

China Tax Alert

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China plans to revise the List of Technologies Prohibited and Restricted from Export of PRC

Summary:

- On December 30th 2022, the Ministry of Commerce, together with the Ministry of Science and Technology and other authorities issued the Notice on Soliciting Public Comments on the Revision of “the List of Technologies Prohibited and Restricted from Export of PRC”, with a view to revising the List. In this revision, 32 technology items are to be deleted, 36 are to be modified, and 7 are to be added. After the revision, there will be a total of 139 items in the List, including 24 technology items prohibited and 115 technology items restricted from export.

Background

According to the provisions of the Foreign Trade Law of PRC and the Administrative Regulations of PRC on Import and Export of Technologies, the Ministry of Commerce (MOFCOM), together with the Ministry of Science and Technology and other relevant authorities of China, shall conduct classified administration on the import and export of technologies. According to the management mode of the import and export of different categories of technologies, the import and export of technologies are classified into three categories, namely, the technologies free to import and export, the technologies restricted from import and export and the technologies prohibited from import and export.

The List of Technologies Prohibited and Restricted from Export of PRC (Draft for Comments) (or List (Draft for Comments)) stipulates the scope of administration of technologies prohibited and restricted from export. The List was initially published in 2001 with subsequent revisions made in 2008 and 2020.

Due to its special nature, technology import and export will not only impact related commercial fields, but also involve national security and other public issues. The revision of the List (Draft for Comments) by Chinese authority not only reflects China's strengthening of technology trade cooperation with other countries and continuous optimization of the business environment for technology trade, but also reflects China's national security concerns in the export control of emerging technologies and other aspects under the guidance of the overall national security concept.

Key revisions to the List (Draft for Comment)

According to the information released by the MOFCOM, this revision intends to delete 32 items, modify 36 items and add 7 items. The revised List has a total of 139 items, including 24 technologies prohibited from export and 115 technologies restricted from export.¹ In this revision, the List has been significantly reduced and some control points of technology items have been furnished with more details, creating favourable environment for strengthening international technical cooperation.

Generally, the deleted items in this revision are mostly concentrated in traditional industries, such as agriculture, food industry, textile industry, chemical industry, machinery and equipment manufacturing industry, and do not involve cutting-edge emerging technologies. Most of the added items involve key or emerging technology industries such as biotechnology, rare earth resources, photovoltaic and intelligent vehicles, which echoes the concerns of Chinese authority in protecting national security and public interests.

¹ For details, please refer to the Appendix.

The last time the Chinese government revised the List of Technologies Prohibited from Export and Restricted from Export was in August 2020, and at that time the MOFCOM said it would continue to revise the list in due course. The revisions in the List (Draft for Comment) issued on December 30th 2022 can be seen as a continuation of the previous revision, strengthening technology export control for key emerging technologies of strategic significance. Against the global backdrop of strategic competition between China and the United States, and against the backdrop of China's growing high-tech industry, It has strengthened the protection of China's own national security and development interests. In parallel, the Chinese government has also moderately adjusted the export control of relevant technologies in traditional industries, in order to promote transnational technology trade and cooperation.

1) The Strengthen Technology Export Control of China

As noted above, this is the third revision made to the List. It can be seen that the Chinese government increases the frequency of revision to adapt to internal and external environmental changes. On the purpose of China's technology export control, in the context of the big picture of international trade and the continuous improvement of China's independent scientific and technological innovation capability, as well as the rapid development of high-end technology industry, the Chinese authority will see national security concerns much more vital in technology export and international technology cooperation, and the technology export control will respectively be constantly strengthened and improved. The revision of the List will remain frequent in the near future, and will focus on items involving emerging key technologies.

In this regard, we suggest that enterprises in the emerging technology industry keep close eyes on the dynamics of government regulation, strengthen the construction of internal compliance and risk control system, timely review the technical items of the technical assets owned by enterprises, and make preparations for future regulatory changes.

2) "Restricted from Export" Technology and "Dual-Use" Technology

In China, the export control of technology includes the control of "prohibited and restricted from export" technologies in the Foreign Trade Law of the PRC and the control of dual-use items and technologies in the Export Control Law of the PRC. For enterprises involved in technology export, both controls should be paid attention to.

