THE US-CHINA BUSINESS COUNCIL
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# US-China Business Council Comments on the Export Control Law (Second Review Draft)

August 14, 2020

On behalf of the more than 220 members of the US-China Business Council (USCBC), we appreciate the opportunity to submit comments on the second review draft of the Export Control Law of the People's Republic of China (hereby referred to as "the Draft") to the National People's Congress (NPC). We appreciate the NPC's efforts in unifying China's export control regime and streamlining relevant regulatory requirements.

USCBC received comments from companies across industries including consumer products, information and communication technology (ICT), chemical manufacturing, pharmaceuticals, automotive manufacturers, and service firms.

We note that the current Draft has taken a few positive steps to reflect previous concerns expressed by our members. We are particularly pleased to see continued improvement in language addressing internal compliance programs. The new Draft mentions that the State Export Control Administrative Departments will release detailed measures to guide companies in developing effective internal programs. We are also pleased to see that if companies establish effective programs, they may be eligible for general export licenses, and that having a perfect record on material violations is no longer a criterion by which companies will be evaluated.

However, beyond commendable progress in the areas mentioned above, USCBC and its member companies would like to encourage the NPC to take note of additional feedback on multiple issues that remain unaddressed to further improve the Draft. In particular, we would like to highlight the following suggestions:

- **Clarify the scope of export controls and national security:** We understand that the Draft prioritizes safeguarding national security, but the term, as defined in other Chinese laws, has a very broad definition. We suggest further clarifying the scope of activities that constitute a "national security threat" for export control purposes. We also encourage China to use internationally accepted best practices and metrics when developing export control lists, such as the multilateral Wassenaar Arrangement.
- **Explain key terms and authorities:** In many places, the Draft is overly general, referencing multiple terms and entities without clear definitions, including controlled items and services, transfer and provision of goods, the State Export Control Administrative Departments, export operators, and temporary controls. We recommend explicitly defining each of these terms.
- **Define activities considered "deemed exports":** It is unclear whether the Draft intends to address "deemed exports." Language on the "provision of export control-related information" in Article 32 may cause significant challenges for multinational companies operating and conducting R&D activity in China, as well as limit the R&D activity of Chinese companies operating overseas. Therefore, we recommend clarifying whether "deemed exports" and export-controlled information are meant to be covered by the law. We also suggest that the Draft explain what information could threaten national security, and what would constitute "provision of export control-

related information by an organization or individual within the territory of the People's Republic of China (PRC) to those outside of the territory of the People's Republic of China."

- **Consider relaxing requirements for end-user statements and certificates:** We recommend Chinese licensing authorities allow buyers to certify on their own account that they will comply with end-use and end-user commitments, and only require government-issued end-user certificates as supporting documents for specific transactions that are strategic in nature.
- **Include a voluntary self-disclosure (VSD) regime:** We suggest that the final law include a VSD regime, under which exporters can voluntarily disclose violations of the export control law or take remedial actions, and penalties for these exporters can be waived or mitigated.
- **Grant a lengthy and orderly transition period:** We recommend Chinese authorities phase in export restrictions and ensure that the law takes effect only after industry and other stakeholders have received adequate notice of all legal changes and requirements. Ideally, this would result in the phased implementation of control regimes for different technologies and items, so that controls on all items are not implemented simultaneously. We would also recommend a delay in enforcement by 9-12 months from the legislative enactment date or the last phase of implementation.
- **Consult export control and industry experts:** We recommend that Chinese authorities engage industry experts through technical advisory committees to gather necessary information to develop and adjust export control lists.
- **Explain any extraterritorial application:** Article 44 of the Draft suggests that the law will be applicable overseas, but it does not specify how this will be enforced, and it is unclear what kind of behaviors will be considered threatening to national security. We recommend clarifying the extraterritorial scope of the law, the required nexus to the PRC for violations, and what kind of behaviors will be considered threatening. We also suggest providing clear guidelines on legal liability for foreign organizations.
- **Include a knowledge standard:** The Draft suggests export operators must apply for licenses for items that they know or are "supposed to know" would require an export license. We strongly recommend removing or revising this provision, given that it will be very difficult for exporters to know of items not included on controlled lists. If this clause remains, a stated "knowledge" standard should be included to define when an exporter should have known of the relevant risks. We further suggest that this provision apply only to circumstances where an exporter has been explicitly informed by authorities that an item is subject to additional license requirements.
- **Clarify accountability standards for service providers:** Under this Draft, import and export agents, forwarders, logistics service providers, customs brokers, and ecommerce platforms will be held accountable for providing services to exporters that violate export controls. We recommend that any penalty imposed on a service provider be limited to services related to the actual illegal export of goods. We also suggest providing clear obligations for service providers, and specific standards to judge their actual knowledge of and involvement in facilitating export violations.

