

Translation



The following document is the current (as of July 29, 2020) draft of an export control bill currently being considered by China's parliament, the National People's Congress. The bill limits exports of dual-use items, military equipment, nuclear materials, and other goods of counterproliferation concern, and sets penalties for Chinese exporters who violate the provisions of the bill.

Title

Export Control Law of the People's Republic of China (Draft) (Second Version)
中华人民共和国出口管制法（草案）（二次审议稿）

Author

PRC National People's Congress (NPC; 全国人民代表大会; 全国人大)

Source

NPC website, June 28, 2020. The NPC is China's parliament; it generally rubber-stamps legislation drafted by or sponsored by the Communist Party of China (CPC). The NPC announced on its website that it is soliciting public feedback on this bill through August 16, 2020.

The Chinese source text is available online at:

<http://www.npc.gov.cn/flcaw/flca/ff80808172b5f24f017313a7ed142bf4/attachment.pdf>

US \$1 ≈ 7 Chinese Yuan Renminbi (RMB), as of July 29, 2020.

Translation Date

July 29, 2020

Translator

Etcetera Language Group, Inc.

Editor

Ben Murphy, CSET Translation
Lead

Contents

Chapter I General Provisions

Chapter II Control Policies, Lists, and Measures

Section 1 General Regulations

Section 2 Dual-Use Item Export Management

Section 3 Military Item Export Management

Chapter III Supervision and Administration

Chapter IV Legal Liability

Chapter V Supplementary Provisions

Chapter I General Provisions

Article 1 This law is formulated to protect national security, safeguard national interests, fulfill international obligations, such as those related to counterproliferation, and strengthen and standardize export controls.

Article 2 This law shall apply to dual-use items, military items, nuclear items, and other items such as goods, technology, or services related to the fulfillment of international obligations related to counterproliferation and the protection of national security (hereinafter referred to collectively as “controlled items”).

As defined under this law, “export control” shall mean the banning or restricting by the State of transfers of controlled items from within the People’s Republic of China to overseas, as well as the provision of controlled items by citizens, legal persons, or unincorporated organizations of the People’s Republic of China to foreign organizations and individuals.

As defined under this law, “dual-use items” shall mean items with both a civil application and a military application or the potential to help improve military capacity, especially goods, technology, or services that may be used to design, develop, produce, or utilize weapons of mass destruction.

As defined under this law, “military items” shall mean equipment, specialized manufacturing equipment, and other related goods, technologies, or services used for military purposes.

As defined under this law, “nuclear” shall refer to nuclear materials, nuclear equipment, non-nuclear material used in reactors, and other related technologies and services.

Article 3 Export control work shall be in line with the overall approach to national security, protect international peace, promote safety and development, and improve the administration and services of export control.

Article 4 The State shall implement a unified export control system that shall be managed through such methods as the drafting of export control lists and implementation of export licenses.

Article 5 The State Council and the Central Military Commission shall oversee the departments in charge of export control (hereinafter collectively referred to as the national export control administrative departments), which shall be responsible for export control work according to their respective responsibilities. Other relevant departments of the State Council and Central Military Commission shall be responsible for export control work according to their respective responsibilities.

The State shall establish a coordinated mechanism for export controls to coordinate important matters related to export control. The national export control administrative departments shall work in close coordination and improve information sharing with the relevant State Council departments.

The national export control administrative departments shall, in conjunction with the relevant departments, establish a dedicated export control advisory mechanism to provide

advice and opinions on export control.

The national export control administrative departments shall publish export control guidelines for relevant industries in due course to provide guidance to businesses on standardizing their operations.

The relevant departments of the People's Governments of provinces, autonomous regions, and municipalities directly under the Central Government shall be responsible for all export control-related work as provided by law and administrative regulation.

Article 6 The State shall increase international cooperation related to export controls and participate in the drafting of international export control regulations.

Article 7 Exporters may establish and participate in relevant self-regulatory organizations, such as chambers of commerce or associations, as provided by law.

Relevant self-regulatory organizations, such as chambers of commerce or associations, shall follow all laws and administrative regulations, provide services related to export controls to their members in accordance with their bylaws, and fulfill their roles of coordination and self-regulation.

Chapter II Control Policies, Lists, and Measures

Section 1 General Regulations

Article 8 The national export control administrative departments shall, in conjunction with the relevant departments, draft export control policies, the most significant of which shall be reported to the State Council or to both the State Council and the Central Military Commission for approval.

The national export control administrative departments may evaluate the destination countries or regions of controlled items, determine the level of risk, and implement appropriate control measures.

Article 9 The national export control administrative departments shall, in conjunction with the relevant departments, draft and revise controlled item export control lists and release them in a timely manner in accordance with the provisions of this law and other relevant laws and administrative regulations and according to export control policy and established procedure.

