



# 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**



Controlled Chemicals Measures and List 1995

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



**Dual-use items &** technologies Management

Measures 2005 and List 2006

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



**Missiles MOFCOM** 



**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** 



**SASTIND** 

Military Products Export **Control Measures and List** 



**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

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





# 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)

## **End-users**

Secure and provide official certifi-

Pledge no transactions or repurposes

cates on end-use (Art. 15)

# Service providers

of controlled items (Art. 16)

(Shipper, Customs Broker...)

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

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





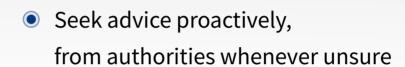
# The new ECL: What to do now?

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Watch out for industry-specific guidelines

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



- 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**

# **Abbreviations & Sources**

**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 Indus-

try 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**

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