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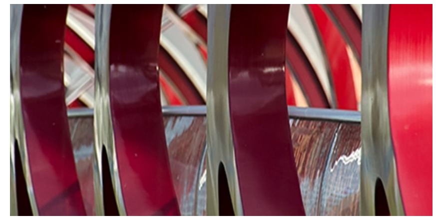

News & Types: Client Advisories

China's Recent Export Control Blocking Rules: The Latest Paper Tiger

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By: Asa W. Markel

Practices: Commercial, Competition & Trade

China’s Ministry of Commerce (“MOFCOM”) issued its latest blocking statute against U.S. export controls at the beginning of this year. MOFCOM’s new Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures (“Blocking Rules”) (MOFCOM Ord. 1/2021) are designed to make it illegal in China to comply with U.S. export controls, since U.S. export controls include an arms embargo against China, and embargoes against Huawei and several other Chinese tech companies. The Blocking Rules allow the Chinese government to order Chinese companies to not comply with certain other countries’ export control rules. Chinese companies will also be able to sue their non-Chinese business partners for damages due to the non-Chinese companies’ continued compliance with the forbidden export controls.

Non-U.S. companies are understandably concerned about the new Blocking Rules. However, the U.S. Government and courts have never recognized foreign blocking statutes. Moreover, the Chinese Blocking Rules are quite ineffectual at combating U.S. export controls. Unlike blocking statutes in Canada and the European Union, which neutralize any efforts to freeze or seize assets of businesses and individuals in those jurisdictions, the Chinese Blocking Rules cannot stop the U.S. Government from blacklisting foreign companies that violate U.S. export controls. What this means is that a company from a third country (such as Japan or Germany) faces a choice between avoiding possible civil liability to its Chinese customer for continuing to abide by U.S. export restrictions and being cut off entirely from the supply of U.S. technology items if the U.S. Government determines that the company has violated U.S. export laws. For many companies, losing access to U.S. technology will be far more detrimental than civil liability to one or more Chinese customers.

For additional information, please contact Asa Markel or any other member of Masuda Funai’s Commercial, Competition & Trade Practice Group.