First of all, although the above two controls have different focuses, one single technology item can still be constrained by the above two controls at the same time. Therefore, enterprises need to assess whether the technology involved is restricted by the above two controls before conducting technology export.

Secondly, the above two controls are parts of China's existing export control regimes, but there are slight differences in implementation. Enterprises should pay attention to the impact of timing requirements of licensing on the transaction, so as to avoid any unauthorized export.

	Technology Restricted from Export	Dual-Use Technology
Competent Authority	Trade in Services and Commercial Services Division, MOFCOM	Industrial Security and Import and Export Control Bureau, MOFCOM
Licensing Process	For technologies restricted from export, the exporter shall apply for a Letter of Intent for Technology Export License before signing the technology export contract and apply for and obtain a Technology Export License before the actual export.	The exporter shall prepare relevant application materials and submit the application to the local competent commercial authorities before the actual export. Only after obtaining a license for dual-use items and technologies can they be exported.

If you have any questions about the above, please feel free to contact the relevant tax experts at KPMG for further discussion.

Appendix

A. Technology Items Deleted	
1. Prohibited from Export	<ul style="list-style-type: none"> a. Agriculture, forestry, animal husbandry, fishing services: <ul style="list-style-type: none"> i. The manufacturing technology of green plant growth regulator b. Mining and processing of non-ferrous metals: <ul style="list-style-type: none"> i. Mining engineering technology c. Agricultural and sideline food processing: <ul style="list-style-type: none"> i. Meat processing technology d. Beverage manufacturing: <ul style="list-style-type: none"> i. Beverage production technology e. Nonferrous metal smelting and rolling: <ul style="list-style-type: none"> i. Nonferrous metal metallurgy technology f. Special equipment manufacturing: <ul style="list-style-type: none"> i. Agricultural machinery manufacturing technology
2. Category Restricted from Export	<ul style="list-style-type: none"> a. Agriculture, forestry, animal husbandry, fishing services: <ul style="list-style-type: none"> i. Production technology of livestock and poultry feeds and growth regulators for animals ii. Livestock product processing technology iii. Bee breeding and bee product collection, processing and utilization technology iv. Forest pest control technology b. Processing of agricultural and sideline products: <ul style="list-style-type: none"> i. Grain processing technology ii. Egg processing technology c. Food manufacturing: <ul style="list-style-type: none"> i. Production technology of food d. Beverage manufacturing: <ul style="list-style-type: none"> i. Beverage production technology e. Textile industry: <ul style="list-style-type: none"> i. Textile natural fibre products and processing technology ii. Soybean protein fibre manufacturing technology f. Paper and paper products: <ul style="list-style-type: none"> i. Paper technology g. Manufacturing of chemical raw materials and chemical products: <ul style="list-style-type: none"> i. Production technology of chemical raw materials ii. Production technology of chemical pesticides iii. Dye production technology iv. Catalyst production technology v. Technology of photosensitive material production vi. Technology for the production of synthetic resins and their products vii. Industrial explosives and the production technology viii. Production Technology of Industrial detonators