We appreciate this opportunity to express our suggestions, and have provided article-specific recommendations in detail below.

| List of Comments | | | |
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| Article # | Article/Clause | Comments | Suggestions |
| Chapter I | | General Principles | |
| 2 | This Law applies to the State's export control over dual-use items, military items, nuclear items and other goods, technologies, services and items relating to the performance of anti-proliferation and other international obligations and maintenance of national security (collectively referred to as "Controlled Items" hereinafter).<br><br>For the purposes of this Law, export control means the prohibitive or restrictive measures taken by the State against the transfer of any Controlled Items out of the People's Republic of China, and the provision of any Controlled Items by any citizens, legal persons or non-corporate organizations of the People's Republic of China to any foreign organizations and individuals.<br><br>For the purposes of this Law, dual-use items mean goods, technologies and services that can be used for not only civil purposes but also military purposes, or that are helpful to enhance military potential, especially those can be used for the design, development, manufacturing or use of weapons of mass destruction.<br>For the purposes of this Law, military items mean equipment, special production equipment and other related goods, technologies and services used | 1) In the second paragraph of Article 2, the deemed export requirement could impose a significant burden on the industry and the attractiveness of developing or manufacturing products in China.<br>2）The Draft includes "service and any other items" in the scope of controlled items, without providing a detailed explanation. It needs to define and list the broad "service any other items" that have national security concerns.<br>3) There are no specific definitions of "Controlled Items," which might cause an unnecessarily broad interpretation by the government authority throughout the enforcement of this law.<br><br>4) For deemed exports, the language of the law remains unclear as to whether the transfer by PRC citizens, legal persons and organizations to non-PRC organizations and individuals of export- controlled information (knowledge or know-how, sometimes described as deemed exports) is meant to be covered by the law. The definitional language of Article 2 does not explicitly include "export-controlled information" as a controlled item in the definition of export control. Article 32 refers to "export control related information"] which may intend to cover transfers of such information within the PRC by PRC citizens, legal | We strongly recommend providing specific definitions and explanations for controlled items, including dual use and military items, which should be harmonized with definitions under existing international regimes; dual use services; and "services and items relating to the performance of anti-proliferation and other international obligations and maintenance of national security." We also recommend defining the terms "transfer" and "provision," providing relevant examples of each in detailed implementing regulations. There should also be an explanation of the law's jurisdiction, clarifying whether it is limited to goods, technologies, and services of Chinese origin, and whether foreign organizations and individuals include those from Hong Kong, Macau, and Taiwan.<br><br>Regarding "deemed exports," i.e., the transfer of export-controlled information by PRC citizens to foreign organizations and individuals, we strongly recommend clarifying whether they are meant to be covered by the law. If the law intends to cover deemed exports, we suggest clarifying Article 2 to include within the definition of "controlled items" an explicit mention of "export-controlled information." Article 32 should also be clarified to substitute "export- controlled information" for "export control-related information." Companies need clear guidance on |

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| | for military purposes.<br><br>For the purposes of this Law, nuclear items mean nuclear materials, nuclear equipment, non-nuclear materials for reactors and related technologies and services. | persons and other organizations to foreign individuals and organizations. Combined with Article 44, the new extraterritorial provision, the Article 32 provision may apply to overseas transfers of export-controlled information. However, none of these provisions clearly covers "deemed exports," which means exporters will not know where the law imposes new license obligations on PRC companies with foreign employees, as well as on foreign companies within the PRC with PRC employees.<br><br>5) There needs to be a detailed explanation with examples for "transfer" and "provision." For example, does a foreign national's participation in a technical meeting or a teleconference, can this fall under the scope of controls? Does storing relevant technical information on a foreign server or in a foreign data center fall within the scope of controls? Or does it depend on whether the server (data center) can be inspected by foreign organizations and individuals? Does applying for a patent for related technologies abroad fall within the scope of drafted controls? In addition, do "foreign organizations" or "foreign individuals" include those from Hong Kong, Macau, or Taiwan? | licensing obligations for this type of transfer.<br><br>We further suggest clarifying: (1) whether deemed export requirements under the law extend to persons outside of China who are working on foreign technology that is of foreign origin and may exceed the Chinese export thresholds; (2) how the national status of an employee or contractor will be established; and (3) if there are citizenship or permanent resident standards.<br><br>Finally, we recommend excluding MNCs registered in China and allow exceptions for intracompany transactions. |
| 4 | The State implements a unified export control system, and oversees the system by making control lists and enforcing export licensing. | Article 4 references "control lists," without explaining the basis for the lists, and a "licensing system," without providing details as to the licensing process. | We recommend the establishment and release, as quickly as possible after adoption of the Export Control Law, of a unified export Control List, with clear and objective criteria with respect to controlled items, consistent with the principles of |

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| | | | international cooperation set forth in Article 32, particularly for common concerns, such as terrorism and nuclear proliferation. It would be useful for the Chinese export control regime to follow existing multilateral regimes, such as the Wassenaar Arrangement.<br><br>We would further appreciate clarification on whether HTS coding will continue to be used or if a new coding system is contemplated. |
| 5 | The departments of the State Council and the Central Military Commission that perform the export control functions (collectively the "State Export Control Administrative Departments" or SECADs) shall be responsible for tasks relating to export control according to their assigned duties. The other departments of the<br>State Council and the Central Military Commission shall be duly responsible for the related tasks according to their assigned duties.<br><br>The State establishes an export control coordination mechanism, and makes overall arrangements for and coordinates key export control matters. The SECADs and the related departments of the<br>State Council shall work closely and share information with each other.<br><br>The SECADs shall work with the related departments to establish an expert consultancy mechanism for export | 1) The Law does not specify which authorities will perform the functions of export control, but rather refers generally to "State Export Control Administrative Departments."<br><br>2) We note that departments at the provincial, regional, and municipal level responsible for carrying out export control work report directly to the Central Government which will aid in consistency of implementation, application, and interpretation across China to help companies comply. | The Law should specify explicitly which authorities will perform the functions of export control (as part of the State Export Control Administrative Departments), and what role provincial governments will play in export control. The law should identify specific agencies at the provincial and national level to ensure consistent treatment at different ports. We further recommend that the export control guidelines for relevant industries be published at the national level to ensure consistency across China and aid in compliance.<br><br>Regarding the "expert consulting mechanism" we suggest explaining in further detail how it will be established. The provision should specify the nature of this mechanism -- whether it will be an internal advisory department for companies to consult for guidance and advice; an external consultant with export control expertise that can provide guidance to the State Export Control Administrative Departments; or an advisory board with |

