China Releases Consolidated Dual-use Items Control List

December 2024

Following the release of the Regulations on the Export Control of Dual-use Items (ECR), the China's Ministry of Commerce (MOFCOM), as anticipated, published the Dual-use Items Export Control List (Control List) which will take effect together with the ECR on December 1, 2024. Please refer to our previous article about the China Export Control Regulations.
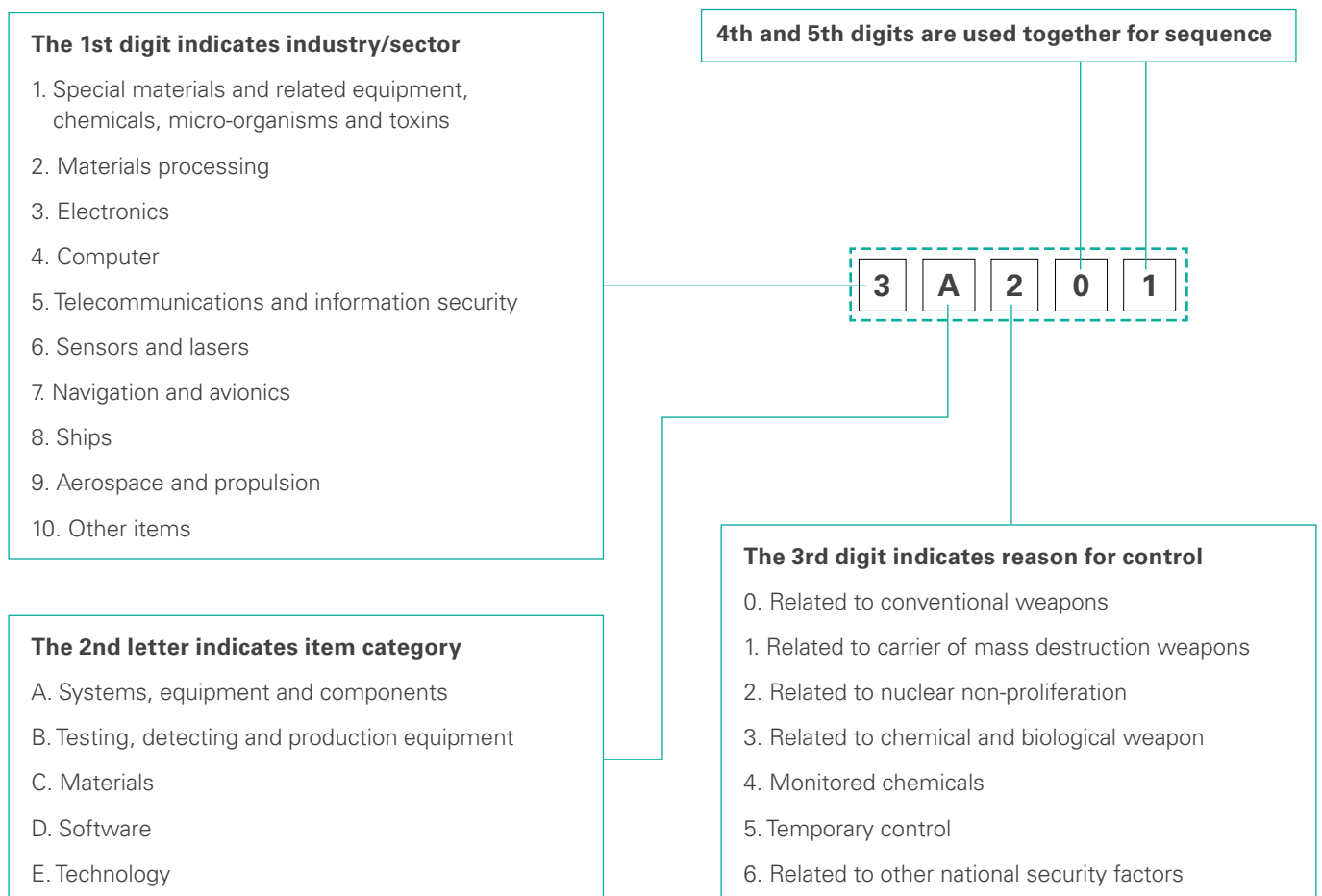
The Control List adopts an Export Control Classification Number (ECCN)-like coding system and clarifies several important concepts, as well as application of the ECR and the Control List.