As required to fulfill international obligations, such as those relating to counterproliferation, and to safeguard national security, upon approval by the State Council or by both the State Council and the Central Military Commission, the national export control administrative departments may institute temporary controls on items, technologies, and services that are not included on export control lists. They shall announce such decisions publicly. These temporary control implementation periods shall not exceed two years. Prior to the expiration of a temporary control implementation period, a timely assessment shall be conducted, and, according to the results of the assessment, a decision shall be made whether

to eliminate the temporary control, extend the temporary control, or add the temporarily controlled item to the export control list.

Article 10 As required to fulfill international obligations, such as those relating to counterproliferation, and to safeguard national security, upon approval by the State Council or by both the State Council and the Central Military Commission, the national export control administrative departments, in conjunction with the relevant departments, may prohibit the export of related controlled items, or prohibit the export of related controlled items to certain destination countries or regions or to certain organizations or individuals.

Article 11 Exporters engaging in the export of controlled items shall comply with the provisions of this law and relevant laws and administrative regulations. This law requires that exporters obtain a relevant controlled item export license, and exporters shall obtain applicable licenses.

Article 12 The State shall implement a licensing system for the export of controlled items.

Exporters shall apply for a license to export the controlled items or temporarily controlled items listed on the export control list from the national export control administrative departments.

Exporters shall apply for a license from the national export control administrative departments to export goods, technologies, or services that are not listed among the controlled items or temporarily controlled items on the export control list when the exporters know or should know that the relevant goods, technologies, or services have the following risks, or have been notified of such risks by the national export control administrative departments:

1. May endanger national security
2. May be used to design, develop, produce, or utilize weapons of mass destruction or to serve as the means of delivery for such weapons
3. May be used for the purposes of terrorism

If exporters are unable to determine whether the exported goods, technologies, or services are a controlled item under this law, they shall submit a query to the national export control administrative departments, which shall reply in a timely manner.

Article 13 The national export control administrative departments shall take the following factors into account to determine whether or not to approve an exporter's application to export controlled items and grant a license:

1. International obligations and pledges to foreign countries
2. National security
3. Type of export
4. Sensitivity of the controlled item
5. Destination country or region for the export
6. End user and end use

7. Relevant credit history of the exporter
8. Other factors as required by law or administrative regulation

Article 14 Exporters shall establish an internal export control compliance review system that shall work effectively. The national export control administrative departments may provide license facilitation measures, such as general-use licenses, for the export of relevant controlled items. Specific measures shall be provided by the national export control administrative departments.

Article 15 Exporters shall submit documentary evidence as to the end user and end use to the national export control administrative departments. Relevant documentary evidence shall be issued by the end user or a governmental body in the country and region where the end user is located.

Article 16 The controlled item end user must pledge not to make unauthorized changes to the end use of the controlled item or transfer the controlled item to a third party without permission from the national export control administrative departments.

If an exporter or importer discovers that the end user or the end use has potentially changed, it shall immediately notify the national export control administrative departments in accordance with the relevant provisions.

Article 17 The national export control administrative departments shall establish a controlled item end user and end use risk management system to evaluate and approve controlled item end users and end uses and strengthen the management of end users and end uses.

Article 18 The national export control administrative departments shall establish a control list of importers and end users that belong in any one of the following categories:

1. Have violated end user or end use management requirements
2. Have the potential to endanger national security
3. Intend to use the controlled items for terrorist purposes

The national export control administrative departments may prohibit or limit any transactions involving controlled items by importers and end users that have been added to the control list and order them to suspend all necessary measures related to the export of controlled items.

Importers may not do business with importers or end users who have violated the rules and been added to the control list.

Article 19 When consignors of export goods or customs brokers are exporting controlled goods, they shall provide customs with the license or licenses issued by the national export control administrative departments for inspection and complete all customs formalities in accordance with relevant State regulations.

If a consignor of export goods does not provide customs with the license or licenses issued by the national export control administrative departments for inspection, and if customs has evidence that shows the export goods may fall within the scope of export controls, customs

shall question the consignor of the export goods. Customs may ask that the national export control administrative departments identify the organization and proceed according to the results of the identification by the national export control administrative departments. Customs shall not permit the release of export goods during the identification or questioning period.

Article 20 No organization or individual shall provide services to exporters engaging in practices that violate export controls, including agency services, freight services, postal services, customs declaration services, third-party e-commerce transaction platform services, or banking services.

Section 2 Dual-Use Item Export Management

Article 21 When an exporter applies to the national dual-use item export control administrative department to export dual-use items, it shall truthfully submit relevant materials as provided by law and administrative regulation.