<p>2. Category Restricted from Export</p>	<ul style="list-style-type: none"> h. Non-metallic mineral products industry: <ul style="list-style-type: none"> i. Production technology of ceramics and their products for daily use ii. Refractories production technology i. General equipment manufacturing: <ul style="list-style-type: none"> i. Combustion technology of boiler manufacture ii. Application technology of construction machinery j. Special equipment manufacturing: <ul style="list-style-type: none"> i. Fire protection technology ii. Criminal related technology k. Electrical machinery and equipment manufacturing: <ul style="list-style-type: none"> i. Production technology of electrical materials l. Water transport industry: <ul style="list-style-type: none"> i. Liquid cargo transportation technology
B. Technology Items Added	
<p>1. Category Prohibited from Export</p>	<ul style="list-style-type: none"> a. Research and experimental development: <ul style="list-style-type: none"> i. Cell cloning and gene editing techniques for human use
<p>2. Category Restricted from Export</p>	<ul style="list-style-type: none"> a. Agricultural: <ul style="list-style-type: none"> i. Crop hybrid dominance utilization technology b. Mining and processing of non-ferrous metals: <ul style="list-style-type: none"> i. Mining engineering technology c. Non-metallic mineral products industry: <ul style="list-style-type: none"> i. Photovoltaic silicon wafer preparation technology d. General equipment manufacturing: <ul style="list-style-type: none"> i. Bulk material handling and conveying technology e. Manufacturing of communication equipment, computers and other electronic equipment: <ul style="list-style-type: none"> i. Lidar system f. Research and experimental development: <ul style="list-style-type: none"> i. CRISPR gene editing technology ii. Synthetic biology technology
C. Technology Items Revised	
<p>1. Category Prohibited from Export</p>	<ul style="list-style-type: none"> a. Pharmaceutical manufacturing: <ul style="list-style-type: none"> i. Extraction and processing technology of medicinal components of rare and endangered plants in China ii. Resources and production technology of Chinese medicinal materials b. Nonferrous metal smelting and rolling: <ul style="list-style-type: none"> i. Extraction, processing and utilization technology of rare earth c. Transportation equipment manufacturing: <ul style="list-style-type: none"> i. Spacecraft measurement and control technology

<p>1. Category Prohibited from Export</p>	<p>d. Telecommunications and other information transmission services:</p> <ul style="list-style-type: none"> i. Computer network technology ii. Satellite application technology
<p>2. Category Restricted from Export</p>	<ul style="list-style-type: none"> a. Agriculture: <ul style="list-style-type: none"> i. Cultivation and breeding techniques of cash crops b. Forestry: <ul style="list-style-type: none"> i. Germplasm resources and breeding techniques of forest trees ii. Breeding technology of garden plants and ornamental plants iii. Wild animal artificial breeding and protection technology c. Agriculture, forestry, animal husbandry, fishing professional and auxiliary activities: <ul style="list-style-type: none"> i. Veterinary medicine production technology ii. Veterinary health quarantine technology iii. Traditional handmade paper production technology d. Manufacturing of chemical raw materials and chemical products: <ul style="list-style-type: none"> i. Biological pesticide production technology ii. Synthetic fibre production technology e. Pharmaceutical manufacturing: <ul style="list-style-type: none"> i. Resources and production technology of Chinese medicinal materials ii. Biotechnology drug production technology f. Rubber and plastic products: <ul style="list-style-type: none"> i. Production technology of rubber products g. Non-metallic mineral products: <ul style="list-style-type: none"> i. Artificial crystal growth and processing technology h. Nonferrous metal smelting and rolling: <ul style="list-style-type: none"> i. Nonferrous metal metallurgy technology i. General equipment manufacturing: <ul style="list-style-type: none"> i. 3D print technology ii. fundamental general technology of machine tool industry j. Special equipment manufacturing: <ul style="list-style-type: none"> i. Design and construction technology of large high-speed wind tunnel k. Transportation equipment manufacturing: <ul style="list-style-type: none"> i. Design and test technology of vessel l. Manufacturing of communication equipment, computers and other electronic equipment: <ul style="list-style-type: none"> i. Computer core hardware manufacturing technology ii. UAV technology m. Instrument and meter manufacturing: <ul style="list-style-type: none"> i. Mechanical measuring instruments ii. Meter manufacturing technology n. Electricity and heat production and supply industry: <ul style="list-style-type: none"> i. Design technology of large electrical equipment

<p>2. Category Restricted from Export</p>	<ul style="list-style-type: none"> o. Water transportation industry: <ul style="list-style-type: none"> i. Port equipment manufacturing technology p. Telecommunications, radio, television and satellite transmission services: <ul style="list-style-type: none"> i. Computer network technology ii. Communication transmission technology q. Computer services: <ul style="list-style-type: none"> i. Information processing technology ii. Password security technology iii. High-performance detection technology r. Software industry: <ul style="list-style-type: none"> i. General computer software programming technology s. Professional technology services: <ul style="list-style-type: none"> i. Acoustic engineering technology
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