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| | control to advise on export control affairs.<br><br>The SECADs issue guidance on export control for the related industries at appropriate times and guide the proper operations of companies. | | industry experts who can provide "feedback" on the law and its implementation. We recommend using the mechanism to solicit input and professional advice on proposed regulations from industry export control experts, including multinational companies, which could meet regularly with the relevant export control departments as an "Expert Advisory Board." |
| 7 | Export operators may establish and join self-regulatory industrial organizations such as chambers of commerce and associations in accordance with the law.<br><br>The related self-regulatory organizations such as chambers of commerce and associations shall comply with laws and administrative regulations, and provide their members with the services relating to export control pursuant to their bylaws, and exercise their coordination and self-regulatory functions. | Due to the sheer volume of exports that may be subject to the proposed regime, the regime must inevitably rely on self-discipline rather than government review and licensing of all individual transactions. Industry self-discipline requires exporters to have a clear understanding about the rules that are in effect. Unpublished, opaque, unclear, and subjective rules will render compliance and industry self-discipline difficult. | We suggest making export control rules sufficiently clear and feasible to enable compliance and industry self-discipline. |
| Chapter 2 | | Control Policies, Control Lists, and Control Measures | |
| 8 | The SECADs shall work with the related departments to establish export control policies of which major policies shall be submitted to either the State Council for approval or the State Council and the Central Military Commission for approval. The SECADs may assess the countries and regions to which the Controlled Items will be exported to determine the risk level and take corresponding control measures. | We would like to know if there will be country charts and suggest publishing country-specific policies. | We recommend defining the term "major" to better understand which policies will be submitted to the State Council or the State Council and the Central Military Commission for approval.<br><br>We further suggest that the risk level and controls for countries and regions be established at a national level and be made public and regularly updated. The country group information can help |

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| | | | companies work on their own license determination matrix. |
| 9 | The SECADs shall work with the related departments pursuant to required procedures to establish and adjust the export control lists for Controlled Items and promptly publish such lists in accordance with the provisions of this Law and related laws and administrative regulations as well as export control policies.<br><br>As required for the performance of anti-proliferation and other international obligations and maintenance of national security, with the approval of the State Council, or with the approval of the State Council and the Central Military Commission, the SECADs may exercise temporary control over any goods, technologies and services outside the export control lists, and make an announcement of such. A temporary control can be enforced for a term of up to two years. Before the expiration of the temporary control term, an assessment shall be carried out in a timely manner, and, depending on the assessment results, a decision on cancellation of temporary control, extension of temporary control, or inclusion of items under temporary control in the export control lists shall be made. | 1) The triggers for the imposition of temporary controls are not clear. Imposition of temporary controls will be publicly announced and we assume so too will be the results of the assessment. While there is provision for review before expiration of the two-year period, it is not clear if industry can appeal. Two years will be disruptive to the industry for a "temporary" control.<br><br>2) The basis for temporary control is unclear, and should be clearly defined. There should be transparent background and justification for imposing a Temporary Control on any given good/technology/service.<br><br>3) Criteria for assessments and how controlled lists will be formulated should be clarified. | We recommend adopting internationally accepted practices, standards, and metrics in determining technical thresholds, to harmonize China's system with those of its trading partners to ensure compliance. The Control List should be regularly updated and published. For coding, we highly recommend that China not use HTS code to identify controlled items, and instead introduce a clear product classification coding mechanism for controlled items, such as the ECCN.<br><br>We further suggest that the development of export control lists should involve consultations with experts and relevant industry representatives. We recommend adding the following language to this article: "The formulation of any control lists and interim list shall collect and fully take into account comments from experts and relevant industry chambers of commerce, as well as take into account international common practices." We suggest that commercial mass market items as defined by global export regulation should not be included among controlled items, and that export control lists distinguish between military and dual-use items.<br><br>Regarding temporary controls, we recommend including an explicit definition, more details as to the reason for imposition of temporary controls, and public notification of the assessment. The |

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| | | | temporary control period should be limited to six months, with possible extension, and allow industry input in the assessment of the need for controls. Assessments before the expiration of the temporary control term should have clear criteria and allow stakeholders the opportunity to submit public comments.<br><br>We recommend that in subsequent implementing regulations, a lengthy buffer period be provided for changes to controlled items and temporary controls, to allow companies time to adjust and make necessary preparations.<br><br>We further suggest that applications approved before the Export Control Law takes effect should not be withdrawn. If applications are withdrawn, companies will need to apply for and obtain an export license, which could significantly delay their goods' delivery time and potentially result in breaches of contract. |
| 10 | As required for the performance of anti-proliferation and other international obligations and maintenance of national security, with the approval of the State Council, or with the approval of the State Council and the Central Military Commission, the SECADS may work with the related departments to prohibit the export of the related Controlled Items, or prohibit the export of the related Controlled Items to certain destination countries and regions, certain organizations and individuals. | The motivation behind adding a separate provision for a "ban", in addition to enumerated controls and temporary controls, is unclear. It is also unclear if the embargo will be consistent with the United Nations Security Council Resolutions or if there will be newly added countries, persons, companies, or other organizations. | We suggest that the identification of specified prohibited countries and individuals should be aligned with international practices.<br><br>In addition, exporters will need timely notice of specified countries, regions, organizations, and individuals to which exports will be prohibited. We recommend that there be public and timely communication of such controls. |

