

China's Draft Export Control Law Submitted for Second Review

中国《出口管制法》草案提交二审

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Trade Controls 贸易管制

China has published a near-final draft of a new Export Control Law that, if enacted as drafted, would build upon China's existing export control regulations, which are scattered across multiple laws, administrative regulations, and implementation rules, with the goal of creating a unified export control system to promote China's commitment to nonproliferation and national security interests. Notably, the new draft retains the key features of the earlier drafts and would make the Export Control Law apply extraterritorially.

中国刚刚发布了出口管制法的最新稿。如正式出台，出口管制法将在现有的各项相关法律法规的基础上建立起一个统一的体系，以促进中国政府履行防扩散的国际义务以及保护中国国家安全和利益。值得注意的是，新草案保留了原先版本的主要特点并将《出口管制法》的适用范围扩展到中国境外。

The first and second drafts of the PRC Export Control Law ("Draft Law"; see our summaries [here](#) and [here](#)) were published for public comment in June 2017 and December 2019. After revisions to the drafts, on June 28, 2020, a new draft of the Export Control Law was submitted to the Standing Committee of the National People's Congress for a second review ("Second Review Draft"). Compared to the draft published in December 2019, the Second Review Draft makes the following changes of note: (1) makes the Export Control Law apply extraterritorially, (2) removes a requirement for exporters to implement an internal audit system, (3) seems to consolidate the lists of controlled items into a single list, (4) removes the time limit for reviewing and approving licenses, (5) adds regulations on the handling of an expired temporary control, (6) enhances review of end-users and end-uses, and (7) further clarifies Customs' authority over export controls. A side-by-side comparison of the December 2019 draft with the June 2020 Second Review draft is available [here](#).

《中华人民共和国出口管制法》草案第一稿和第二稿（“草案”；点击[此处](#)及[此处](#)查阅我们的概要）分别于2017年6月和2019年12月发布并征求公众意见。在对草案进行了相应修改之后，2020年6月28日，《出口管制法》的新稿（“二审稿”）提交十三届全国人大常委会进行了第二次审议。相比2019年12月发布的第二稿，本次二审稿值得关注的改动包括：（1）引入了出口管制法的域外适用，（2）移除了要求出口经营者实施一个内部审查系统的要求，（3）似乎将管制物项的多个清单合并为一个清单，（4）移除了审批许可的时间限制，（5）增加了临时管制措

施期满后的处理规定，（6）加强了对最终用户最终用途的核查，以及（7）进一步明确了海关在出口管制中的职权。点击[此处](#)查阅二审稿与 2019 年 12 月稿的条文对比。

Key Changes from the December 2019 Draft 二审稿对 2019 年 12 月稿的主要修改

Extraterritorial Application. The Second Review Draft makes the Export Control Law apply extraterritorially. According to Article 44 of the Second Review Draft, organizations and individuals outside of China who, in violation of the export control regulations of the Export Control Law, obstruct the fulfilment of international obligations such as non-proliferation and damage China's national security and interests, shall be held legally accountable. The draft does not provide further detail, although some commentators have linked the new provision to the extraterritorial reach of the export regimes of other countries, such as the United States.

域外适用。 二审稿引入了出口管制法的域外适用。根据二审稿第四十四条，中华人民共和国境外的组织和个人，违反本法有关出口管制规定，妨碍防扩散等国际义务的履行，危害中华人民共和国国家安全和利益的，依法追究其法律责任。二审稿并未提供域外适用的细节，但有评论认为此规定与其他司法辖区（例如美国）出口管制制度的域外管辖效力有关系。

Internal Audit System. Earlier drafts had required exporters (“export operators”) to implement an “internal audit system for export control compliance.” The Second Review Draft appears to remove the explicit requirement for each exporter to implement such a system, instead giving exporters whose systems “work well” the possibility of a general license for certain controlled items.

