

Descriptions for Drafting Export Control Law of the People's Republic of China (Draft)

I. Necessity of legislation

(I) Implementation of export control is an important means to effectively maintain China's security and development benefit. In order to prevent the risk of spreading weapons of mass destruction, conventional weapons, as well as relevant dual-use items and technology throughout the world, it is necessary to accelerate the legislation of export control, fully exert the important role of the Export Control Law in such aspects as national security maintenance, anti-terrorism and anti-violence, protection for important strategic rare resources, and fulfillment of international obligations, so that the national security and development benefit could be effectively protected.

(II) Legislation of export control is the active demand for proper control and completion of legal system. The existing export control regulations and rules in China were issued a long time ago with low legal hierarchy, and such problems as insufficient investigation and law enforcement permission in working practice, in addition to some cases being impossible to be investigated, affect the authority of export control. Legislation of export control is desiderated to fill up the legal lacuna, complete the legal system, and boost the control.

(III) Legislation of export control is the fundamental guarantee to fulfill international obligations and strengthen international cooperation. China is the permanent member of the UN Security Council and also the contracting state of such international agreements as *Treaty on the Non-Proliferation of Nuclear Weapons*, *Chemical Weapons Convention* and *Biological Weapons Convention*. Legislation is required to complete the fulfillment mechanism and build the image of a responsible great power. Besides, connection of export control legislation with international rules shall be promoted with strengthening the international

cooperation.

II. Guiding Principle of Legislation

(I) Obey the overall national security concept and insist on coordination of security maintenance and economic development.

Properly handle the relationship between the export control and the national security maintenance, economic development guarantee, and protection of legitimate interest of administrative counterpart.

(II) Persist in the problem orientation and enhance the pertinence.

Comprehensively sort the insufficiencies of the existing legal system and actual legislation demand, complete the legal system of export control, and build the legal system of China-specific export control.

(III) Insist on scientific and democratic legislation.

Follow the law of economic, social, and technical development, and comprehensively ask for all-round opinions, use international and domestic mature methods and advanced experience for reference, and fulfill the international conventions and treaty obligations.

III. Design for Main System of Legislation Draft

(I) Take the implementation of overall national security concept as the main line.

The draft clearly defines the guiding ideology of implementing the overall national security concept in such leading clauses as purpose of legislation and control principles. "Maintenance of national security and development benefit" is regarded as the purpose of legislation, and "compliance with the overall national security concept and persistence in coordination of security maintenance and economic development" are defined as the principles of export control.

(II) Build the scientific export control management system as the core.

Firstly, scientific and complete control list system has been stipulated. National

department in charge of export control jointly with relevant departments study and formulate the macroscopic and uniform export control policy to guide the export control, comprehensively evaluate such factors as national security, technical development, international market supply, international obligations, and influence on trading and industrial competitiveness according to the export control policy, as well as formulate and adjust the export control list based on scientific research and demonstration. In order to meet the timeliness of export control and fulfill the international obligations as resolutions of the Security Council, the draft specifies the temporary control and embargo measures, supplements the control list system and constitutes the complete control system. Formulation of export control policy, formulation and adjustment of control list, and implementation of temporary control and embargo shall be submitted to the State Council or the State Council and Central Military Commission for approval.

Secondly, comprehensive and rigorous license management system has been stipulated. In the entity, the qualification management is performed for the operators that are engaged in the export of controlled items through such systems as monopoly and filing; in the object, the license management is undertaken for the controlled items through the control list system; in the end-use and end-user aspect, the management on end-use and end-user of the controlled items has been reinforced to build more rigorous license management system.

(III) Regard the enhancement of law enforcement supervision and punishments as the guarantee.

Firstly, the draft grants necessary law enforcement permission for competent departments. For such problems as insufficient permission of competent department regarding investigation and law enforcement existing in the working practice of export control, the draft grants necessary law enforcement permission and means for national department responsible for export control, such as sealing up and detaining relevant involved items and enhances the degree for investigation and law enforcement of export control.

Secondly, the draft increases the varieties of unlawful acts against export control. Legal liabilities have been stipulated for such illegal behaviors as export without

licenses, avoidance behavior, and illegal intermediary behavior with the enhancement of punishment for illegal behaviors.

Thirdly, the draft enlarges the punishments for unlawful acts and enhances the deterrent force for law enforcement of export control. For example, the draft has specified the punishments like temporarily suspending or revoking the enterprises' monopoly qualification, and stipulated that the credit information of punished export operators will be included into the national credit information sharing platform for publicity to the society. National department in charge of export control may not accept the submitted application for export license within 3 years.

(IV) Deem the improvement of enterprises' awareness of law violation prevention as the supplement.

Enterprises are the first defense line of export control. For the export operators to conveniently obey the Export Control Law and reduce the illegal risk, the draft has set up the provisions about compliance facilitation of export operators through multiple clauses and focused on improving the enterprises' awareness of law violation prevention.

Firstly, the consulting mechanism has been stipulated for export operators. Before export, the export operators may consult the national department in charge of export control for the items to be exported belonging to controlled items or not; the expert consultation mechanism has been established to provide the expert authentication opinions for the definition of controlled items; and the export operators may obtain the services relating to export control through participation in relevant chambers of commerce and associations.

Secondly, the license facilitation system has been stipulated for export operators. The state encourages the enterprises to build the internal compliance mechanism of export control and may grant corresponding license convenience like general license.

Thirdly, the administrative guidance system has been stipulated for export operators. National department in charge of export control will issue the industrial

instructions and optimum operation guidance about export control, and lead the enterprises for standardized operation.

Fourthly, the measures for illegal risk prevention has been set up for export operators. National department in charge of export control may take such measures as issuance of warning letters and regulatory talks, and remind the export operators to prevent the illegal risk.

(V) Pay attention to connection with international rules, and embody the forward-looking and openness of legislation.

Firstly, the application range of export control is expanded to "dual-use items, military products, nuclear products, and other state-related items like cargoes, technologies, and services".

Secondly, international established practice is adopted in the definition of dual-use items, including the dual-use items relevant to conventional weapons.

Thirdly, such license management means as license exception and license convenience with such provisions as inspection on end-users and end-use have been added.

(IV) Strengthen the international exchange and cooperation, and build the image of responsible great power.

Firstly, strengthening the international exchange and cooperation has been specified. The draft specifies that the national department in charge of export control shall enhance the international exchange and cooperation about export control and actively join the formulation of international rules.

Secondly, fulfilling the international obligations and building the image of responsible great power have been specified. The draft regards the performance of such international obligations as nonproliferation as one of purposes of legislation and stipulates that relevant licensing procedures shall obey the international obligations undertaken by the People's Republic of China and the special licensing procedures regarding export control specified in external promise.