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| 12 | The State implements a licensing system for the export of Controlled Items.<br><br>For the export of Controlled Items listed on the control lists and the items subject to temporary control, export operators shall apply for a license to the SECADs.<br><br>For the export of any goods, technologies or services that are not Controlled Items on the export control lists or the items subject to temporary control and that may have any of the following risks of which an export operator is or should be aware or is notified by the SECADs, the export operator shall apply for an license to the SECADs: (1) endangering national security; (2) being used for the design, development, production or use of weapons of mass destruction and their delivery vehicles; or (3) being used for terrorist purposes.<br><br>If an export operator is unable to confirm whether any goods, technologies, and services to be exported are Controlled Items under this Law, and consult with the SECADs for that, the SECADs shall respond in a timely manner. | 1) It is unclear how an exporter would know or is supposed to know that an item may endanger national security or is being used for a certain purpose, where an item is not on the Control List and the exporter has not been notified of risks by the State Export Control Administrative Departments. This is a very broad and subjective "catch-all" criteria that creates significant uncertainty for an exporter. It would put an exporter constantly at risk of being subjected to penalties for violating the obligation.<br>2) Details as to how an exporter can make an inquiry to determine whether an item is controlled are not provided and there is no timeline for a response.<br>3）Though this article offers channels for exporters to consult with export control authorities, it still needs to include specific names of State Export Control Administrative Departments as well as authorized consulting teams, for exporters to easily reference.<br>4) This provision places a terrific burden on exporters to "know" what endangers China's national security, which itself is not defined. | Regarding licensing, we recommend that details be provided regarding the agencies with whom license applications should be filed, timing for approval, and whether licenses can be granted for multiple shipments.<br><br>Furthermore, we strongly recommend deleting or revising the phrase "is or should be aware of," given that it will be very difficult for the exporter to know items not listed on controlled lists. If this clause remains, a stated "knowledge" standard should be included to define when an exporter "should have known" of the relevant risks. We strongly recommend that the "catch all" provisions apply only to circumstances where an exporter has been explicitly informed by the authorities that an item is subject to additional export control/license requirements. There should also be additional clarity and guidance for companies to determine whether an item outside of the control list is subject to the three risks outlined.<br><br>In addition, we suggest creating a written communication channel (web portal) between companies and government departments, and releasing an official set of instructions, which companies can take advantage of to resolve questions that come up during the export clearance process. This way, companies can develop and improve their internal system for compliance and can receive written |

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| | | | replies from relevant departments. This provision should specify a time frame for State Export Control Administrative Departments to respond to queries from export operators who are uncertain whether goods, technologies, or services to be exported fall within the scope of controlled items, (i.e. authorities shall respond no later than 15 days after receiving a query.)<br>It would be helpful to clarify whether a negative response via this communication channel is binding so the exporter can rely on the response as a guide.<br><br>Finally, we recommend adding: "If applicants' and consultants' submitted documents or information involves trade or business secrets, relevant departments should allow the businesses to apply for confidentiality." |
| 13 | The SECADs will take all of the following factors into account in reviewing an export operator's application for the export of Controlled Items, and make an approval or non-approval decision: (1) international obligations and commitments; (2) national security; (3) type of export; (4) sensitivity of the items; (5) destination country or region of the export; (6) end-users and end-use; (7) credit record of the export operator; (8) other factors provided in laws and administrative regulations. | 1) The types of licenses available are not defined, (e.g., individual or general licenses). It is also unclear whether general licenses will be provided to allow multiple exports to multiple destinations/s without the need for applications for each individual transaction.<br><br>2) "Type of export" is not defined to cover which might be more sensitive, i.e., temporary exports, general trade and the like.<br><br>3) Does "destination country or region of the export" refer to a country chart detailing how they are risk-ranked as described in Article 8? | We recommend that provision be made for general licenses for multiple exports to multiple destinations/end-users once the bona fides of the exporter are verified to minimize the number of licensing transactions, especially for high-volume exporters.<br><br>We further recommend clarification of the "types of exports" covered by this factor; establishment and publication of a country chart; and either deletion or further explanation of the "credit record of the export operator." The exporter credit record should be further defined as to relevancy, with |

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| | | 4) The term “relevant credit record of export operators” is not defined. It is not clear how this is relevant to export controls, how it will be evaluated, and whether it is a reference to the Corporate Social Credit System. It is also unclear what an exporter will need to submit in order to satisfy this factor. We suggest that the denial of an application should not be based on issues unrelated to export control. | standards for evaluation, and protection as a sensitive business record. |
| 14 | Article 14 If an export operator establishes an internal audit system for export control compliance, and the system works well, the SECADs may grant licensing facilitation measures such as a general license for the export of the related Controlled Items by such export operator. The specific measures will be provided by the SECADs. | We are happy to see that an Internal Compliance Program (ICP) deemed to be in good operation by the State Export Control Administrative Departments could qualify export operators for a general license. That would be of great value for high-volume exporters and would ease strain on the export licensing system for low risk exports. In future regulations, we hope to see clear criteria for what kind of internal compliance review system will be required to obtain a general license. | Detailed measures that establish the requirements and evaluation criteria of the ICP should be established and published as soon as possible after implementation of this law. These measures should make clear how the ICP will be evaluated, whether an audit will be conducted and if so by whom, and the criteria for evaluation.<br><br>We also recommend differentiating exporters based on the status and quality of their internal compliance programs, allowing more flexibility for an exporter with a high level of compliance.<br><br>Finally, if an organization meets the criteria to obtain a general license for export, there should also be a transition period or arrangement to facilitate continued exports from the time the general license arrangement is sought, to avoid disrupting ongoing business and supply chains. |