Article 22 The national dual-use item export control administrative department shall process dual-use item export applications and examine such dual-use item export applications, either on its own or in conjunction with the relevant departments and in accordance with this law and relevant laws and administrative regulations, and issue a decision within the legally stipulated period as to whether or not to grant a license. The license-issuing organization shall uniformly issue export licenses if a decision is made to grant a license.

Section 3 Military Item Export Management

Article 23 The State shall implement a special system for the export of military items. Exporters engaged in the export of military items shall obtain special status for exporting military items and engage in military export activities as permitted within the authorized scope of business.

Special status for exporting military items shall be evaluated and granted by the national military item export control administrative department.

Article 24 Military item exporters shall apply to the national military item export control administrative department to carry out the formalities related to military item export project planning, military item export projects, and contract examination and approval for military item export agreements in accordance with control policies and according to the characteristics of the products.

Major military item export project planning, projects, and contracts shall be examined by the national military item export control administrative department in conjunction with relevant departments and shall be reported to the State Council and the Central Military Commission for approval.

Article 25 Prior to exporting military items, military item exporters shall apply for and obtain a military item export license from the national military item export control administrative department.

When exporting military items, military item exporters shall provide customs with the license or licenses issued by the national military item export control administrative

department for inspection and complete all customs formalities in accordance with relevant State regulations.

Article 26 Military item exporters shall authorize approved military product export and transport companies to conduct business related to the export and transport of military items. Specific measures shall be determined by the national military item export control administrative department in conjunction with the relevant departments.

Article 27 If military item exporters or scientific research and production companies attend international military product expos, they shall complete approval formalities with the national military item export control administrative department according to established procedure.

Chapter III Supervision and Administration

Article 28 The national export control administrative department shall conduct a supervisory inspection of the export of controlled items as provided by law.

The national export control administrative departments shall investigate all conduct that is suspected of being in violation of the provisions of this law and may institute the following measures:

1. Enter the workplace of the entity under investigation or other related places to carry out inspections
2. Question the entity under investigation, interested parties, and other related organizations or individuals and require that they provide clarification related to the incident under investigation
3. Consult and duplicate relevant files and materials, including documents, agreements, accounting ledgers, business correspondence, etc. of the entity under investigation, interested parties, and other related organizations or individuals
4. Inspect the means of transport used for export, stop the loading of suspicious export goods, and order that goods exported illegally be returned
5. Seize or and hold goods that are suspected of being related to the matter
6. Consult the bank accounts of the entity under investigation

Written approval shall be obtained from the head of the national export control administrative departments in order to carry out items 5 or 6 above.

Article 29 The national export control administrative departments shall perform their duties as provided by law. The relevant departments of the State Council and local People's Governments and their relevant departments shall provide assistance.

The national export control administrative departments, either on their own or in conjunction with the relevant departments, shall open supervisory inspections and investigation as provided by law. The relevant organizations and individuals shall provide

assistance and may not refuse or obstruct such work.

The relevant national bodies and their employees are required as provided by law to keep all state secrets, trade secrets, and personally identifiable private information about which they became aware during the investigation confidential.

Article 30 In order to strengthen the export management of controlled items and prevent the risk of the illegal export of controlled items, the national export control administrative departments can implement measures, including regulatory conversations or the issuing of warning letters, etc.

Article 31 Any organization or individual has the right to report any conduct that is suspected of violating this law. The national export control administrative departments shall process all reports immediately after receiving them as provided by law and shall keep the identity of the informant confidential.

Article 32 The national export control administrative departments shall initiate cooperation and exchange related to export controls with other countries or regions, international organizations, etc., in accordance with international treaties that they have entered into or to which they are a party, or in accordance with the principle of equality and mutual benefit.

If organizations and individuals located within the People's Republic of China are providing information related to export control to those abroad, they shall do so as provided by law. Providing any information that could jeopardize national security is prohibited.

Chapter IV Legal Liability

Article 33 Exporters that have not obtained the relevant controlled item export license(s) and that engage in the export of relevant controlled items shall be given a warning, ordered to stop all illegal activities, and have all illegal business revenue seized. If illegal business revenue is in excess of 500,000 yuan Renminbi (RMB), a penalty of not less than five times but not more than ten times the illegal business revenue shall be imposed. Where no business revenue has been made illegally or if illegal business revenue is less than RMB 500,000, a penalty of not less than RMB 500,000 but not more than RMB 5 million shall be imposed.

