

New Rules Govern Exports of Dual-Use Products and Technology to China

Effective June 19, 2007, the United States Department of Commerce initiated new regulations governing the export of certain U.S. products and technology (which include both U.S.-origin products and technology, as well as foreign-developed products and technology incorporating U.S. "content") to end-users in China. See 72 Federal Register 33646 (June 19, 2007). These new regulations are extremely broad in scope; they cover products, technology and information subject to U.S. jurisdiction. Accordingly, all U.S. companies conducting or considering business in China should evaluate these regulations to evaluate the impact on their business. Recent enforcement actions involving illegal exports to China suggest that such transactions rank high on the Government's list of enforcement priorities and underscore the importance of familiarity with the new rules.

The new rules have three primary effects:

1. Tighter restrictions on certain products and technologies destined for a military end-use in China.

The primary purpose of the new rules is to impose new export licensing requirements on the export to China of certain dual use U.S. goods or technology that heretofore would not have required a license. This requirement applies to certain specifically delineated products and technologies when the exporter has "knowledge" that the items are destined for "military end-use." A "military end-use" includes incorporation of a product or technology into any product or class of products that are listed on the U.S. Munitions List or under the international Wassenaar Agreement. "Military end-use" also includes use in the operation, development, or production of military systems.

The products or technology subject to the new licensing requirements include the following, which are identified in the regulations and in an accompanying BIS "Fact Sheet" by ECCN:

- Carbon fiber and prepegs for use in composite structures;
- Certain hydraulic fluids containing synthetic hydrocarbon oils;
- Certain bearings and bearing systems;
- Numerically controlled machine tools;
- Machine tools for generating optical quality surfaces;
- Certain dimensional measuring or inspection equipment;
- Certain oscilloscopes;
- Flash X-Ray machines and components of pulsed power systems;
- High performance computers (exceeding 0.5 Teraflops)
- Program validation software and software allowing for the automatic generation of source code;
- Telecommunications equipment capable of operating outside normal temperature ranges;
- Radio equipment using quadrature-amplitude modulation;
- Phase array antennae;
- Certain lasers;
- Certain optical sensing fibers;
- Certain airborne communications and inertial navigation systems;
- Certain avionics production and test equipment;

- Underwater camera systems, submersibles, underwater survival gear, and other underwater equipment;
- Certain military aircraft;
- Aero Gas turbine engines.

Increased restrictions on the products and technologies set forth above does not eliminate any pre-existing restrictions on exports of other products. Thus, other products or technologies destined for chemical/biological, nuclear, or missile-based end-uses will continue to require export licenses. Additionally, military hardware identified as “major weapons systems” (such as battle tanks, armored combat vehicles, combat aircraft, missile systems, offensive space weapons, and night vision technology) will require an export license when destined for a military end-use in China.

2. Reduced administrative burden in obtaining End-User Statements from the Chinese Ministry of Commerce. Recognizing that expanding the licensing requirements for certain products and technologies will increase the administrative burden on U.S. companies, the new rules attempt to ameliorate that burden somewhat by reducing the requirement for official End-User Statements from China’s Ministry of Commerce. Under former rules, U.S. companies needed to obtain an official End-User Statement for licensed sales over \$5,000 in order to help the U.S. government ensure that products or technologies would not be diverted contrary to U.S. policies. However, the new rules raise this threshold requirement to \$50,000 for most transactions, which should significantly reduce the mandatory administrative burden on some U.S. companies in connection with modestly sized transactions.

3. Easier licensing for certain “trusted customers” in China. The new rules also create procedures by which Chinese companies may be listed as “validated end-users” – civilian companies with a proven track record that present less risk of unauthorized diversion of U.S. products and technologies. Inclusion on the validated end-user list will allow a company to receive certain U.S.-controlled items without obtaining an export license, which would otherwise be required. Currently, processing an application for an export license through the Department of Commerce can delay shipment for weeks at a time. While the Department of Commerce hopes to have a preliminary validated end-user list assembled within a month, there are no companies that have currently been identified as “approved.” Chinese companies or subsidiaries of U.S. or foreign companies operating in China may submit an application for inclusion on the list. Details for such applications are included in the new rules.

Questions concerning the new China rules, as well as how best to comply with U.S. export control laws, can be directed to:

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