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| 15 | Export operators shall submit documents certifying end-users and end-use to the SECADs, and the related certifying documents shall be issued by a national or local government agency in the place where such end-use or end-users are located. | 1) China suppliers and contract manufacturers are usually at the upstream of the supply chain. In many existing supply chain models, the brand owner or overseas customer will want to protect its end-user or customer information from its suppliers and contract manufacturers. If an exporter needs to provide an end-user statement for each export transaction, it will be a significant burden on the exporter and create delay in the supply chain, thus negatively impacting China's export market.<br>2) Not every government issues end-use and end-user certificates and in some instances, the intermediate overseas customer will not provide the name of the end-user to its suppliers. A mandatory requirement for an end-user/end-use certificate or statement for every export will be unduly burdensome and disrupt established supply chains. It is not clear that this requirement applies only to licensed exports or all exports. | As written, this requirement seems to apply to all exports, and not just to controlled items. We recommend using language that limits the scope to controlled items, substituting "may" for "shall" and requesting such certificates only for specific transactions that are more sensitive or strategic in nature. It will also be helpful to clarify what kind of certifications of an end-user are acceptable. We suggest adding some examples of certification documents, like the contractual provision signed by the end-user.<br><br>In addition, we suggest accepting documentation provided by the end-user, during situations in which countries or regions do not issue end-use or end-user certificates.<br><br>We further request that authorities accept the brand owner or consignee's undertaking on non-WMD/nuclear proliferation instead of an end-user statement.<br><br>Finally, we request that required documents may be submitted in English. |

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| 16 | The end-users of Controlled Items shall undertake not to alter the end-use of the related Controlled Items or assign the related Controlled Items to any third party without the approval of the SECADs.<br><br>If an export operator or importer becomes aware of any possible change of the end-users or end-use, it shall immediately report to the SECADs as required. | 1) As China is a manufacturing powerhouse, there will be an overwhelming volume of transactions if re-transfer also requires approvals from the China export control administrative departments.<br>2) The required commitment is too broad in covering all exports of controlled items and will overly burden the State Export Control Administrative Departments.<br>3) It is also unclear whether the end-user should make this commitment to the export operator or State Export Control Administrative Departments. | We recommend removing Article 16. If the Article is still included, we suggest that these measures only apply to military items; that they exempt subsequent re-transfer goods of non-Chinese IP technology from the scope of control; and accept a brand owner/consignee undertaking on non-WMD/nuclear proliferation instead of an end-user statement.<br><br>If re-export remains in the scope of control, we propose a reporting obligation for the export operator (not importer) only if (1) the end-use is likely to be related to WMD/nuclear proliferation purposes or endangers national security; or (2) the new end-user is a listed restricted party. |
| 17 | The SECADs establish a risk management system for end-users and end-uses of Controlled Items, evaluate and review end-users and end-uses of Controlled Items, and implement a strict management of end-users and end-uses. | The timing and scope of evaluations and verifications for end-users and end-uses will be evaluated and verified is not clear as to timing and scope. We are also uncertain how the State Export Control Administrative Departments will coordinate with foreign governments if the risk management system includes on-site verification for foreign end-users. | We recommend clarifying whether the risk management will be an element of review for licensing.<br><br>We further recommend clarifying the timing and scope of the end-use/end-user verification process. The provision should state whether authorities will conduct on-site verifications for foreign end-users, and should delineate any necessary coordination with foreign governments. |

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| 18 | The SECADs shall establish a control list for importers and end-users that: (1) violate the requirements regarding the management of end-users and end-uses； (2) may endanger national security; or (3) use Controlled Items for terrorist purposes.<br><br>For importers and end-users that are included in the control lists, the SECADs may take necessary measures such as prohibiting or restricting the related deals relating to Controlled Items, ordering suspension of export of the related Controlled Items, and withholding export licensing facilitation measures.<br><br>Export operators shall not enter into any transactions with any importer or end-user that is included in the control lists in violation of the rules. | 1) Referring to “control list” in the first paragraph, we propose that these lists be published in English.<br>2) Referring to sub-paragraph (1), adding an importer or end-user to one of the control lists of violators due to violation of the commitment on the end-user is not in line with the current practice of the Chinese export market where exporters are at the beginning of the supply chain. | We recommend including more details regarding the development of the importer control list, that it be made publicly available so that companies can add the listed entities to their screening lists, and that a process by which a listed entity can be removed from the control list be established. The list should be published in advance so companies can update systems and procedures to perform appropriate due diligence.<br><br>With regard to the third paragraph, it should be clarified whether this is an absolute ban on any type of trade with the importers and end-users on the control list.<br><br>Finally, we suggest that authorities articulate requirements or procedures necessary for importers or end-users to be removed from this list. |
| 19 | When a shipper or customs broker of export goods seeks to export any controlled goods, it shall submit licensing documents issued by the SECADs to the customs for verification, and go through customs formalities in accordance with applicable government policies.<br><br>If a shipper of exported goods fails to submit licensing documents or certifying documents for any related licensing facilitation measures issued by the SECADs to the customs for verification, and the customs has evidence that the goods to be exported may be subject to export control, the customs shall | 1) We are unsure on what basis Customs would judge that a good for export “may be subject to export control.” Would this be based on Harmonized System classification?<br>2) There is a significant opportunity here for arbitrary detainment of goods, particularly with no timeframe specified for Customs/ State export control administrative departments to reach a conclusion. | We recommend adding: “When a dispute arises between Customs and the shipper about whether or not the exported goods fall under the scope of export controls, Customs should submit the organization’s identification to the State Export Control Administrative Departments.”<br><br>In addition, we suggest establishing a time limit for Customs and State Export Control Administrative Departments to reach a conclusion and complete their period of identification or questioning, to avoid the arbitrary detainment of goods for an indefinite period. |

