



## 贸易咨询快讯

# 中国调整禁止与限制出口技术目录



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成就不凡  
始于 1845

2020 年 8 月 28 日，商务部会同科技部出台公告 2020 年第 38 号，调整《中国禁止出口限制出口技术目录》（以下简称《目录》）。本次调整对《目录》中的禁止出口技术条目、限制出口技术条目，以及相关的技术控制要点进行了增删和修改。其中，新增的禁止或限制出口技术条目与控制要点将涉及包括基因工程、3D 打印、人工智能、网络安全、航空航天等在内的一系列高新技术领域。

### 政策背景

根据《中华人民共和国对外贸易法》和《中华人民共和国技术进出口管理条例》，技术出口是指从境内向境外通过贸易、投资或者经济技术合作的方式转移技术的行为，包括专利权转让、专利申请权转让、专利实施许可、技术秘密转让、技术服务和其他方式的技术转移。

我国技术出口分为自由、限制和禁止三类。其中，自由类实行事后合同登记备案，限制类需要申请许可证，列入禁止类的技术则不得出口。对限制类和禁止类的技术出口实行目录清单管理，由商务部会同科技部根据维护国家安全和社会公共利益等基本原则，制定、调整并发布《中国禁止出口限制出口技术目录》。《目录》分行业列示限制或禁止出口的各类技术，并在每一类技术的条目中列明了需要控制的技术内容、特征及范围（即控制要点）。上一次《目录》调整是在 2008 年，距今已经有 12 年的时间。此次调整反映了当下各产业科学技术的发展态势。

## 调整要点

本次《目录》调整共涉及十七个行业的 53 类技术，其中禁止出口技术调整共涉及 9 类技术，限制出口技术调整共涉及 44 类技术：

	调整内容	涉及行业技术举例
禁止出口技术	删除 4 类技术	微生物肥料技术等
	修改 5 类技术的控制要点	航天器测控技术等
限制出口技术	删除 5 类技术	天然药物生产技术等
	新增 23 类技术	基因工程、3D 打印、无人机技术、大型电力设备设计、信息防御技术等
	修改 16 类技术的控制要点	空间仪器及设备制造、语音合成技术、人工智能交互界面等

跟进国内产业更新与科技发展态势是此次《目录》调整的主要目的之一。以发展迅速的计算机服务业为例，此次调整新增了“密码安全技术”、“高性能检测技术”、“信息防御技术”和“信息对抗技术”等 4 类技术，并且在原有的“信息处理技术”类别下增加了 5 项技术控制要点，其中不乏人工智能交互界面、语音评测、基于数据分析的个性化信息推送等新兴技术门类。更多具体调整内容，请点击[此处](#)了解详情。

根据了解，本次调整已从公告发布之日起执行。目前实务上已经有技术出口企业依照新版《目录》向地方商务主管部门申请出口许可意向书以便展开后续的贸易谈判和限制类技术的出口许可申办事宜。

## 观察与评论

我们在实践中发现，与有形货物的出口管制相比，部分企业对于技术出口尚未给予较多关注，尤其对于自身业务活动是否会构成出口限制类技术行为仍缺乏清晰与全面的认知，由此可能会给企业带来违规风险。在未取得许可证的情况下，出口限制类技术可能会使企业受到警告、处罚，企业的对外贸易经营许可可能会被暂停或取消，构成犯罪的还将被追究刑事责任。

同时，部分企业虽然知晓出口限制类技术须取得许可证，但对于相关实务程序不甚了解，从而可能导致企业的商业计划遇到阻碍或延迟。例如，拟申请技术出口许可证的企业一般需要在对外进行实质性贸易谈判之前先向地方商务主管部门申请取得《技术出口许可意向书》，相关谈判及合同订立需在《技术出口许可意向书》有效期内完成，否则出口经营者需要向有关部门重新提出申请。另一方面，由于限制类技术出口的审核与管理权限下放到了各地方，目前在实务上各地执行口径存在差异，部分地区对出口许可的审批可能尤为谨慎。这些会对企业的技术出口实务带来一定挑战。

此外，由于符合条件的对外转让技术可适用增值税零税率或免税待遇，而税务机关在复核纳税人是否可享受上述待遇时一般会要求提供商务部门对技术转让的认定意见。因此，对于限制类技术的出口，企业是否合规取得出口许可对转让收入的增值税待遇亦将产生影响。实践中甚至有的企业直到办理增值税零税率或免税待遇时，才意识到已经履行的相关合同涉及限制类技术的出口，但为时已晚。

事实上，我国对于技术出口的认定较为宽泛；涉及向境外进行技术转移的，都需要严格遵守有关技术出口管制的规定。出口核技术、核两用品

相关技术、监控化学品生产技术、军事技术等出口管制技术的，还应依照相关行政法规的规定办理。值得注意的是，本次《目录》调整中新增的语音识别、无人机、3D 打印和个性化信息推送服务等限制出口技术，大都属于目前我国比较领先的高科技领域，从事相关经营活动的企业应重点关注由此带来的企业合规影响。

我们建议相关企业从两方面着手进行技术出口的管理：一是对于企业经营业务中涉及到的技术是否属于禁限类技术进行全面梳理；二是就相关技术的转移是否构成受管束的出口行为进行识别。

目前国家有关部门仍在持续开展《目录》的修订工作，与技术出口密切相关的《中华人民共和国出口管制法》立法也在进行中。我们建议广大技术出口企业应对相关的政策与实务进展保持持续关注，结合国际经济贸易态势与规则的变化，及时完善自身的贸易合规风控体系，适时调整商业安排。

