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China's Trade Controls: The Evolution & Development

In recent years, China has planned to introduce its export control law, which aims to consolidate and streamline its numerous but discrete export control legislation. People keep asking about the status of the draft law which is a good sign as it demonstrates that economic operators are keen to learn and comply with the upcoming law. However, in parallel with this enthusiasm, there appears to be a common misunderstanding. Currently, China has no export control enforcement because its export control law is still in draft phase, so there is no requirement for there to be export control compliance work in practice. In fact, many violations are currently occurring out of this misunderstanding of the existing regulations.

Therefore, an understanding of the evolution and development of China's trade control regime is beneficial as this helps to recognise and control the risks and facilitate trade compliance efforts when conducting business with or within China.

Within the context of dual-use and military transactions, China not only controls the export but also the import. Therefore, the phrase "trade control" is more accurate within a Chinese environment. Whereas "export control" or "strategic control" are the phrases commonly used in other countries or regions.

China has been trading with the rest of the world for a long time. Throughout history, the Silk Road¹ in Han Dynasty and the maritime expeditions of Admiral Zhenghe² in the Ming Dynasty are two of the most commonly known

voyages. The latest archeological findings indicate that the exchange of goods, technologies and even human beings between China and the rest of the world might have occurred as early as 200 BC. Today, China is one of the leading merchandise traders in the world. Therefore, how China regulates and controls its foreign trade has profound implications for others.

The People's Republic of China was established in 1949³, and the development of its trade control regime can be divided into four phases.

Phase One: 1949 - 1978

The earliest legislation made by the People's Republic of China, which contains provisions concerning export control, is the Common Program of the Chinese People's

¹ <https://baike.baidu.com/item/%E4%B8%9D%E7%BB%B8%E4%B9%8B%E8%B7%AF/434>

² <https://baike.baidu.com/item/%E9%83%91%E5%92%8C/118869>

³ <https://baike.sogou.com/v70268786.htm?fromTitle=%E6%96%B0%E4%B8%AD%E5%9B%BD%E6%88%90%E7%AB%8B>

Political Consultative Conference⁴, which was adopted on the 29 September 1949.

For example, Article 37⁵ of the Common Program deals with Commerce, which states that “all legitimate public and private trade shall be protected. Controls shall be exercised over foreign trade and the policy of trade protection shall be adopted.”

In 1950, the central government enacted provisional regulations on the administration of foreign trade⁶, stipulating that “importers and exporters shall obtain licenses/approvals from the Central Government or the provincial foreign trade authorities.”⁷

However, due to a series of social campaigns in the 1950s, this legislation did not play a significant role in the field of export controls. For instance, as a result of the socialist transformation, by the end of 1956, the nationalisation of foreign trade companies had been established.⁸ Consequently, foreign trade was monopolised by a number of state-owned enterprises. That way, foreign trade was directly operated by the government and regulated mainly by administrative measures rather than by statutory laws.

Phase Two: 1979 - 1993

On 31 January 1979⁹, the Shekou Industrial Zone of Shenzhen was founded, becoming the first experimental area in China to “open up”. That year, four Special Economic Zones (SEZ) were established in South China, namely Shenzhen, Shantou, Xiamen, and Zhuhai. Foreign direct investment and foreign trade was encouraged in the zones where there was more autonomy and less control. For example, a foreign invested company located in a SEZ could be granted the foreign trade right and import raw materials and export finished products freely.

Furthermore, the socialist market economy was defined and tested in China. Gradually and cautiously, the whole of China was in transition from a centrally-planned economy to a market-driven one.

However, the most essential part of a market economy was missing which was a complete and authoritative legal system. On the one hand, the state-owned enterprises were privatised and separated from the government, and on the other hand, unleashed enterprises had to face an institutional legal vacuum in a newly established market economy.

This was particularly true in the field of export controls where administrative instructions ceased while regulatory legislation was not yet ready. Driven by economic goals, missiles, conventional arms, and nuclear technologies were exported by enterprises for profit. In certain cases, China was criticised and blamed by the international community for its proliferation behaviour which had a negative impact on its reputation.

Phase Three: 1994 - 2001

As described in the second phase, China was confronted with critics and even sanctions from the international community because of its ignorance of an export control regime. In response to these criticisms, China realised that serious measures needed to be enacted in order to change the situation. Therefore, the development of a legal framework for export controls was given top priority.

China enacted its first foreign trade law in 1994¹⁰, and revised the Customs law in 2000¹¹, which were two primary pieces of legislation pertaining to export controls.