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| | challenge the shipper on the goods to be exported; the customs may request appraisal by the SECADs, and shall handle the matter lawfully according to the appraisal results of the SECADs. During the appraisal or challenge period, the customs will not grant clearance to the exported goods. | | |
| 20 | No organizations or individuals shall provide any agency, shipping, delivery, customs clearance, third-party e-commerce trading platform and financial services for any export operator engaging in any export control violations. | | We recommend limiting the scope of this provision to avoid jurisdictional overreach. |
| 21 | When an export operator applies for export of dual-use items to the State's administrative department for the export control over dual-use items, it shall submit truthful related materials in accordance with laws and administrative regulations. | | We recommend publishing a list of required documents for export applications, so expectations of exporters are clear. |

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| 22 | The State's administrative department for the export control over dual-use items accepts applications for the export of dual-use items, and shall review the applications for the export of dual-use items in accordance with the provisions of this Law and administrative regulations either independently or by working with the related departments, and make a decision within a statutory period on approval or non-approval. If an approval decision is made, an export license shall be issued by the license issuing authority exclusively. | The statutory time frame is not specified. | We recommend publication of the statutory time frame for consideration of license applications. It would also be helpful to provide a web portal for applicants to check the status of their applications online.<br><br>Regarding the phrase "within a legally prescribed time limit," we suggest including a specific short time limit of 20 to 30 days.<br><br>Furthermore, we recommend that China consider license exceptions for intracompany transfer of goods and technology for repair/ testing and temporary exports. |
| 24 | An exporter of military items shall apply to the State's administrative department for the export control over military items for the review and approval of initiation of the project of export of military items, the project of export of military items and contract on export of military items in accordance with the control policies and the products' properties.<br><br>The initiation of major projects of export of military items, major projects of export of military items and major contracts on export of military items shall be reviewed by the State's administrative department for the export control over military items by working with the related departments, and submitted to the State Council and the Central Military Commission for approval. | The definition of what is to be considered "major" is not provided. | We recommend providing a more specific definition of "major projects." It would also be helpful to describe what thresholds are applicable to trigger review and approval. |

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| 25 | An export operator of military items shall apply to the State's administrative department for the export control over military items before exporting any military items.<br><br>When exporting military items, an export operator of military items shall submit the licensing documents issued by the State's administrative department for the export control over military items to the customs for verification, and go through the customs formalities in accordance with applicable government policies. | | We recommend publication of the requirements to obtain a military export license. |
| 26 | An export operator of military items shall engage an approved carrier for the export of military items to perform the transport and other services for the export of military items. The specific measures shall be provided by the State's administrative department for the export control over military items by working with the related departments. | | We recommend releasing specific detailed measures for the transport of military items, and suggest that industry leaders be consulted in developing the measures to ensure its practicability. |
| Chapter 3 | | Regulation | |

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| 28 | The SECADs shall lawfully supervise and inspect the activities regarding export of Controlled Items.<br><br>The SECADs may take the following measures against any suspected violation of any provisions of this Law: (1) entering the place of business or any other related site of the investigated person for inspection; (2) interviewing the investigated person, interested parties, or other related organizations or individuals, and asking them to provide explanation related to the investigated matters; (3) examining and duplicating the related documents, agreements, accounting books, business correspondence and other files and information of the investigated person, interested parties or other related organizations or individuals. (4) checking the delivery vehicles used for the export, preventing the loading of suspicious export items, and ordering the withdrawing of illegally exported items; (5) Confiscating and seizing the related items involved in the investigation; and (6) Examining the bank accounts of the investigated person;<br><br>To take the measures in paragraphs (5) and (6) above, the written approval of a person in charge of the SECADs is required. | It is not clear whether there is a difference between the measures permitted to "supervise and inspect" and those provided when investigating suspected violations of law. There are no details provided for specifically permitted measures to supervise and inspect, only for investigations. For investigations, there are rights that must be protected under the law. | We recommend that in executing routine supervision and inspection, entering the business premises, making copies of business records, seizing and detaining items and checking bank accounts should not be permitted without explicit protocols, details, and criteria regarding the conditions and circumstances that would justify the specified measures. Any such measures should require notice if there is no suspected violation of law.<br><br>Entering the business premises should only occur during normal working hours and should be limited to those of an exporting entity, suspected of exporting violations.<br><br>We further suggest that all the listed measures should require approval in writing by the State Export Control Administrative Departments, and only be executed if there is probable cause that a violation of the export control law has occurred. |
| 29 | The SECADs shall perform their duties in accordance with laws, and the related departments of the State Council, as well as local people's | 1) The difference between inspection, supervision, and investigation is not clear. | We recommend a definition be provided for supervision, inspection, and investigation as well as the circumstances under which each is |

