



June 25, 2007

China Trade to Feel Impact of New U.S. Restrictions

Effective June 19, 2007, the Department of Commerce finalized a new rule to its export regulations that will have a significant impact on high tech industries that trade with the People's Republic of China ("PRC").

Long awaited by U.S. industry, the new restrictions sweep across several industry sectors, to include, among others, the computer, telecommunications and aerospace industries. A new military end-use control requires an export license and other documentation for thirty-one commodities, software and technology when the exporter has knowledge or is informed that such items are destined for a "military end-use", as defined in the regulations, in the PRC. This is significant because the specified thirty-one items previously did not require a license for export to the PRC. However, after reviewing public comments and conducting an interagency review of the Commerce Control List, Commerce determined that these items have the potential to advance the military capabilities of the PRC, "contrary" to U.S. foreign policy interests, and thus require licensing controls.

The categories of products affected include, among others, materials, chemicals, microorganisms and toxins; materials processing, such as certain bearings and bearing systems; electronics design, development and production; computers; telecommunications; sensors and lasers; navigation and avionics; marine; and propulsion systems, space vehicles and related equipment.

The rule also implements a new license review policy for certain items controlled for chemical and biological weapons proliferation, nuclear nonproliferation, and missile technology. Under this policy, Commerce applies a presumption of denial for any license application to export items that would make a direct and significant contribution to the PRC's military capabilities. Commerce provides an illustrative list of military capabilities in a new regulation supplement.

Finally, the rule requires exporters obtain End-User Statements (changed from End-User Certificates) from the PRC Ministry of Commerce for all transactions that require a license to PRC for any reason and that exceed a total value of \$50,000.00. Commerce raised the threshold dollar amount from \$5,000.00 as stated in the proposed rule.

Industry reaction to the rule is resigned in nature. Although the stated policy behind the rule is to facilitate exports to legitimate civil end-users in the PRC, some fear whether the rule will have the effect of shifting sourcing away from U.S. technology firms to non-U.S. companies that do not have to deal with U.S. export control laws.

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