内部审查系统。 较早的草案要求出口经营者实施一个“出口管制合规审查系统”。二审稿似乎移除了对每一个出口经营者必须实施该系统的明确要求，取而代之的是给予系统运行“良好”的出口经营者对某些管制物项的通用许可的可能性。

Control List(s). Earlier drafts referenced separate lists for dual-use items, military items, and nuclear items. The Second Review Draft removes the references to separate lists, suggesting that controlled items may be consolidated into a single list.

管制清单。 较早的草案提及分开的两用物项清单、军品清单、和核清单。二审稿删除了提及分开的清单的文字，表明管制物项可能将被并入一个单独的清单。

Time Limits for Reviewing License Applications. Earlier drafts gave the agency 45 business days to review and approve/deny a license application, with the option for an extension of 15 business days under “special circumstances.” The Second Review Draft removes that clause completely. (Implementing regulations, which are typically issued after a law is enacted, may address deadlines.)

审核许可申请的时间限制。 较早的草案给予相关部门 45 个工作日的时间审批许可申请，并在“特殊情况”下可以延长 15 个工作日。二审稿删除了相关条文。（法律发布后往往会制定的实施规范可能会涉及限期问题。）

Oversight over End-Users and End-Uses. Earlier drafts of the law imposed upon the national export controls management department an obligation to establish a risk management system for end-users and end-uses. Article 17 of the Second Review Draft further requires regulators to “inspect [and] enhance the management of end-users and end-uses.”

对最终用户及最终用途的监督。草案规定国家出口管制管理部门有义务建立最终用户和最终用途风险管理制度。二审稿第十七条进一步要求监管机构“核查，加强最终用户和最终用途管理。”

Temporary Controls. Previous drafts allowed the national export controls management department to impose a temporary control upon unlisted items for a period of no more than two years, but the previous drafts failed to specify what occurred after two years. Article 9 of the Second Review Draft provides that an evaluation is promptly conducted before the expiration of a temporary control, and based on the results of that evaluation, a decision is be made to cancel the temporary control, extend the temporary control, or add the items under temporary control to the export control list.

临时管制。之前的草案允许国家出口管制管理部门对管制清单以外的物项实施不超过两年的临时管制，但未说明两年期满后的处理方法。二审稿第九条规定临时管制实施期限届满前应当及时进行评估，根据评估结果决定取消临时管制、延长临时管制或者将临时管制物项列入出口管制清单。

Customs' Export Control Powers. According to Article 19 of the Second Review Draft, if a shipper fails to submit to Customs for inspection the export controls license, and Customs has evidence showing that the items to be exported may be subject to export controls, Customs shall raise questions with the shipper. Customs can request the national export controls management department to verify, and Customs shall make decisions based on the results of the verification. During the verification or questioning period, Customs cannot release the items to be exported.

海关的出口管制职权。根据二审稿第十九条，出口货物的发货人未向海关交验由国家出口管制管理部门颁发的许可证件，海关有证据表明出口货物可能属于出口管制范围的，应当向出口货物发货人提出质疑；海关可以向国家出口管制管理部门提出组织鉴别，并根据国家出口管制管理部门作出的鉴别结论依法处置。在鉴别或者质疑期间，海关对出口货物不予放行。

Notably, despite a number of comments from business organizations, the Second Review Draft does not clarify a number of key questions from the earlier drafts. (See our summaries [here](#) and [here](#).)

值得注意的是，二审稿并未就商业组织对之前的草案提出的一些问题进行澄清。（点击[此处](#)和[此处](#)查阅我们的总结。）

Next Steps

后续

Public comments are due by July 31. Based on past experience, we anticipate that the third and final review of the law likely will occur at the August 2020 meeting of the Standing Committee of the National People's Congress. While it is possible that additional changes will be made in the final version, for most laws, the differences between the Second Review Draft and the final version are typically minor.

二审稿征求意见的截止期限为7月31日。根据经验，我们预计全国人大常委会将可能于2020年8月对三稿（一般即是最终稿）进行审阅。相比二审稿，最终稿可能还会有一定的修改，但差距通常不会很大。

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If you have questions concerning the material discussed in this alert, please contact any of the following Covington attorneys based in China:

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