

# China Tax Alert

Issue 2, January 2024



## China's tighter grip on technology export restrictions and licensing procedures

### Summary :

- In December 2023, the Chinese Ministry of Commerce (MOFCOM) released a notice to amend the Catalogue of Technologies Prohibited and Restricted from Export of China. The revision was initiated under the Foreign Trade Law of the People's Republic of China and the Regulations on the Administration of Technology Import and Export of the People's Republic of China. The revision involved the removal of 34 technologies, the modification of 37, and the addition of four new technologies. The revised Catalogue now comprises 134 items, 24 of which are strictly prohibited from being exported, while the export of 110 technologies is restricted. For detailed information on the revised content, please refer to the Appendix.
- China restricts the export of certain technologies listed in the Catalogue of Technologies Prohibited or Restricted from Export as per the Administrative Regulations of the People's Republic of China on Import and Export of Technologies. This practice is an essential component of China's export control policy. The Catalogue has been revised, and the key changes include:
  1. Delete six prohibited export technology items, such as green plant production, manufacturing technology, etc. Delete 28 technology items restricting exports, such as medical diagnostic devices and equipment manufacturing technology, target feature extraction and recognition technology, etc.
  2. Add one new prohibited export technology entry: cell cloning and gene editing technology for human use. Add three new technology items that restrict exports: crop hybrid advantage utilization technology, bulk material loading and unloading transportation technology, LiDAR system, etc.
  3. Adjust the control points and technical parameters of some technical items, involving six prohibited export technology items, such as traditional Chinese medicine resources and production, as well as 31 restricted export technology items, such as economic crop cultivation and breeding technology, nonferrous metal metallurgy technology, and large-scale high-speed wind tunnel design and construction technology.
- On January 9, 2024, the MOFCOM released a new version of the "Guidelines for Procedures Related to Import and Export Technology Licenses" (referred to as the "Procedure Guidelines"). The new guidelines briefly explain the relevant procedures that enterprises should follow when obtaining import and export licenses for technologies that are prohibited or restricted under the law.

### Background

The Chinese government implements comprehensive control measures for technologies restricted or prohibited from export, following the relevant statutes of the Foreign Trade Law of the People's Republic of China and the Regulations on the Administration of Technology Import and Export of the People's Republic of China. It employs licensing management for commercial enterprises engaged in technology trade with foreign parties by formulating corresponding controlled technology catalogs and control measures.

In 2020, the MOFCOM announced the final revised content of the Catalogue, which had been under discussion since 2018. Compared to the Catalogue in 2008, the 2020 version deleted nine technologies, added 23 technologies, and modified the control points of the other 21 technologies. This revision reflects the policy direction of implementing export controls on technology exports from a national security perspective. For instance, the restricted technology category included 3D printing, large-scale high-speed wind tunnels, offshore island and reef construction, rocket engine bearings, drones, and laser technology. The revision aimed to strengthen export controls on advanced critical technologies, which is consistent with the requirements of China's new Export Control Law and other common international practices.

At the end of 2022, the MOFCOM released a draft to solicit opinions on the proposed revision of the Catalogue. It proposed deleting 32 technical items, adding seven new items, and modifying 36 items, roughly the same as the modifications made to the Catalogue that came into effect this time. The Catalogue's final version is more streamlined, and some proposed restricted technologies, such as CRISPR gene editing technology, are outside the scope of restrictions. Some technologies were proposed to be downgraded, such as mining engineering technology, which is still listed as prohibited export technologies in the final version. Overall, China's restrictions on technology exports are generally based on safeguarding China's national security and development interests, and efforts are made to avoid unnecessary restrictions on Chinese enterprises' international technology cooperation.

In October 2021, the MOFCOM issued the "Operation Guidelines for Technology Import and Export (Enterprise Edition)," which provides a comprehensive introduction to the relevant concepts of technology import and export, China's technology import and export management system, and technology import and export contracts to enterprises. The newly released "Guidelines for Procedures" on January 9, 2024, provide a more straightforward introduction to applying for restricted technology import and export licenses from the Chinese commerce regulatory authorities. This is expected to be more helpful for enterprises in practical operations.

## KPMG's observations

The Chinese MOFCOM has recently published the "Procedure Guidelines", which do not significantly differ in content from the Operation Guidelines released in 2021. However, the government agency extracted matters related to restricted technology license applications from the comprehensive Operation Guidelines, wrote them separately, and published them. This indicates that the Chinese government will attach more importance to enterprise technology export licensing work, and corresponding regulatory and enforcement activities may increase accordingly.

China's laws and regulations on technology exports are relatively simple, but some detailed provisions still need clarification. For instance, the Regulations on the Administration of Technology Import and Export only provide a principal definition of "technology export," which is "the act of transferring technology from the territory of the People's Republic of China to overseas through trade, investment, or other economic and technological cooperation." The specific supervision methods adopted by different provincial commerce authorities in identifying such "technology exports" may vary slightly. Some authorities consider the parties' nationality in a technology contract as the starting point for evaluating cross-border technology transfer contracts. If the contract is signed between a Chinese party and a foreign party, it is deemed a technology transfer from China to overseas. However, these two corresponding relationships are only partially consistent.

