
Export Control Law of the People's Republic of China (Draft)

Chapter I General Provisions

Article 1 The Law is hereby formulated for the purpose of fulfilling international obligations such as nonproliferation, maintaining the state security and benefits and strengthening export control.

Article 2 The Law shall apply to the State's control of the export of dual-use items, military products, nuclear materials, and other goods, technologies, services and items that relate to the fulfillment of international obligations and the maintenance of the state security (the "controlled items").

For the purpose of the Law, export control refers to the prohibitive or restrictive measures taken by the State on the transfer of controlled items from within the territory of the People's Republic of China to overseas, and the provision of the controlled items by a citizen, legal person or other organization of the People's Republic of China to any foreign natural person, legal person or other organization.

For the purpose of the Law, dual-use items refer to items that can both be used for civil affairs and be applied for military affairs or are favorable to boosting military potentials, especially those goods, technologies and services that can be used to design, develop, produce or use weapons of mass destruction.

For the purpose of the Law, military products refer to equipment, special production facilities and other goods, technologies and relevant services.

For the purpose of the Law, nuclear refers to relevant nuclear materials, nuclear equipment, and non-nuclear materials and related technologies and services used for reactors.

Article 3 Export control shall adhere to the view of general state security, maintain international peace, coordinate security and development, and improve export control management and services.

Article 4 The State adopts a uniform export control regime and imposes administration of export control by launching control lists, licensing or otherwise.

Article 5 Departments under the State Council and the Central Military Commission undertaking functions of export control (the "State's administrative authorities of export control") shall be in charge of export control as per duties respectively. Other relevant departments under the State Council and the Central Military Commission shall perform the relevant work as per duties respectively.

The State has established an export control coordination mechanism, and coordinates the major matters of export control. The State's administrative authorities of export control and relevant departments under the State Council shall closely coordinate and strengthen information sharing.

The State's administrative authorities of export control in concert with related departments shall establish an expert consulting mechanism for export control, and provide relevant consulting opinions in respect of export control.

Relevant departments under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall perform the

specific work of export control according to laws and administrative regulations.

Article 6 The State's administrative authorities of export control shall carry out exchanges and cooperation concerning export control with other countries, regions, international organizations and so on, and take part in formulating international standards, pursuant to the international treaties that China has signed or entered into or under the principle of equality and reciprocity.

Article 7 Export business operators may establish and join relevant chambers of commerce, associations or other industry self-discipline organizations in a legal way. Relevant chambers of commerce, associations and other industry self-discipline organizations shall abide by laws and administrative regulations, provide services concerning export control to their members according to their bylaws, and play their role in coordination and self-discipline.

For the purpose of the Law, export business operators refer to citizens, legal persons or other organizations exporting controlled items according to laws and administrative regulations.

Chapter II Control Policies and Lists

Article 8 The State's administrative authorities of export control shall formulate export control policies in concert with relevant departments; significant policies shall be reported to the State Council or to the State Council and the Central Military Commission for approval.

The State's administrative authorities of export control may evaluate export destination countries and regions of the controlled items, determine the risk grade, and take corresponding control measures.

Article 9 The State shall formulate control lists as per export control policies.

The State's administrative authority of export control of dual-use items shall, in concert with relevant departments, formulate and adjust the export control list for dual-use items, and submit the same to the State Council or the State Council and the Central Military Commission for approval before making it public.

The State's administrative authority of export control of military products shall, in concert with relevant departments, formulate and adjust the export control list for military products, and submit the same to the State Council and the Central Military Commission for approval before making it public.

The State's administrative authority of export control of nuclear materials shall, in concert with relevant departments, formulate, adjust and make public the export control list of nuclear materials.

Article 10 As per demands for fulfilling international obligations and maintaining the state security, the State's administrative authorities of export control in concert with relevant departments may, upon approval by the State Council or the State Council and the Central Military Commission, forbid the export of relevant controlled items or the export of relevant controlled items to specific destination countries and regions or the export to specific natural persons, legal persons and other organizations, or temporarily control goods, technologies and services outside of the control lists. The

duration of temporary control shall be no longer than two years.

Article 11 The State's administrative authorities of export control shall issue relevant industry export control guidelines in due time, and guide enterprises to operate normatively.

Chapter III Control Measures

Section 1 General Provisions

Article 12 The State's administrative authorities of export control shall impose administration of export business operators through monopoly, record-filing or otherwise according to laws and administrative regulations.

Article 13 The State implements the licensing system for the export of controlled items under the control lists and items subject to temporary control.

