



## Bush Administration Launches Review of Export Control Policy Toward China

The U.S. Commerce Department—through its regulatory policy division at the Bureau of Industry and Security—recently announced a major review of U.S. policy concerning exports to China of dual-use goods and technology that could have significant military applications. The review is an expansion of the Administration's current effort to develop a new "catch-all" regulation that would restrict exports of U.S. products to military end-users in China and about 20 other countries. The Administration is considering applying the draft regulation to countries that are subject to United Nations arms embargoes as well as to countries such as China that are under a U.S. arms embargo, but not under a United Nations arms embargo.

More importantly, the Administration has signaled an interest in reviewing other aspects of U.S. export control policy toward China that might lead to stricter license review policies and procedures for exports to China. The review reportedly will cover all exports to China of dual-use goods and technologies, even those that are not destined for military end-users.

### THE CATCH-ALL CLAUSE

The proposed catch-all regulation is still under review by the Executive Branch. The regulation could require licenses for exports to military end-users of items such as personal computers and certain microprocessors and avionics that previously could have been shipped to China and other countries without licenses. Many business groups, including the U.S. Chamber of Commerce, have raised objections to any U.S. unilateral controls that are more restrictive than controls imposed by U.S. trading partners. Business groups have asked that any new rules be consistent with rules implemented by members of other multilateral export control arrangements, that the controls be limited to those goods and technologies identified by the government as directly and significantly contributing to new military capabilities, and that the rules explicitly identify items and foreign entities targeted by the new controls.

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## INDUSTRIES AFFECTED

Nearly every company that exports goods or services could be affected by these proposed new regulations. Particularly affected would be companies that export dual-use products to China. Those companies may wish to engage with the Departments of Commerce, Defense, and State to assure the adoption of sensible export control policies and regulations.

## ASSISTANCE ON EXPORT CONTROL MATTERS

Arnold & Porter LLP has an extensive and sophisticated export control and trade sanctions practice. We advise clients on whether licenses are necessary, on threatened and actual enforcement proceedings, and in the development of U.S. government policies and regulations. We also help companies develop and implement export compliance programs to ensure that any transfers to China and other countries are fully consistent with U.S. national security objectives, and we advise on export control and trade sanctions matters in connection with due diligence and other aspects of M&A transactions involving exporters of goods and services. We practice before the Departments of Commerce, State, and Treasury (Office of Foreign Assets Control).

More broadly, doing business in China presents many unique challenges. We are experienced in advising and assisting clients in meeting those challenges, which range from pure commercial interests to U.S. national security and political concerns. For example, we recognize the human rights scrutiny that China is currently under by the U.S. government and the complex issues that scrutiny may raise for companies doing business with or exporting to China. We assist companies in handling these issues as they arise in foreign countries, and in the Congress, the Executive Branch, and federal agencies.

Finally, we also advise American subsidiaries in the U.K. and Europe through our offices in London and Brussels.

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