Article 34 If an exporter engages in any of the following activities, it shall be ordered to stop the illegal activity and have all illegal business revenue seized. If illegal business revenue is in excess of RMB 500,000, a penalty of not less than five times but not more than ten times the illegal business revenue shall be imposed. Where no business revenue has been made illegally or if illegal business revenue is less than RMB 500,000, a penalty of not less than RMB 500,000 but not more than RMB 5 million shall be imposed. In cases of severe violations, the exporter shall be ordered to cease business operations until such operations can be rectified, and its export license may be revoked:

1. Exporting controlled items without permission or authorization

2. Exporting controlled items that fall outside the scope provided by the export license
3. Exporting controlled items that are prohibited for export

Article 35 Those who obtain controlled item export licenses through improper means, such as fraud or bribery, or who illegally transfer a controlled item export license to another party, shall have their license revoked and confiscated, and all illegal business revenue shall be seized. If illegal business revenue is in excess of RMB 200,000, a penalty of not less than five times but not more than ten times the illegal business revenue shall be imposed. Where no business revenue has been made illegally or if illegal business revenue is less than RMB 200,000, a penalty of not less than RMB 200,000 but not more than RMB 2 million shall be imposed.

Those who forge, falsify, or sell their controlled item export licenses shall have their illegal business revenue seized, and if their illegal business revenue is in excess of RMB 50,000, a penalty of not less than five times but not more than ten times the illegal business revenue shall be imposed. Where no business revenue has been made illegally or if illegal business revenue is less than RMB 50,000, a penalty of not less than RMB 50,000 but not more than RMB 500,000 shall be imposed.

Article 36 Providers who are aware that an exporter is engaging in illegal activities related to these export controls but who still provide services including agency services, freight services, postal services, customs declaration services, third-party e-commerce transaction platform services, or banking services shall be given a warning, ordered to stop all illegal activities, and have all illegal business revenue seized. If illegal business revenue is in excess of RMB 100,000, a penalty of not less than three times but not more than five times the illegal business revenue shall be imposed. Where no business revenue has been made illegally or if illegal business revenue is less than RMB 100,000, a penalty of not less than RMB 100,000 but not more than RMB 500,000 shall be imposed.

Article 37 Exporters who violate item 3 of Article 18 of this law shall be given a warning, ordered to stop all illegal activities, and have all illegal business revenue seized. If illegal business revenue is in excess of RMB 500,000, a penalty of not less than ten times but not more than twenty times the illegal business revenue shall be imposed. Where no business revenue has been made illegally or if illegal business revenue is less than RMB 500,000, a penalty of not less than RMB 500,000 but not more than RMB 5 million shall be imposed. In cases of severe violations, the exporter shall be ordered to cease business operations until such operations can be rectified, and its export license may be revoked.

Article 38 If an exporter refuses or obstructs a supervisory inspection, it shall be given a warning and a penalty of not less than RMB 100,000 but not more than RMB 300,000 shall be imposed. In cases of severe violations, the exporter shall be ordered to cease business operations until such operations can be rectified, and its export license may be revoked.

Article 39 The national export control administrative departments may refuse to process the export license applications of exporters that are fined for violating this law for five years from the effective date a fine is imposed. They may prohibit the management and other staff that are directly responsible for the exporter from engaging in export-related activities for a period of five years. Those who are fined for illegal export-controlled activities may be

prohibited from engaging in export-related activities for life.

The national export control administrative departments shall input exporter violations of this law into the credit reporting system as provided by law.

Article 40 The national export control administrative departments shall investigate and impose penalties for export control violations as provided under this law. In cases where the law or administrative regulations provide that customs shall investigate and impose penalties for such violations, it shall do so in accordance with this law.

Article 41 If a relevant organization or individual opposes the national export control administrative department's decision not to grant a license, it may apply for administrative review as provided by law. The outcome of the administrative review shall be final.

Article 42 State employees engaged in export control who neglect their duties, provide undue advantages to certain entities, commit irregularities, or misuse their authority shall be disciplined as provided by law.

Article 43 If a violation of this law constitutes a crime, criminal liability shall be pursued as provided by law.

Article 44 Overseas organizations or individuals of the People's Republic of China that violate the provisions of this law related to export control, hinder the fulfillment of international obligations related to counterproliferation, or jeopardize the national security and interests of the People's Republic of China shall be dealt with as provided by law and shall be held legally liable.

Chapter V Supplementary Provisions

Article 45 The transit, transshipment, through transportation, or re-export of controlled items, or overseas export from a special customs supervision zone such as a bonded zone, export processing zone, etc. or a bonded supervision area such as an export supervised warehouse or bonded logistics center shall be carried out as provided by the relevant provisions of this law.

Article 46 Matters related to the export of nuclear and other controlled items not provided for under this law shall be handled in accordance with relevant laws and administrative regulations.

Article 47 Military items used for overseas military operations, overseas military communications, and military assistance shall be exported in accordance with relevant legal provisions.

Article 48 This law shall take effect on MM/DD/YYYY.