基于德勤间接税、海关与全球贸易咨询团队在全球贸易合规领域的专业实践，德勤全球贸易咨询服务团队能够为希望了解该变化对其业务潜在影响的公司提供以下专业协助服务：

- 协助分析此次《目录》删除、新增或修改条目的范围及影响，审视企业进出口合规管理策略，例如针对技术产品设计评估问卷，建立评估流程，以适应法规更新等；
- 协助评估不同的业务场景，识别其中属于技术转移的情形，并对不同的业务场景定制合规管理策略与控制点，完善贸易合规管理体系；
- 协助合同备案及许可申请，例如递交材料的准备，与当地主管部门的沟通等；
- 向管理层及员工提供贸易合规相关的培训或相关洞见；以及
- 协助根据监管动向对贸易流程以及自动化方案进行复核与更新。

德勤间接税、海关与全球贸易咨询服务团队将持续关注法规变化与实务进展，并向您提供相关资讯的更新与评述。

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## Trade Advisory Newsflash

# Catalogue of technologies subject to export restrictions and prohibitions updated



On 28 August 2020, China's Ministry of Commerce (MOFCOM) and Ministry of Science and Technology (MOST) announced updates to the *Catalogue of Technologies Prohibited or Restricted from Being Exported*. The updates have added certain technologies in areas such as gene engineering, additive manufacturing, artificial intelligence, cybersecurity, and aerospace.

The Catalogue, which was last updated in 2008, is prepared and updated by MOFCOM and MOST based on considerations such as the national security and public interest. The updates become effective as from the date of announcement.

### Background

Under China's export regulations, the export of technologies encompasses all forms of transfer including the outright sale of technologies and licensing the right to use technologies. The Catalogue lists technologies that are completely "prohibited" from being exported, and those that are "restricted" from being exported subject to government approval prior to exportation. For each technology, further "control points" describe the technological content that is prohibited or restricted.

## Updates to the Catalogue

The adjustments generally reflect the development of technologies over the last 12 years. For example, four items have been added to the list of restricted technologies in the fast-developing computer services sector, which are password safety technology, high-performance detection technology, information defense technology, and information countermeasures technology. In addition, several emerging technologies, including artificial intelligence (AI) interaction platforms, speech recognition and evaluation technologies, and data analytics-enabled personalized information push services, have been added to the control points.

In total, the updates affect 53 items in 17 sectors, which are summarized below:

	Update	Examples of sectors or technologies affected
Prohibited category	Removal of 4 items	Biofertilizer, chemical synthesis of caffeine, synthetic drugs, manufacturing of vitamin B2
	Adjustments to the control points of 5 items	Spacecraft telemetry, tracking and command technology; applications of satellites; breeding of silkworms
Restricted category	Removal of 5 items	Manufacturing of natural medicines; chemical synthetic and semi-synthetic drugs; fire-wall software technology; bioactive and functional polymeric materials
	Addition of 23 items	Gene engineering, additive manufacturing, unmanned aerial vehicles (UAVs), design of large-scale electrical equipment, information defense
	Adjustments to the control points of 16 items	Aerospace instrument and equipment manufacturing, speech synthesis, AI interaction platform

### Comments

In our observation, businesses tend to pay less attention to the export control requirements on exports of technologies rather than goods. Some companies may be unaware that they have exported prohibited or restricted technologies. Such violations may subject the exporter to warnings or penalties, suspension or revocation of the licence to conduct foreign trade, or even criminal sanctions in serious cases.

Even if aware of the export control requirements, some companies could be unfamiliar with the export licence application procedure, which could delay the schedule of any relevant business transactions. In fact, a

company that plans to export technology under a "restricted" category must request the local government to grant an initial approval by issuing a letter of intent before the relevant agreement may be negotiated. After the letter is issued, the negotiation and conclusion must be completed within a timeframe specified in the letter; otherwise, another request must be made to the local government to issue such letter. Furthermore, the interpretation of relevant laws and practice could vary depending on location and certain local governments may adopt a stricter position in granting such approval, which could prove challenging for the exporter.

With regard to value-added tax (VAT), certain exports of technology may be exempt from VAT or zero-rated for VAT purposes. However, the tax authorities may request an exporter to provide the relevant export approvals for the transfer of restricted technologies and, if the exporter has not obtained such approvals, the exemption or zero-rating would be denied.

Businesses should carefully assess whether they have technologies that are prohibited or restricted from export according to the updated Catalogue, and, if so, determine whether their business plans involve the transfer of such technologies to foreign jurisdictions. In addition, businesses should improve compliance controls for the export of technologies and make any necessary adjustments to their business plans. With the rapid development of science and technology, MOFCOM and MOST will continuously assess the need to update the Catalogue. Meanwhile, the latest draft legislation on export control was published in June for public consultation. Businesses should closely monitor any legislative developments that could affect their export compliance matters.

Deloitte team is able to provide the following professional assistances to businesses to address the potential impact of the change:-

- Assist in reviewing import and export compliance management strategies to adapt to regulatory updates (e.g., assist to design evaluation questionnaire and establish evaluation process for controls over technological items);
- Assist in assessing different business scenarios, identifying the activities of technology transfer; and assist in customizing the company's compliance management strategies and control points to improve trade compliance management program;
- Assist in contract filing and license application (e.g., assist in preparation of submission materials, communication with local authorities, etc.);
- Provide training sessions or insights on trade compliance for management team and operation personnel; and
- Assist in reviewing, revising or updating trade processes and automation solutions in accordance with regulatory updates.

We will continue to follow the legislative and regulatory developments and provide you with relevant updates and comments.



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