Other examples include:

- the Regulations on the Administration of Controlled Chemicals in 1995¹²;
- the Regulations on the Administration of Arms Export in 1997¹³; and
- the Regulations on the Nuclear Export Control in 1997.¹⁴

China also attempted to repair its image by improving the openness and transparency of its export controls system. For instance, China for the first time in history published

⁴ <https://news.qq.com/a/20111116/000896.htm>

⁵ https://news.qq.com/a/20111116/000896_1.htm

⁶ <http://history.mofcom.gov.cn/wp-content/uploads/2016/11/1127.png>

⁷ <http://history.mofcom.gov.cn/?datum=%e3%80%8a%e5%af%b9%e5%a4%96%e8%b4%b8%e6%98%93%e7%ae%a1%e7%90%86%e6%9a%82%e8%a1%8c%e6%9d%a1%e4%be%8b%e5%ae%9e%e6%96%bd%e7%bb%86%e5%88%99%e3%80%8b%e4%b8%ad%e5%a4%ae%e4%ba%ba%e6%b0%91%e6%94%bf%e5%ba%9c1>

⁸ <https://baike.baidu.com/item/%E4%B8%AD%E5%9B%BD%E7%9A%84%E7%A4%BE%E4%BC%9A%E4%B8%BB%E4%B9%89%E6%94%B9%E9%80%A0/15636653?fromtitle=%E7%A4%BE%E4%B8%BB%E4%B9%89%E6%94%B9%E9%80%A0&fromid=5608039>

⁹ <http://history.mofcom.gov.cn/?specialtwo=ggkfyldwmyfqh>

¹⁰ http://www.npc.gov.cn/wxzl/gongbao/2017-02/21/content_2007588.htm

¹¹ <http://www.customs.gov.cn/customs/302249/302266/302267/1880958/index.html>

¹² http://www.gov.cn/gongbao/content/2011/content_1860782.htm

¹³ http://www.mod.gov.cn/policy/2009-07/14/content_3100970.htm

¹⁴ <http://www.mofcom.gov.cn/article/swfg/swfgbf/201101/20110107350738.shtml>

the Arms Control, Disarmament and Non-proliferation White Paper in 1995¹⁵ and started to publish the National Defense White Paper regularly from 1998.¹⁶

Moreover, China started to pay attention to the international export control norms and tried to align its efforts. For example, China signed the Nuclear Non-Proliferation Treaty in 1992¹⁷, the Chemical Weapons Convention in 1997¹⁸, and joined the Zangger Committee in 1997.¹⁹

Phase Four: 2002 - present

After resuming its WTO membership in 2001²⁰, China expedited the process of modernising its legal framework. Thousands of pieces of legislation had been reviewed, revised or abolished according to their applicability with additional legislation being drafted and added to the current system.

For example, in the realm of export controls, several important regulations were published in 2002 including:

- The Missile and Related Items and Technology Export Control Regulations²¹;
- The Certain Chemicals, Related Equipment and Technology Export Control Regulations²²;
- Biological Dual-use Items, Related Equipment and Technology Export Control Regulations²³; and

- The Arms Export Control Regulations were revised in 2002²⁴ to include a newly developed control list.

In order to facilitate the enforcement of the controls, China introduced a number of licenses that cover a wide variety of items and technologies in trade, formulated essential control lists and amended civil and criminal penalties for different kinds of violations.

In short, China in this phase made great progress towards building a robust export controls system.

However, the patchwork of numerous and discrete export control laws hampered the compliance efforts of conducting business and the enforcement efforts of government. Therefore, China has been longing for a significant reform to improve the situation. Eventually, the draft export controls law was released in 2017²⁵ to solicit public comment. After amendments were made, the revised draft was released in 2019²⁶ for a second round of public commentary. We are looking forward to entering phase five after the law is formally enacted in the future.

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¹⁵ http://www.gov.cn/zhengce/2005-09/01/content_2615754.htm

¹⁶ http://news.mod.gov.cn/headlines/2015-05/26/content_4586669.htm

¹⁷ <http://news.sina.com.cn/c/2003-12-03/21361248858s.shtml>

¹⁸ http://www.china.com.cn/aboutchina/txt/2009-04/24/content_17665337.htm

¹⁹ <http://news.sina.com.cn/c/2003-12-03/21361248858s.shtml>

²⁰ http://www.gov.cn/test/2009-10/10/content_1435051.htm

²¹ http://www.gov.cn/gongbao/content/2002/content_61742.htm

²² <http://www.chinanews.com/2002-10-20/26/234031.html>

²³ http://www.gov.cn/gongbao/content/2002/content_61806.htm

²⁴ http://www.china.com.cn/zhuanti2005/txt/2002-10/21/content_5220201.htm

²⁵ <http://www.chinanews.com/cj/2017/06-16/8252882.shtml>

²⁶ https://www.guancha.cn/politics/2019_12_30_529979.shtml

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