The State's administrative authorities of export control shall comprehensively consider the following factors, examine applications for the export of controlled items by export business operators, and make decisions whether to approve the export:

1. international obligations and commitments to foreign parties;
2. state security;
3. export types;
4. sensitivity of items;
5. export destination countries or regions;
6. end users and ultimate uses;
7. credit records of export business operators; and
8. other factors prescribed in laws and administrative regulations.

Article 14 Export business operators shall establish an internal compliance examination system for export control.

Where the internal compliance examination system of an export business operator operates well, and it does not have any record of material illegality, the State's administrative authorities of export control may take corresponding licensing convenience measures for its export of relevant controlled items. Specific measures shall be formulated by the State's administrative authorities of export control.

Article 15 Where an export business operator knows or should know or is informed by the State's administrative authority of export control that relevant goods, technologies or services outside of export control lists to be exported by it may have any of the following risks, it shall apply for permission to the State's administrative authority of export control concerned as per Article 13 hereof:

1. state security is endangered;
2. is used to design, develop, produce or use any weapon of mass destruction or its delivery vehicle; or
3. is used for nuclear, biological or chemical terrorist purposes.

Article 16 Where an export business operator cannot determine whether any goods, technologies or services to be exported by it are the controlled items specified herein

and therefore consults the State's administrative authority of export control, the said authority shall give a reply in due time.

Article 17 An export business operator shall submit the certification of end users and ultimate uses to the State's administrative authority of export control, which is issued by end users or the government agency of the country or region where the end users are located.

Article 18 The end user of the controlled items shall undertake not to arbitrarily change the ultimate use of the controlled items or transfer them to any third party, without the permission of the State's administrative authority of export control.

Where an export business operator or importer finds that any end user or end use may be changed, it shall immediately inform the State's administrative authority of export control.

Article 19 The State's administrative authorities of export control shall establish a risk management system for end users and ultimate uses, and evaluate certifications of end users and ultimate uses submitted by export business operators.

Article 20 The State's administrative authorities of export control shall establish control lists for importers and end users in any of the following circumstances:

1. breaching of commitments of end users or ultimate uses;
2. probable endangerment of state security; or
3. use of any controlled items for any terrorist purpose.

Where an export business operator trades with any natural person, legal person or any other organization included in a control list, the State's administrative authority of export control may take necessary measures such as forbidding the trade, restricting the trade, ordering the suspension of the export of relevant controlled items or not taking any export licensing facilitation measure.

Article 21 When exporting controlled goods, the consigner of exported goods or customs agent shall present the permit granted or relevant licensing facilitation measure certification issued by the State's administrative authority of export control to the Customs for verification, and go through customs formalities in accordance with the relevant provisions of the State.

Where the consigner of exported goods fails to present the permit or relevant licensing facilitation measure certification issued by the State's administrative authority of export control to the Customs for verification, and the Customs has any evidence indicating that the exported goods may fall into the scope of export control, the Customs shall propose identification to the State's administrative authority of export control or express its doubts to the consigner of exported goods, and deal with the same as per the identification conclusion made by the State's administrative authority of export control or the doubt conclusions thereof. The Customs shall not release the exported goods during the identification or if in doubt.

Section 2 Administration for the Export of Dual-use Items

Article 22 When applying to the State's administrative authority of export control of

dual-use items for the export of dual-use items, an export business operator shall faithfully submit materials stipulated under laws and administrative regulations.

Article 23 For applications to export dual-use items, the State's administrative authorities of export control of dual-use items shall decide whether or not to approve such applications for licensing, after reviewing them separately or in concert with relevant departments according to the law. If they decide to grant the licensing, the permit-issuing authorities shall issue the export permit in a uniform manner.

Article 24 The State's administrative authority of export control of dual-use items shall, within 45 working days as of the date of accepting an application for the export of dual-use items, decide whether or not to approve such application for licensing; if it cannot do so within 45 working days in a special circumstance, it can extend the period by 15 days upon approval by the principal thereof, and inform the applicant of the reason for the extension.

In the case of any application for export licensing that needs to be reported to the State Council or the State Council and the Central Military Commission due to possible significant impacts on the state security, the preceding paragraph shall not apply.

Section 3 Administration for the Export of Military Products

Article 25 The State runs a monopoly system for the export of military products. Operators engaging in the export of military products shall obtain the monopoly qualification for the export of military products and conduct business activities in respect of the export of military products within the permitted business scope. The monopoly qualification for the export of military products shall be granted by the State's administrative authority of export control of military products after review.

