



China's First Measures Under New Export Control Law Target Encryption Products

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China's new *Export Control Law* (ECL) took effect on December 1, 2020. The next day, the Ministry of Commerce (MOFCOM), together with the State Cryptography Administration and the General Administration of Customs (China Customs), released a circular entitled *Announcement on the Issuance of Import Approval List, Export Control List and Related Administrative Measures for Commercial Encryption* (Circular)¹. The circular includes the first list of products and technologies (Initial List) subject to restrictions under the new ECL, focusing on commercial encryption products and technologies.

MOFCOM has yet to issue general measures implementing the ECL, but the initial list may offer a glimpse into its phased enforcement. MOFCOM, China Customs, and other relevant authorities may periodically announce new trade controls on targeted categories of controlled items, superseding existing measures. responsibility for processing export license applications and approval may be gradually centralized under MOFCOM, the lead authority under the ECL. for companies seeking to establish or localize their china export control compliance systems, MOFCOM's 2007 *Guidance on Establishing Internal Export Control Mechanisms*² provides a useful foundation.

The initial list is not china's first restriction on the import and export of commercial encryption products. The PRC encryption law, which became effective on January 1, 2020, specifically provides for import licensing procedures and export control measures on commercial encryption products and calls for relevant authorities to develop control lists of such items.

This Circular includes:

1. a list of four types of items requiring import approval;
2. a list of nine types of products/equipment as well as related software and technologies that will be placed under export control;
3. procedures for the application of import and export licensing approvals.

The Circular will come into effect on January 1, 2021, and will replace prior circulars issued in 2009, 2012, 2013 and 2019.

Under current practice, exporting commercial encryption products requires an export license from the cryptography administrations at the provincial level (including Shenzhen city) or above. The circular replaces those procedures for items on the initial list:

- I. MOFCOM will now be the competent authority to review the applications and issue the requisite export license, though it may consult with the cryptography administrations and other relevant authorities such as china customs.
- II. The former commercial cryptographic products export license will be replaced by the requisite import and export

license for dual-use items and technologies³.

III. The *Administrative Measures for the Import and Export Permits of Dual-use Items and Technology*⁴ shall govern matters relating to the license application and approval for the covered products.

For any questions about this new circular and the handling of items under the initial list, or any inquiry relating to PRC export control regime, please contact our export controls and economic sanctions practice professionals across offices in Asia.

¹ Guanyu Fabu Shangyong Mima Jinkou Xuke Qingdan Chukou Guanzhi Qingdan he Xiangguan Guanli Cuoshi de Gonggao [《关于发布商用密码进口许可清单、出口管制清单和相关管理措施的公告》], issued by the Ministry of Commerce, the State Cryptography Administration and the General Administration of Customs, December 2, 2020, effective January 1, 2021. Available in Chinese

² Shangwubu Guanyu Liangyong Wuxiang he Jishu Jingying Qiye Jianli Neibu Chukou Kongzhi Jizhi de Zhidao Yijian [《商务部关于两用物项和技术经营企业建立内部出口控制机制的指导意见》], issued by the Ministry of Commerce, August 29, 2007. Available in Chinese

³ Liangyong Wuxiang he Jishu Jinchukou Xukezheng [两用物项和技术进出口许可证].

⁴ Liangyong Wuxiang he Jishu Jinchukou Xukezheng Guanli Banfa [《两用物项和技术进出口许可证管理办法》], issued by the Ministry of Commerce and the General Administration of Customs, December 31, 2005, effective January 1, 2006. Available in Chinese

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