



China's trade policy toolbox : How can German Companies comply?

October 2021



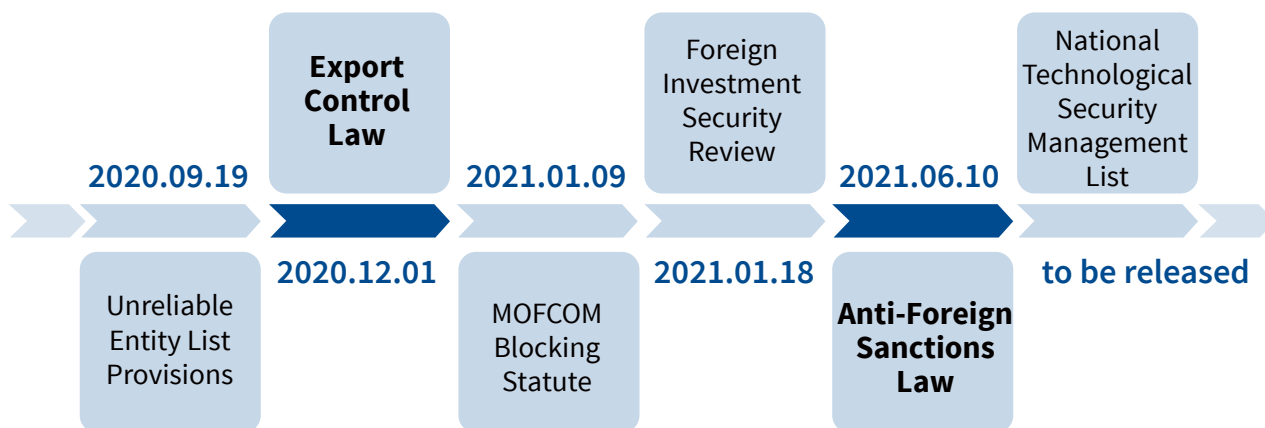
China's trade policy toolbox: How can German Companies comply?

The US-China trade and geopolitical tensions led to a tit-for-tat series of measures and actions between the two countries, such as tariffs, export controls, sanctions and other restrictions. Since 2020, the Chinese government has put in place an array of measures that are affecting all companies, so that German companies operating in China need to be aware of it.

From September 2020 to June 2021, China released five laws, regulations and measures, with another document still in the works. China has adopted legislative measures of all kinds, with some more preventive and reactive in nature, while others being much more proactive.

German companies operating in China need to navigate through the various documents and assess risks for their companies. The German Chamber provides below overview and recommends some preliminary moves for companies to comply.

Timeline



Measure Clusters

Preventive Measures	Reactive Measures	Proactive Measures
At Borders Barriers & Restrictions	In China Nullification & Remedies	Beyond Borders Retaliation & Extraterritoriality
<ul style="list-style-type: none"> • Export Control Law • FDI Security Review • National Technology Security Management List (to be released) 	<ul style="list-style-type: none"> • Export Control Law • The Blocking Statute • Unreliable Entity List Provisions 	<ul style="list-style-type: none"> • Export Control Law • Anti-Foreign Sanctions Law

