

Tax Analysis

China: updates to multiple catalogues of items subject to export controls

The Chinese government updated the following catalogues regarding export controls towards the end of 2023:

- The catalogue of technologies prohibited or restricted from export (the Technology Catalogue);
- The catalogue of dual-use items subject to import/export license requirements (the Dual-use Items Catalogue); and
- The catalogue of goods subject to export license requirement (the Goods Catalogue).

The Technology Catalogue was published on 21 December 2023 and became effective on the same day, while the other two became effective as of 1 January 2024. This article aims to highlight the developments and to share Deloitte China's observations of the potential impact on businesses.

The catalogue of technologies prohibited or restricted from export

On 21 December 2023, China's Ministry of Commerce (MOFCOM) and Ministry of Science and Technology (MOST) jointly announced the revised catalogue of technologies prohibited or restricted from export superseding the last version released in 2020.

Under China's export regime, both of an outright sale of a technology and licensing the right to use a technology can be considered as an

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export of the technology. The catalogue further provides “control points” to describe the relevant content for each technology item on the list. An export license is required for any export of technologies that are restricted from export.

The new Technology Catalogue includes a total of 134 technology items (i.e., 24 prohibited items and 110 items restricted from export).

Compared with the prior version, the new catalogue includes the following revisions.

- Addition of four new technology items:
 - “Cloning human cells and gene editing”, which may bring ethical concerns, is added to the technologies prohibited from export.
 - Three items including “crop hybrid advantage utilization technology”, “bulk materials loading and transportation technology” and “laser radar systems” are added to the technologies restricted from export. Laser radar systems are widely used in driverless vehicles for which China has been one of the leading countries in technology development.

Photovoltaic related technology which was included as a restricted item from export in the draft catalogue issued at the end of 2022 has not been included in the final version. It has been speculated this was to avoid a potentially negative impact on outbound investments by Chinese businesses.

- Removal of 34 technology items
 - Six items (related to mining, meat processing, manufacturing of green plant growth regulators, etc.) are removed from the technologies prohibited from export; and
 - 28 items (related to manufacturing of medical diagnostic instruments and equipment, target feature extraction and recognition, etc.) are removed from the technologies restricted from export.
- Revisions to the “control points” for 37 technology items
The revisions impact six items (related to the production of traditional Chinese medicine, and the refining/processing/utilization of rare-earth elements, etc.) under the category of technologies prohibited from export; and 31 items under the category of technologies restricted from export (e.g., “control points” for certain items related to information transmission and processing have been modified to reduce the effective scope of the restricted technology).
- All items have been re-coded and re-ordered according to the new industrial classification code (i.e., “Classification of National Economic Industry (GB/T 4754-2017)”).

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The catalogue of dual-use items subject to import/export license requirements

On 29 December 2023, the MOFCOM and the General Administration of Customs (GAC) jointly announced the new version of the catalogue of dual-use items subject to import/export license requirements superseding the last version of the catalogue released in 2022. The Dual-use Items Catalogue contains the names and descriptions of each controlled dual-use items, as well as the relevant Harmonized System codes (HS codes) for tangible goods.

Compared with the prior version, the new Dual-use Items Catalogue includes the following revisions:

- Addition of 24 new items, reflecting certain adjustments already announced and implemented during 2023, including:
 - 14 items related to gallium and germanium, where the relevant export control has been effective since 1 August 2023;
 - Eight items related to drones, where the relevant export control has been effective since 1 September 2023; and
 - Two items related to highly sensitive graphite, where the relevant export control has been effective since 1 December 2023.
- Removal of eight items related to graphite, where the relevant export control has been removed since 1 September 2023;
- Revisions to the names and descriptions for more than ten items (e.g., certain nuclear-related items, chemicals, and biological items); and
- Revisions to the HS codes for more than 20 items (e.g., certain nuclear-related items, chemicals, biological and missile-related items) according to the China's 2024 tariff adjustment plan.

It is worth noting that the HS codes listed in the catalogue are provided for reference purposes. To determine whether such goods fall within the scope of the catalogue, still needs careful review of the actual goods against the names and descriptions of the items listed.

The catalogue of goods subject to export license requirement

On 29 December 2023, the MOFCOM and GAC also jointly announced the 2024 version of the catalogue of goods subject to export license requirement, which superseded the 2023 version. The Goods Catalogue contains a list of named tangible goods and descriptions, as well as the relevant HS codes. For exports of any goods on the list, an exporter must apply for an export license, which then must be submitted to the Chinese customs for verification when the relevant goods are exported.

Like the Dual-use Item Catalogue, the HS codes listed in the Goods Catalogue are provided for reference purposes. Businesses cannot simply rely on the relevant HS codes to determine whether the goods in question fall within the scope of the Goods Catalogue. Certain goods may be listed on both the Dual-use Items Catalogue and Goods Catalogue. In this situation, the goods should be considered as a dual-use item for export license application purposes.

The Goods Catalogues includes 43 categories of goods with few updates since the 2023 version and, with only a small number of items' descriptions and HS codes adjusted (e.g., certain goods in relation to fluorite, titanium, platinum, and vanadium).

Recommendations

As the catalogues have been updated, affected exporters should re-assess whether their business arrangements have or will include any technologies or goods that are prohibited or restricted from export. For any item newly added to the catalogues, businesses should update their trade compliance management accordingly and apply for export licenses in a timely manner.

MOFCOM has been encouraging businesses to establish and maintain a robust internal control system in regards to the trade compliance management by providing relevant efficiency incentives (i.e., granting general export licenses that allows multiple exports of multiple specified types of dual-use items to multiple destination countries/regions or end-users within the valid period of the license). Exporters should consider how they may continuously enhance their compliance management performing a regular review and assessment of the internal control system to identify any weakness, and utilization of digital tools to improve the management efficiency.

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