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| | governments and their relevant departments, shall provide assistance therefor.<br><br>The SECADs shall, in accordance with laws, perform the regulatory, inspection, and investigation duties independently or by working with the related departments, and the involved organizations and individuals shall cooperate with rather than refuse or obstruct the performance of such duties.<br><br>The involved government departments and their employees shall be legally bound to keep any national secrets, trade secrets, personal privacy, and personal information that become known to them in the investigation confidential. | 2) It is not clear whether "commercial secrets" include proprietary business information.<br><br>3) The confidentiality provision should apply to the information contained in licensing applications, as well as information that becomes known during the supervision and inspection process, in addition to investigation. The current confidentiality provision is too narrow. | appropriate. Supervision and inspections should be limited to compliance-related supervision of export controls, and allowable measures be more circumscribed than for investigations of a suspected violation of export controls.<br><br>In addition, we recommend that a general confidentiality provision be included for state secrets, commercial secrets, personal privacy and personal information, and proprietary information that becomes known during the licensing application process, supervision, and inspection. The export control law, and regulations issued pursuant to it, should include specific protections for Confidential business information provided to the authorities for licensing. |
| 31 | Any organization and individual has the right to report any suspected violation of the provisions of this Law to the SECADs, and SECADs shall handle the report upon receipt thereof in a lawful and timely manner, and keep the identity of the reporting person(s) confidential. | This provision appears limited to third-party whistleblowers and does not seem to provide for voluntary self-disclosure. | We recommend that the provision be amended to include "truthfully report" to discourage false reporting to gain an anti-competitive advantage.<br><br>This provision should also include voluntary self-disclosure, which would greatly aid in supervision of export controls. The provision should be clear that companies are encouraged to self-disclose violations, and there should be a corresponding penalty mitigation to encourage such disclosures in case an exporter is able to do so. |

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| 32 | The SECADs shall cooperate and communicate with the other countries or regions and international organizations, etc. on export control in accordance with the international treaties concluded or ratified by China or on the basis of principles of equality and reciprocity.<br><br>Any provision of export control-related information by an organization or individual within the territory of the People's Republic of China to those outside of the territory of the People's Republic of China shall be in conformity with laws; in case of any possibility of endangering the national security, such provision of information is prohibited. | The term "export control related information" is not defined and may refer to "export controlled information" such that this provision relates to "deemed exports," i.e., the transfer of sensitive information (knowledge of know-how) by a PRC citizen or organization to foreign recipients within the PRC. | We recommend that if the intent is to control deemed exports, the term "export control related information" be defined or be substituted with "export-controlled information." |
| Chapter 4 | | Legal Liability | |
| 33 | If an export operator engages in any export of Controlled Items without obtaining the qualification for export operations with respect to relevant Controlled Items, [the authorities shall] issue a warning, order that the violation be stopped, confiscate any illegal income, and impose a fine that is greater than five times of and smaller than ten times of the illegal turnover if the illegal turnover is more than RMB 500,000, or a fine that is greater than RMB 500,000 and smaller than RMB 5 million if there is no illegal turnover or the illegal turnover is less than RMB 500,000. | On legal liabilities, there should be greater distinction in legal liabilities between administrative penalties and criminal penalties in this chapter. | We recommend that that provision be made for a voluntary disclosure mechanism with protection against penalties or significantly mitigated penalties in case an exporter is able to come forward and voluntarily disclose potential violations. We also suggest that there be potential penalty mitigation credit for companies who disclose errors in the normal course of their operations.<br><br>We recommend generally that a distinction be made between inadvertent errors that occur in the normal course of business operations, and more negligent or knowing violations that potentially threaten national security. The penalty ranges (from warnings and regulatory talks for otherwise compliant companies who |

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| | | | make a mistake to fines and penalties for more serious violations), should reflect that distinction, rather than only the value of the transaction to ensure deterrence but also to encourage efforts to comply by acknowledging them through lesser penalties for honest mistakes. |
| 34 | If an export operator has committed any of the following violations, [the authorities shall] order the violation to be stopped, confiscate any illegal income, and impose a fine that is greater than five times of and smaller than ten times of the illegal turnover if the illegal turnover is more than RMB 500,000, or a fine that is greater than RMB 500,000 and smaller than RMB 5 million if there is no illegal turnover or the illegal turnover is less than RMB 500,000; in serious cases, the export operator shall be ordered to suspend business for rectification, and its export operation qualification may even be revoked:<br><br>(1) exporting any Controlled Items without approval; (2) exporting any Controlled Items beyond the approved scope specified in the export license; or (3) exporting any Controlled Items that are prohibited from being exported. | | This provision should include a description of what would constitute a “serious” circumstance. The provision should clarify whether serious circumstances are limited to those that impact national security, proliferation, or terrorism, or if they involve deliberate and knowing conduct, involvement of senior level management, or systemic and widespread violations. This suggestion also applies to Articles 37 and 38. |

