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INSIGHT

China Issues New Export Control Law and Related Policies

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On October 17, 2020, the Standing Committee of China's legislature, the National People's Congress (NPC), passed the Export Control Law of the People's Republic of China, which goes into effect on December 1, 2020 (Chinese text and unofficial English translation).The passage follows three rounds of legislative deliberations since China's cabinet, the State Council, first presented a draft to the NPC in June 2017. The law realizes a longstanding Chinese government goal of elevating and consolidating ministry-level export control authorities under one national-level legal and policy framework. The new law defines China's export control authorities as a joint mechanism of units under both the State Council and the Central Military Commission that perform export control functions. The action is part of a broader effort by China's President Xi Jinping to build out national security authorities and reflects themes—such as China's right to development—as broad justifications for national security-related trade actions.

The final language includes several new provisions that appear aimed at creating a Chinese policy counterweight to the U.S. government's use of export control authorities to restrict the transfer of U.S. dual-use technology to China, including provisions for retaliatory action and extraterritorial jurisdiction. (See CRS In Focus U.S. Export Control Reforms and China: Issues for Congress.) The United States and other governments—such as those in Japan, Taiwan, and Europe—have tightened China's access to sensitive technology through strengthened export control authorities and licensing practices over the past two years. Relatedly, there has been a marked upswing over the past year in the number of countries that have sought to ban or impose conditions on the participation of China's telecommunications firm Huawei in their 5G networks, particularly in Europe.

The Export Control Law gives the Chinese government new policy tools and justifications to deny and impose terms on foreign commercial transactions—both inside and outside of China—on the grounds of China's national security and national interest. The Chinese government traditionally has sought to restrict foreign investment and imports to advance national industrial goals, although there have been prominent examples of China controlling the export of strategic commodities, such as coke, fluorspar, and rare earth elements. China for some time also has used ad hoc import restrictions to create commercial and political pressures on its major trading partners, a tactic that Beijing has used most recently with Australia and Canada in restricting agriculture and commodity trade. The law gives China's government new rationales and processes to impose terms on transactions among firms and within joint ventures and

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other partnerships within China, as well as on exports and offshore transactions. Key licensing factors include not only the particular technology, end use, and end user, but also an entity's "social credit" rating, highlighting how the government may seek to leverage and enhance the emerging role of China's social credit system as a policy tool to influence corporate activity.

The law authorizes the government to exercise export controls in retaliation against other countries' actions, to impose temporary (up to two years) export controls on items not on a control list, and to broadly justify actions with several open-ended clauses. The law also includes provisions for China's participation in international discussions and regimes and global rulemaking on export controls according to the principles of equality and reciprocity, a sign that China could become more active in trying to set rules and norms that advantage China.

Amended Catalogue of Controlled Technologies

In a related action, China's Ministry of Commerce and Ministry of Science and Technology on August 28, 2020 amended China's Catalogue of Technologies Prohibited or Restricted from Export (in Chinese) to impose new controls in technological areas including:

- biotechnology, pharmaceuticals, and medical equipment;
- 3D printing;
- construction , petroleum, and power equipment;
- machine tools;
- high speed wind tunnel design;
- aerospace bearings;
- unmanned aerial vehicles (UAVs);
- space–related remote sensing image acquisition, measurement instruments, and data transmission;
- vacuum technology;
- mapping;
- information processing technologies (e.g., personal interactive data algorithms, speech synthesis, artificial intelligence-based interactive interface, voice evaluation, and intelligent scoring); and
- cryptographic and cyber-related technologies.

China's national industrial plans prioritize these technology areas, and the Chinese government prohibits or restricts foreign investment in these areas while seeking technology transfer through foreign partnerships and acquisitions. The timing of the catalogue update and the addition of information technologies and algorithms used in social media platforms may reflect an effort to influence terms the U.S. government might impose on the U.S. operations of China-based ByteDance's social media platform, Tik Tok.

Unreliable Entity List

In another related action, China's Ministry of Commerce on September 19, 2020 issued a State Council-approved Order on Provisions on the Unreliable Entity List that calls for the establishment of a new system" to identify and respond to entities that endanger China's sovereignty, security, or development; violate "normal" market transaction principles; and cause serious damage to the legitimate rights and interests of Chinese companies, organizations, or individuals. While the list triggers export control action similar to the U.S. Department of Commerce's Entity List, China's justifications for including an entity on the list appear to be much broader. In addition to fines, other punitive actions include restrictions or prohibitions on participation in China-related trade and investment and foreign personnel entry, work, stay, and residence in China.

Issues to Watch

The Chinese government is expected to issue implementing regulations and is updating its control lists, offering a window into its views of China's relative technological strengths and gaps. The Chinese government may impose or threaten to impose controls against particular companies or technologies in which the U.S. and other governments have imposed export controls that affect Chinese entities. Beijing also may seek to impose controls where it has niche advantages or control over certain elements of global technology supply chains. Such actions could backfire, however, by magnifying the technology risks of doing business in China—particularly in advanced technology and research and development—and potentially accelerating technology decoupling. China's potential retaliatory use of export controls challenges global rules and norms and could drive the United States and like-minded countries to strengthen collaboration in licensing practices and multilateral export control arrangements, such as the Wassenaar Arrangement, to address growing China concerns.

Export Control Law of the People's Republic of China

Effective December 1, 2020

ARTICLE 2	Defines **controlled items** to include dual-use items, military items, nuclear items and other goods, technologies, services and items relating to the maintenance of national security and national interests, and performance of nonproliferation and other international obligations
ARTICLE 3	Defines **transfer** to include any transaction outside the PRC and involving foreign organizations or individuals (implying it includes transactions in China that involve foreign entities)
ARTICLE 4	Defines **control list** to include lists, catalogues, and directories
ARTICLE 5	Defines **export control authorities** to include a consultative mechanism of State Council and Central Military Commission units that perform export control functions
ARTICLES 6 & 32	Call for **strengthening international cooperation and participating in global rules** related to export controls; cooperating and communicating with other countries and international organizations in accordance with international treaties concluded or ratified by China or on the **basis of principles of equality and reciprocity**
ARTICLE 7	Encourages companies to work through **industry groups and chambers of commerce** to perform export control duties
ARTICLES 8 & 9	Mention **both country and product list and determinations**
ARTICLE 9	Allows for **temporary controls** (up to 2 years in duration) for **products not on a control list**
ARTICLES 12 & 13	State that **license decisions** will consider **national security and the national interest**. Other factors include: international commitments; type of export; sensitivity of the items; destination country or region of the export; end users and end use; **credit record** of the entities; and **other factors** provided in China's laws and administrative regulations
ARTICLE 14	Includes provisions for **internal compliance systems** and **general licenses**
ARTICLE 16	Includes provisions for end-users and end-user; includes **restrictions on altering end-use**
ARTICLES 34-40	Outline **fines and actions** in response to various types of violations
ARTICLE 44	Scopes jurisdiction to include **transfers that occur outside of China**
ARTICLE 45	Addresses trade and transfer via **China's bonded zones**

ARTICLE 48	Provides justification for **tit-for-tat retaliatory action**: *"If any country or region abuses export control measures to endanger the national security and national interests of the People's Republic of China, the People's Republic of China may, based on the actual situation, take reciprocal measures against that country or region."*

Source: Export Control Law of China, effective December 1, 2020; available at http://www.xinhuanet.com/2020-10/18/c_1126624518.htm

Notes: CRS has **bolded** key provisions.

Author Information

Karen M. Sutter
Specialist in Asian Trade and Finance

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