

China Released the Draft Export Control Law

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On December 28, 2019, the Standing Committee of China's National People's Congress ("**CNPC**") published the Draft Export Control Law ("**Draft ECL**") on with comments due by January 26, 2020. According to the 2020 Annual Work Report recently released by the Standing Committee of CNPC, it is anticipated that the Draft ECL will be finalized and become effective within the year 2020.

Key Contents:

1) The First Omnibus National Export Control Law

China's current export control legal regime is not set out in a unified legislation, but rather is spread across several different laws, including the Foreign Trade Law (rev. 2016) and Customs Law (2017), and administrative regulations, including the Regulations on Arms Export (2002), Regulations on Control of Nuclear Export (2006), and Regulations on Control of Nuclear Dual-Use Items and Related Technologies (2007), as well as the Administrative Measures for the General Licensing for Export of Dual-Use Items and Technologies (2009). Meanwhile, administrative authority is divided among several Chinese government agencies: the Ministry of Commerce of the People's Republic of China, the State Administration of Science, Technology and Industry for National Defense, the Ministry of Science and Technology, the Central Military Commission and the General Administration of Customs.

The newly drafted ECL would mark the first omnibus and comprehensive national export control legislation and would create clear legal authority and investigation powers for enforcement of China's export controls.

2) Export Control List

Items, including goods, technologies and services, characterized as (i) dual-use; (ii) military; (iii) nuclear; or (iv) otherwise related to performing international obligations or national security protection would be designated on export control lists (regular or temporary) and would be subject to export licensing requirements. Licenses are required for exporting the items described on the control lists.

For controlled items not on the above-mentioned control lists, i.e., category (iv), including critical technologies, China would also be able to (a) impose an embargo; (ii) prohibit exports to certain destinations, individuals or entities; and (iii) apply temporary controls for up to two-years.

China may blacklist foreign importers and end-users for (1) violating end-user or end-use commitments; (2) endangering national security; or (3) terrorism. The Draft ECL would abolish the retaliation provision that would have prohibited exports of controlled items to countries, such as the US, that have imposed restrictions or prohibitions on exports of such items to China.

Implications:

It appears that China intends to strengthen its export control regime in part to provide counter measurements to the tightened US export controls perceived as targeting China and Chinese companies such as Huawei.

After the ECL is adopted, we expect to see new and consolidated export control lists. Such lists would likely include sensitive and cutting-edge technologies, likely resulting in a tit-for-tat regulatory response to similar export control measures adopted by US. These control lists may also include critical natural resources such as rare earth metals, a potentially powerful tool for China to disrupt global supply chains. Thus, the Draft ECL reflects a continued movement towards the US and China “de-coupling”, especially in certain sensitive sectors.

Multinational companies (MNCs) outside and inside China should be aware of the changes in the export control regimes. When exporting to China, overseas MNCs will need to comply with overseas, especially US or EU, export control requirements, and when exporting from China, MNCs within China will need to comply with the Chinese ECL.