The Chinese government's emphasis on enterprise technology export licensing implies that regulations on prohibited and restricted technology exports will be adjusted to a certain extent. Enterprises facing changes in the regulatory environment should pay attention to their business compliance risks related to technology asset transfer and technology export. Based on the current regulatory requirements for the management of technology contracts, regulatory agencies generally start with technology contracts and determine whether there are technology export behaviors based on the specific agreements between the two parties. For enterprises involving prohibited and restricted technologies, caution should be exercised regarding technology contracts, especially in technology transactions between affiliated enterprises within multinational corporations. It is best to make clear agreements on the ownership of technology assets, rights, and transfers.

Since the first draft of the Export Control Law (for soliciting opinions) was released by the Chinese MOFCOM in 2017, the importance of export controls for China's national security and development interests has significantly increased. China's export control system has also been continuously optimized and adjusted. The Export Control Law, governing the export control of dual-use items and the technology management system for prohibiting export restrictions mentioned earlier, constitutes a complete system of China's export control institutions.

Since 2018, the Chinese government has begun to adjust the scope of technology export restrictions, focusing more on advanced technologies that may significantly impact national security or long-term development in response to international pressure and better safeguard China's national security and development interests. This revision of the Catalogue by the MOFCOM is the second time in nearly three years, and the revision frequency has dramatically increased compared to before. In practical situations, there are situations where the same technology transaction involves two different technology export licenses. In compliance management, enterprises should combine export controls on dual-use items with export restrictions on prohibited and restricted technologies to address this potential risk.

If you have any questions about the above contents, please contact the relevant tax experts of KPMG and have an in-depth discussion.

## Appendix

<b>(I) Technology Item Added</b>	
1. Category prohibited from export	Cell cloning and gene editing techniques from human use
2. Category prohibited and restricted	Technology for utilizing hybrid advantages in crops
	Bulk material handling and conveying technology
	Lidar system
<b>(II) Technology Item Deleted</b>	
1. Category prohibited from export	Manufacturing technology of green plant growth regulators
	Meat processing technology
	Beverage production technology
	Nonferrous metal metallurgical technology
	Agricultural machinery manufacturing technology
	China's unique species resource technology
2. Category prohibited and restricted	Production technology of animal feed and growth regulators for animal use
	Animal product processing technology
	Bee breeding and collection, processing, and utilization technology of bee products
	Forest pest and disease control technology
	Processing Technology of Forest Chemical Products
	Grain processing technology
	Egg processing technology
	Food additive production technology
	Beverage production technology
	Textile natural fiber products and their processing technology
	Soybean protein fiber manufacturing technology
	Chemical raw material production technology
	Chemical pesticide production technology
	Dye production technology
	Catalyst production technology
	Production technology of photosensitive materials
	Production technology of synthetic resins and their products
	Industrial explosives and their production technology
	Industrial detonator production technology
	Production technology of daily ceramics and their products
	Refractory material production technology
	Application Technology of Construction Machinery
	Fire protection technology
	criminal technique
	Medical diagnostic instruments and equipment manufacturing technology
	Production Technology of Electrical Materials
	Liquid cargo transportation technology
	Target feature extraction and recognition technology

(III) Technology Item Revised	
1. Category prohibited from export	Chinese herbal medicine resources and production technology
	Extraction, processing, and utilization technology of rare earths
	Computer network technology
	Satellite application technology
2. Category prohibited and restricted	Cultivation and breeding techniques for economic crops
	Forest Germplasm Resources and Breeding Techniques
	Breeding techniques for garden and ornamental plants
	Artificial breeding and protection technology for wild animals
	Animal medicine production technology
	Veterinary health and quarantine technology
	Biopesticide production technology
	Synthetic fiber production technology
	Chinese herbal medicine resources and production technology
	Biotechnology drug production technology
	Preparation and processing technology of tissue engineering medical device products
	Rubber product production technology
	Artificial crystal growth and processing technology
	Nonferrous metal metallurgical technology
	3D printing technology
	Basic Common Technologies of the Machine Tool Industry
	Design and construction technology for large high-speed wind tunnels
	Ship-type design and testing technology
	Drone technology
	Mechanical quantity measurement instruments and instrument manufacturing technology
	Key Technologies for Container Loading and Unloading
	Communication transmission technology
	Computer Network Technology
	information processing technology
	Computer General Software Programming Technology
	Computer Core Hardware Manufacturing Technology
	High-performance testing technology
	Acoustic Engineering Technology
	Computer Core Hardware Manufacturing Technology
	Traditional handmade paper production technology
Combustion Technology in Boiler Manufacturing	



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