Abbreviations & Sources

## Abbreviations

**NPC:** National People's Congress

**MOFCOM:** The Ministry of Commerce

**MIIT:** The Ministry of Industry and Information Technology

**SASTIND:** The State Administration for Science, Technology and Industry for National Defense (国家国防科技工业局)

**EDD of CCP:** Equipment Development Department of CCP's Central Military Commission (中国共产党中央军事委员会装备发展部)

**MFA:** The Ministry of Foreign Affairs

**GAC:** The General Administration of Customs

**MOST:** The Ministry of Science and Technology

## Sources

### China's Non-proliferation and Export Control Laws and Regulations

[https://www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/zzjg\\_663340/jks\\_665232/fksflfg\\_665258/t141341.shtml](https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/jks_665232/fksflfg_665258/t141341.shtml)

[http://russiaembassy.fmprc.gov.cn/web/wjb\\_673085/zzjg\\_673183/jks\\_674633/fg\\_674663/t119288.shtml](http://russiaembassy.fmprc.gov.cn/web/wjb_673085/zzjg_673183/jks_674633/fg_674663/t119288.shtml)

### NPC: Export Control Law

<http://www.npc.gov.cn/npc/c30834/202010/cf4e0455f6424a38b5aecf8001712c43.shtml>





## About the German Chamber of Commerce in China

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