Article 26 Operators engaging in the export of military products shall, in accordance with control policies and product attributes, apply to the State's administrative authority of export control of military products to go through the examination and approval formalities for the initiation of export projects of military products, export projects of military products and contracts concerning the export of military products. The initiation of export projects of important military products, export projects of important military products and contracts concerning the export of important military products shall be reviewed by the State's administrative authority of export control of military products in concert with relevant departments and be reported to the State Council and the Central Military Commission for approval.

Article 27 Export business operators of military products shall apply for a permit for the export of military products to the State's administrative authority of export control of military products, prior to the export of military products.

At the time of export of military products, export business operators of military products shall present to the Customs the permit issued by the State's administrative authority of export control of military products, and go through customs declaration formalities as per relevant state provisions.

Article 28 Export business operators of military products shall entrust certain enterprises which are approved to transport exported military products to transport such products and handle the relevant business. Specific measures shall be formulated by the State's authority of export control of military products in concert with relevant departments.

Article 29 Where export business operators of military products or research institutes or manufacturers of military products intend to participate in international exhibitions of military products, they shall go through the examination and approval formalities with the State's administrative authority of export control of military products pursuant to certain procedures.

Chapter IV Supervision and Administration

Article 30 The State's administrative authorities of export control shall supervise and examine situations of compliance with laws and administrative regulations on export control of citizens, legal persons and other organizations engaged in the export of controlled items.

The State's administrative authority of export control may take the following measures for its investigation of any behavior suspected of violation of the Law:

1. enter the business premises of the party under investigation or any other relevant place to carry out the investigation;
2. interview the party under investigation, interested parties and other relevant units or individuals and request them to provide explanations;
3. access and copy relevant vouchers, agreements, accounting books, business correspondence and other documents and materials as well as electronic data proving the real export conditions of the party under investigation, interested parties and other relevant units or individuals;
4. check the means of transport used for the export, stop the loading of suspicious items to be exported, and order the transport back of illegally exported items;
5. seal up and detain relevant items involved in the case; and
6. inquire about the bank accounts of operators.

Adoption of the measures specified in Item 5 or Item 6 of the preceding paragraph shall be approved in writing by the principal of the State's administrative authority of export control.

Article 31 Where the State's administrative authority of export control separately or in concert with relevant departments conducts supervision and administration according to the law, relevant citizens, legal persons and other organizations shall coordinate the same, and shall not reject or impede such supervision and administration.

Departments of public security, the state security, transportation, financial supervision and administration, market supervision and administration, postal administration and so on under the State Council, local people's governments and relevant departments thereof shall assist in such supervision and administration within the scope of their respective duties.

Relevant state organs and functionaries working therein shall be obligated to maintain the confidentiality of any state secret, commercial secret and personal privacy that comes to be known during investigations.

Article 32 Where the State's administrative authority of export control learns about or finds during its supervision and administration that any activity or act is likely to result in a risk of breaking the law concerning export control, it may issue a warning to the relevant citizens, legal persons and other organizations, conduct interviews with them for regulation purposes, or take other measures.

Article 33 In terms of any act suspected of violating the Law, any citizen, legal person or other organization shall have the right to report the same to the State's administrative authority of export control, and the authority shall promptly deal with the same, and keep information about the reporter secret. Where a reporter makes a report in their real name and provides relevant facts and evidence, the State's authority of export control shall inform the reporter of the treatment results.

Chapter V Legal Liability

Article 34 Where an export business operator exports controlled items in violation of any requirement of monopoly qualification for the export, the State's authority of export control shall give it a warning, order it to stop its illegal behavior, and confiscate its illegal gains. If its illegal business amount exceeds CNY500,000, the authority shall also impose a fine of not less than five times and not more than ten times the illegal business amount; if it does not have any illegal business amount or the illegal business amount is less than CNY500,000, the authority shall also impose a fine of not less than CNY500,000 and not more than CNY5 million.

Article 35 Where an export business operator commits any of the following acts, the State's authority of export control or the Customs shall order it to stop its illegal behavior, and confiscate its illegal gains; if its illegal business amount exceeds CNY500,000, the authority or the Customs shall also impose a fine of not less than five times and not more than ten times the illegal business amount; if it does not have any illegal business amount or the illegal business amount is less than CNY500,000, the authority or the Customs shall also impose a fine of not less than CNY500,000 and not more than CNY5 million; if the circumstances are serious, the authority or the Customs shall order it to shut down for rectification, or revoke its monopoly qualification for export to the largest extent:

1. export of controlled items without the relevant permit;
2. export of controlled items beyond the permitted business scope; or
3. export of controlled items where the export is forbidden.