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| 36 | If any person provides any agency, shipping, delivery, customs clearance, third-party e-commerce trading platform, financial, and other services for any export operator in the circumstances of knowing such operator's engagement in export control violations, [the authorities shall] issue a warning, order that the violation be stopped, confiscate any illegal income, and impose a fine that is greater than three times of and smaller than five times of the illegal turnover if the illegal turnover is more than RMB 100,000, or a fine that is greater than RMB 100,000 and smaller than RMB 500,000 if there is no illegal turnover or the illegal turnover is less than RMB 100,000. | 1) This article is overly broad in two respects: first, the term "export operator engaged in illegal export activities" is not defined, so service providers may fear dealing with an otherwise compliant exporter who made a single inadvertent error, as well as an exporter with sustained illegal operations; second, the article refers to any services provided to an export operator, even unrelated to the actual export of goods. Only those services related to exports should be prohibited and penalized as this would otherwise be a total ban on working with the export operator. | Any penalty imposed on a service provider should be limited to the services related to the actual illegal export of goods. Accordingly, the words "related to the export of goods" should be added after describing the nature of the services to be provided to the exporter.<br><br>A definition of "knowing," limited to actual knowledge and involvement in facilitation of an export violation, would be helpful so that service providers who work with export operators but have no knowledge of an export violation and do not knowingly facilitate it are not penalized.<br><br>We suggest providing a clear guideline that specifies the obligations for a services provider versus an exporter. |
| 39 | For an export operator punished for any violation of this Law, as from the date when the penalty decision becomes effective, the SECADs may refuse to accept any export license application submitted by such operator within five years; any supervisors directly responsible for such violation or any other directly responsible persons may be prohibited from engaging in relevant export operation activities within five years, and any person who receives any criminal penalty for any export control violation shall not engage in relevant export operation activities during his/her lifetime. The SECADs shall include such export operator's violations of this Law into its credit record in accordance with laws. | This provision allows for a potential export licensing ban on export operators for up to five years and up to life for criminal violations on individuals who are directly involved or responsible. Since the decision essentially could put a company out of business or render an individual unemployable in certain fields, without recourse, it is important to note the different levels of severity in non-compliant behavior. The penalty in this article should only be applied proportionally to severe non-compliant behavior, as opposed to minor violations. | We recommend that standards be implemented for imposition of this penalty and that a process for reconsideration be adopted, with regular reviews during the period of the ban for possible suspension if the company has resolved the violation and instituted an effective internal compliance program.<br><br>With regards to liability for "any supervisors directly responsible for such violation or any other directly responsible persons," this personal liability should be applicable only in cases of wilful misconduct by the person violating this law.<br><br>In developing standards for punishment, we suggest that penalties |

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| | | | vary based on the level of severity of non-compliant behavior. Detailed implementing regulations should take this into account and prevent arbitrariness in government enforcement. |
| 41 | If a relevant organization or individual is dissatisfied with a decision of non-approval made by the SECADs, they may apply for administrative reconsideration lawfully. The decision of the administrative reconsideration is final. | 1) It will be helpful to clarify that other administrative activities under this law will follow the administrative law for remediation.<br>2) The only stated remedy for an unsatisfactory licensing decision is administrative reconsideration with no specified standards or process for review. | We recommend that the procedures for administrative reconsideration be consistent with the *Implementing Regulations of the Foreign Investment Law*, such that foreign-invested enterprises be permitted to use the "compliant settlement mechanism" to address disputes that may arise under the export control laws.<br>This provision should also outline specific standards and the process for review. |
| 42 | If any State functionary neglects his/her duties, plays favorites and commits irregularities, or abuses his/her authority or position in export control, such functionaries shall be punished in accordance with the law. | | We recommend the inclusion of "release or breach of confidentiality" as a punishable offense. |
| 43 | If any violation of this Law constitutes a crime, the person committing such violation shall be prosecuted for criminal liability in accordance with the law. | There is no clear explanation of what kinds of violations will be considered criminal. | This article would benefit from further clarification as to what would constitute a crime and what penalties would ensue from that determination under this law. |

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| 44 | An organization or individual outside of the territory of the People's Republic of China that violates the provisions of this Law in relation to administration of export control, hinders the performance of non-proliferation and other international obligations, or endangers the national security and interests of the People's Republic of China, shall be subject to investigation and legal liability in accordance with the law. | 1) The draft does not specify how China will enforce the law overseas. It is unclear what kind of behaviors will be considered to "endanger national security." We would like to get clarity on what kind of behaviors will be considered under this category.<br>2) This provision appears to extend the law extraterritorially, but it is not clear whether it covers foreign organizations and individuals, or has a required nexus to the PRC. | We recommend clarifying the extraterritorial reach of the export control laws, the required nexus to the PRC of the violations, and what kind of behaviors will be considered to endanger national security. We encourage China to establish and develop an extraterritorial provision/regime which is reasonable, transparent, and predictable.<br>We further recommend that the provision provide clear guidelines on what would construe legal liability for foreign organizations. |
| Chapter 5 | | Supplementary Provisions | |
| 45 | The transit, transshipment and through shipment, reexport of any Controlled Items or the export of any Controlled Items from bonded areas, export processing zones and other areas specially regulated by the customs and regulated bonded places such as regulated export warehouses and bonded logistics centers shall be governed by the applicable provisions of this Law. | 1) The Draft mentions "re-export" in the same context as transit, trans-shipment, pass-through, and export from special customs supervision areas. However, further explanation is expected, especially in the definition of "re-export", and how to exert controls over re-export.<br>2) The terms "transit," "transshipment," "transportation," and "re-export" are not defined in this law. These terms should be harmonized with those used in relevant Customs laws and regulations, to ensure enforcement consistency. | We recommend that the term "as defined in the relevant Customs laws and regulations" be added immediately after the undefined terms "transit," "trans-shipment," "transportation," and "re-export."<br>We also recommend that Article 2 be amended to include re-exports if the law is intended to cover re-exports, or if not, that the term "re-export" be deleted in Article 45.<br>We further suggest clarifying in this provision that (a) this law doesn't apply to the provision of any controlled Items by a Chinese company to its direct/indirect shareholders for corporate governance purposes regardless of the nationality of such shareholders; and (b) this law doesn't apply to any base IP and/or modified IP |

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| | | | developed based on such base IP (either of which might be related to the Controlled Items) provided by a Chinese company to the owner and/or licensor of the base IP regardless of the nationality of such owners and/or licensor, pursuant to the relevant IP license, co-development, engineering service, or confidential agreements. |
| 48 | Article 48 This Law shall come into force as of [DATE]. | | We recommend a grace period of 9 to 12 months before implementing any export control rule. This grace period will allow local and foreign companies to establish systems and procedures for export control. There should not be any fines or penalties imposed during the grace period. |