CHINA’S EXPORT CONTROLS AND ENCRYPTION REGULATIONS

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OVERVIEW

CHINA’S EXPORT CONTROL REGIME
  International Commitments
  Statutory Framework
  Regulatory Framework
  Key Organizations
  Procedures
  Implementation And Enforcement

CHINA’S ENCRYPTION REGULATIONS
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  Regulatory Framework
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  Penalties
EXPORT CONTROLS
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

  - Website recovery, firewalls, routers, smartcards, data backup and recovery, operating systems, databases, anti-spam, intrusion detection, network vulnerability and audit products


- 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