Article 36 Where any export business operator obtains an export permit for controlled items by improper means such as fraud and bribery, or alters, resells, rents, lends or illegally transfers in any other form its export permit for controlled items, the State's authority of export control shall revoke the licensing, take back the export permit, and confiscate its illegal gains. If its illegal business amount exceeds CNY200,000, the authority shall also impose a fine of not less than five times and not more than ten times the illegal business amount; if it does not have any illegal business amount or the illegal business amount is less than CNY200,000, the authority shall also impose a fine of not less than CNY200,000 and not more than CNY2 million.

Where an export business operator fabricates, alters or trades its export permit for controlled items, the State's authority of export control shall confiscate its illegal gains. If its illegal business amount exceeds CNY50,000, the authority shall also impose a fine of not less than five times and not more than ten times the illegal business amount; if it does not have any illegal business amount or the illegal business amount is less than CNY50,000, the authority shall also impose a fine of not less than CNY50,000 and not more than CNY500,000.

Article 37 Where a party clearly knows that any other party has committed any illegal act of export control but still provides it with services such as agency, freight, consignment, third-party e-commerce transaction platform and financial services, the State's authority of export control or the Customs shall give it a warning, order it to stop its illegal behavior, and confiscate its illegal gains. If its illegal business amount exceeds CNY100,000, the authority or the Customs shall also impose a fine of not less than three times and not more than five times the illegal business amount; if it does not have any illegal business amount or the illegal business amount is less than CNY100,000, the authority or the Customs shall also impose a fine of not less than CNY100,000 and not more than CNY500,000.

Article 38 Where an export business operator violates the measure requirement set out in Paragraph 2 of Article 20 hereof, the State's authority of export control shall give it a warning, order it to stop its illegal behavior, and confiscate its illegal gains. If its illegal business amount exceeds CNY500,000, the authority shall also impose a fine of not less than ten times and not more than 20 times the illegal business amount; if it does not have any illegal business amount or the illegal business amount is less than CNY500,000, the authority shall also impose a fine of not less than CNY500,000 and not more than CNY5 million; if the circumstances are serious, the authority shall order it to shut down for rectification, or revoke its monopoly qualification for export to the largest extent.

Article 39 Where an export business operator rejects or impedes supervision and examination, the State's administrative authority of export control or the Customs shall give it a warning, and also impose a fine of not less than CNY100,000 and not more than CNY300,000; if the circumstances are serious, the authority shall order it to shut down for rectification, or revoke its monopoly qualification for export to the largest extent.

Article 40 Credit information such as administrative sanctions of an export business operator receiving punishments due to its violation of the Law shall be recorded on the national credit information sharing platform. As of the date of effectiveness of the decision on punishment, the State's authority of export control may not accept its application for export licensing for five years; and, may forbid its persons directly in charge and other persons directly liable to conduct relevant export business activities for five years, and forbid persons receiving criminal punishments due to the illegal behavior of export control to conduct relevant export business activities for their lifetime.

Article 41 Where the Customs finds any behavior in violation of the Law, which falls

into its scope of duties, the Customs shall launch investigations and impose penalties in accordance with the Law; where no provisions are stipulated herein, investigations and penalties shall be carried out and imposed pursuant to customs laws and regulations.

Article 42 Where any citizen, legal person or any other organization does not obey the decision of no licensing made by the State's administrative authority of export control, it/he may apply for administrative review according to the law. The decision of the administrative review shall be final.

Article 43 Where any functionary involved in export control neglects his or her duties, plays favoritism and commits irregularities, or abuses his or her powers, a sanction shall be imposed according to the law.

Article 44 In the case of any violation of the Law, thereby constituting a crime, criminal liability shall be investigated according to the law.

Chapter VI Supplementary Provisions

Article 45 The relevant provisions herein shall apply to the transit, trans-shipment, thorough transportation and re-export of controlled items, or the export of such controlled items from customs special supervision areas (such as bonded areas and export processing zones) and bonded supervision places (such as warehouses under supervision and bonded logistics centers) to overseas.

Article 46 In the case of no provisions on the export of nuclear and other controlled items herein, the relevant laws and administrative regulations shall apply.

Article 47 The export of military products used for overseas military actions, external military exchanges, military assistance, etc. shall be subject to the relevant laws and regulations.

Article 48 The Law shall come into force as of [MM][DD][YYYY].