



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

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

The German Chamber of Commerce is the official membership organization for German companies in China, and has currently more than 2,700 members. The German Chamber helps its members to succeed in China by providing up to date market information and practical advice. It offers a platform for the German business community and represents its members' interests towards stakeholders including government bodies and the public.



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