Risks and Compliance

Laws/Regulations	Risk Exposure	Compliance Check
<p>反外国制裁法 Anti-Foreign Sanctions Law Introduced and effective on 10 June 2021</p>	<p>The Law authorizes State Council agencies to blacklist entities and individuals who played a part in laws and sanctions against China's national interests. Those listed would be subjected to visa rejection, denial of entry into China or deportation if they are in China, assets and property freezing, or prohibited to collaborate with Chinese individuals and organizations. Any decisions made by the State Council agencies would be final, banning administrative reconsideration or judicial review.</p>	<ul style="list-style-type: none"> ✓ Seek legal advice and scrutinize the Law's provisions and implications with operations in mind. ✓ Be aware that conflicting compliance requirements from national governments with diverging interests could put business into crises. ✓ Review your suppliers, consumers and partners for any possible vulnerability and continue doing so on a regular basis. ✓ Scrutinize your contracts or templates and redesign exit clauses, set up contingency plans if possible. ✓ Carry out due diligence and other actions proactively.
<p>出口管制法 Export Control Law Introduced on 11 October 2020 and effective on 1 December 2020</p>	<p>The Law covers all kinds of export activities, such as transit, transshipment, and across special customs zones, all kinds of goods, technologies, services and data and is relevant for exporters, importers, service providers and end-users.</p>	<ul style="list-style-type: none"> ✓ Seek advice proactively, from authorities whenever unsure. ✓ Pursue internal audits of activities involving controlled items of any form. ✓ Pursue risk evaluation of products, activities, and suppliers. ✓ Set up red-flag warnings against abnormal transactions. ✓ Be aware of related information provisions during foreign exhibitions and tradeshows and prevent unauthorized provision by employees.
<p>外商投资安全审查办法 Foreign Investment Security Review Measures Introduced on 19 December 2020 and effective on 18 January 2021</p>	<p>The scope of review increased from four areas in 2011 to ten, including agriculture, energy and resources, machinery, IT and tech, internet services. Actual control will trigger review, regardless who is the majority shareholder.</p>	<ul style="list-style-type: none"> ✓ Investors investing or planning to invest in China need to consider whether a filing is triggered. ✓ Those having already invested and looking for disposal of related interests will need to consider whether the potential buyer will require a security review.

Laws/Regulations	Risk Exposure	Compliance Check
<p>阻断外国法律与措施不当域外适用办法 Rules on counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures or Blocking Statute Introduced and effective on 09 January 2021</p>	<p>The Blocking Statute aims to eliminate any adversary effects of some long-arm foreign legislations and measures. With the main targets being secondary sanctions, some primary sanctions and export controls could potentially be included.</p>	<ul style="list-style-type: none"> ✓ Report to authority in 30 days, if businesses are adversely affected by extra-territorial effect of foreign laws and regulations. ✓ Seek exemption approvals if companies do need to make transactions with backlisted entities. ✓ Seek government support and judicial relief, if business got hurt due to complying with China's law. ✓ Monitor the official Prohibition Orders. ✓ Proactively evaluate risk exposures
<p>不可靠实体清单规定 Unreliable Entity List Provisions Introduced and effective on 19 September 2020</p>	<p>The Provisions targets companies who cut normal business transactions with or conducting discriminatory measures against Chinese counterparts. Chinese authority may launch investigations by itself or upon enterprise reporting. Investigations and results of inclusion or exclusion of certain foreign businesses should be announced.</p>	<ul style="list-style-type: none"> ✓ Comply with Anti-Foreign Sanctions Law and the Export Control Law etc, to avoid official designation. ✓ Monitor government announcements closely, avoiding business relations with designated entities in any possible ways. ✓ If really necessary, ensure to apply for permits before conducting business with designated entities. ✓ Scrutinize suppliers and consumers and update database regularly.
<p>国家技术安全管理清单制度 National Technological Security Management List System (to be released)</p>	<p>According to suggestions by NDRC this system should protect China's core technologies and technological breakthroughs - also against a possible use by foreign countries impairing China's interests. So this might bear risks for foreign companies doing business with Chinese companies in key technological sectors.</p>	<ul style="list-style-type: none"> ✓ Check where and to what extent you use technologies of Chinese companies. German companies should follow the news and watch out for updates by the German Chamber. ✓ Watch out for the German Chamber's Updates.

反外国制裁法: <http://www.npc.gov.cn/npc/c30834/202106/d4a714d5813c4ad2ac54a5f0f78a5270.shtml>

出口管制法: <http://www.npc.gov.cn/npc/c30834/202010/cf4e0455f6424a38b5aef8001712c43.shtml>

外商投资安全审查办法: https://www.ndrc.gov.cn/xgk/zcfb/fzggwl/202012/t20201219_1255025.html

阻断外国法律与措施不当域外适用办法: <http://www.mofcom.gov.cn/article/i/jjyl/1/202101/20210103029715.shtml>

Blocking Statute: <http://english.mofcom.gov.cn/article/policyrelease/announcement/202101/20210103029708.shtml>

不可靠实体清单规定: <http://www.mofcom.gov.cn/article/zwgk/zcfb/202009/20200903002593.shtml>

The Unreliable Entity List Provisions: <http://english.mofcom.gov.cn/article/policyrelease/questions/202009/20200903002580.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 2,300 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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