1. Consolidated List and New Coding System

First of all, as expected, the Control List consolidates the existing 10 plus control lists that are published under different regulations.

More importantly, the Control List creates a five-character coding system that is similar to the ECCN under the US Export Administration Regulations (US EAR), and the EU list of dual-use items. The meanings of the five characters are also similar to ECCN and EU control list, which will make it much easier to reference and compare in international trade.

Under the current rules, the export control lists do not have a numbering system. To facilitate control in practice, MOFCOM and the General Customs jointly issued an export control catalog that references to the customs HS code. The HS codes, however, do not accurately describe the control items, nor can they refer to technology or software. The Control List establishes a standalone referencing system that no longer ties with HS code. Each item is assigned to a five characters code that is arranged as follows:

The 1st digit indicates industry/sector

1. Special materials and related equipment, chemicals, micro-organisms and toxins

2. Materials processing

3. Electronics

4. Computer

5. Telecommunications and information security

6. Sensors and lasers

7. Navigation and avionics

8. Ships

9. Aerospace and propulsion

10. Other items

4th and 5th digits are used together for sequence

3 A 2 0 1

The 2nd letter indicates item category

A. Systems, equipment and components

B. Testing, detecting and production equipment

C. Materials

D. Software

E. Technology

The 3rd digit indicates reason for control

0. Related to conventional weapons

1. Related to carrier of mass destruction weapons

2. Related to nuclear non-proliferation

3. Related to chemical and biological weapon

4. Monitored chemicals

5. Temporary control

6. Related to other national security factors

As introduced in the article about Chinese Export Control Law unlike the EAR, the Chinese export control applies only to specifically listed items, and not generally China-origin items. Therefore, there is no EAR99-like number under the Control List.

Further, while the third digit is "reason of control", China does not have a similar tool like "Commerce Country Chart". China's control is not country specific.

2. Important Clarification and Interpretation

The Control List makes several important interpretations of the application of the ECR and various definitions, such as technology, technical support, public domain, production, development and use, "specifically designed for". Some of the concepts are currently scattered in a few existing sector-specific regulations. A few general application interpretations are summarized as follows:

- **Primary component** – The Control List clarifies that if an item incorporates a controlled item that (i) constitutes a primary component of such product, and (ii) may be removed or dismantled and used for other purpose, such item (even not specifically listed) is also subject to control. This is a commonly asked question that is unclear under the current rules. The Control List, however, does not further interpret what "primary component" means.

- **Operation technology** – An export license for any controlled item covers a license for the minimum technology necessary for the installation, operation, maintenance or repair of such item for the same end-user. This is similar to the concept of "operation technology" under the EAR. Unlike the EAR, however, the Control List does not further define "minimum technology".

- **Technologies not subject to control** – The Control List clarifies that a technology is not subject to control if it is (i) in public domain, or (ii) used in fundamental research or (ii) necessary knowledge for ordinary patent application. These concepts look similar to those under the EAR but worded differently.

- **Software not subject to control** – The Control List clarifies that a software is not subject to control if it is (i) in public domain, or (ii) generally available to the public by means of (a) being sold at retail selling points without restriction or (b) designed for installation by the user without further substantial support by the supplier. It seems to match the "mass market" definition under EAR, but slightly different. The Control List also fails to indicate "and" or "or" between (a) and (b), i.e., whether (a) and (b) should both be met, or just one of them.

3. No Expansion of Control Parameters

Despite the new coding system, MOFCOM confirmed in a press conference that the Control List did not amend or expand the current scope of controlled items or control parameters. This first draft of Control List in only aimed to consolidate the existing lists, create a new coding system and clarifies application of the Control List. The Control List will be amended, from time to time in the future, to update the scope of controlled items.

Contacts

George N. Grammas
Partner, Washington DC
T +1 202 626 6234
E george.grammas@squirepb.com

Ju (Lindsay) Zhu
Partner, Shanghai
T +86 21 6103 6303
E lindsay.zhu@squirepb.com

José María Viñals
Partner, Madrid/Brussels/Geneva
T +34 91 426 4840
E josemaria.vinals@squirepb.com

squirepattonboggs.com