

KING & SPALDING LLP

CHINA'S EXPORT CONTROLS AND ENCRYPTION REGULATIONS

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CHINA'S INTERNATIONAL COMMITMENTS

- **International Atomic Energy Agency**
- **Non-Proliferation Treaty**
- **Chemical Weapon Convention**
- **Comprehensive Test Ban Treaty**

STATUTORY FRAMEWORK (1)

- *Foreign Trade Law:*
 - **Art. 16: Government may restrict or prohibit imports or exports for reasons including “national security” or when required by international agreements**
 - **Art. 17: Government may, in interest of “international peace and security” take any “necessary” measure with respect to import or export of goods or technology relating to:**
 - **Fissionable materials**
 - **Arms, ammunition, and implements for war**
 - **Art. 18: Authorizes publication of lists of goods or technologies restricted for import or export**

STATUTORY FRAMEWORK (2)

- ***Customs Law***
 - Legal basis for inspection of goods and technology prior to import or export
- ***Administrative Punishments Law***
 - Establishes penalties for violations
- ***Criminal Law***
 - Establishes penalties for violations

REGULATORY FRAMEWORK (1)

- ***Measures For The Administration Of Import And Export Licenses For Dual-Use Goods And Technologies***
 - **Art. 3 establishes MOFCOM supremacy in administration of licensing for dual use goods and technologies**
 - **Art. 5 provides that MOFCOM Quota and License Administrative Bureau will process license applications, with assistance from provincial and municipal DOFCOMs**

REGULATORY FRAMEWORK (2)

- ***Catalogue Of Commodities Under The Administration Of Import And Export License Of Dual-Use Goods And Technologies***
 - **Does NOT specify how covered items are controlled, establish different levels of control, or give any indication to what countries covered items may or may not be exported**
 - **Nuclear goods and technologies**
 - **Dual-use nuclear goods and related technologies**
 - **Dual-use biological agents and related equipment and technologies**
 - **Monitored and controlled chemicals**
 - **Certain chemicals and related equipment and technologies**
 - **Missile and related equipment and technologies**

KEY ORGANIZATIONS (1)

- **MOFCOM**
 - **Primary agency for overseeing exportation of dual-use goods and technologies; also has a role in enforcement**
 - **Export Control Division 1 - inbound**
 - **Export Control Division 2 - outbound**
- **General Administration Of Customs**
 - **Reviews licenses prior to export, may delay shipments**
- **Ministry Of Foreign Affairs**
 - **Reviews foreign policy, national security, and treaty implications**

KEY ORGANIZATIONS (2)

- **National Development & Reform Commission**
- **Atomic Energy Authority**
- **Ministry Of Public Security**
- **Public Security Bureau**
- **People's Liberation Army**

PROCEDURES

- **Register With MOFCOM As An Exporter Of Sensitive Goods And Technologies**
- **Obtain Certificate Of Authority (“Electronic Key”)**
- **Submit Online License Application**
- **Submit Hard Copy Of Application, Including End-User Certificates And Technical Specifications To Local MOFCOM Offices**
- **Present License And Supporting Documents To GAC**

IMPLEMENTATION AND ENFORCEMENT

- **Violations May Lead To:**
 - **Criminal prosecution**
 - **Administrative sanctions, including warnings, confiscation of illicit proceeds, fines, and the suspension or revocation of foreign trade licenses**
- **In 2004, MOFCOM Administratively Sanctioned 2 Firms For Exporting Missile-Related Goods And Technologies, Including Fines Of “Millions” Of RMB**
- **In 2006, MOFCOM Suspended The Registration Certification For Shanghai Smart Chemicals Co., Ltd, Effectively Prohibiting The Company From Applying For Licenses**
- **In 2008, MOFCOM Fined Zibo Chemet Equipment 450,000 RMB (\$60,000)**

ENCRYPTION REGULATIONS

FRONT-PAGE ISSUES

- **On August 27, 2007 China Notified WTO That It Would Require Certification Of 13 Information Security Products**
 - **Website recovery, firewalls, routers, smartcards, data backup and recovery, operating systems, databases, anti-spam, intrusion detection, network vulnerability and audit products**
- **On March 3, 2008, The Certification And Accreditation Administration Announced Implementation Of Rule Effective May 1, 2009, With A One-Year Transition Period**
- **Similar Effort In 2006 When China Tried To Mandate Use Of WAPI Wireless Encryption Standard**
- **Similar Effort In 2001 With Required Disclosure Related To Encryption Systems**

REGULATORY FRAMEWORK (1)

- ***Commercial Encryption Regulations***
 - Designate State Encryption Management Commission (SEMC) as responsible for regulation of use of encryption in China
 - Art. 13: Import and export of encryption products and equipment must be approved
 - Art. 14: Only products approved by SEMC may be used in China
- ***Rules On The Production Of Commercial Encryption Products***
- ***Rules On The Sales Of Commercial Encryption Products***
- ***Rules On The Scientific Research Of Commercial Encryption Products***

REGULATORY FRAMEWORK (2)

- ***Rules On The Use OF Commercial Encryption Products***
 - Govern use by Chinese persons, including legal persons
 - Foreign Invested Enterprises must get SEMC approval for use of encryption products or technology
- ***Measures On the Use Of Commercial Encryption Products In China by Foreign Organizations And Individuals***
 - Nearly identical to rules for Chinese persons

PROCEDURES

- **Applications To Use Foreign-Made Encryption Products Or Technology Are Filed With Local SEMC Office**
- **Applications Forwarded To Central SEMC Authorities**
- **If Approved, SEMC Will Issue A Certificate Valid For 3 Years**

PENALTIES

- **Confiscation Of Offending Products**
- **Forfeiture Of Illegal Income**
- **Fines Ranging From 1 To 3 Times Value Of Illegal Income**
- **Possibility Of Criminal Prosecution**