

論美國出口管制條例修正與烏俄戰爭出口管制措施對出口

人責任之影響

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摘要

美國於 2018 年將國家經濟安全納入出口管制改革法 (Export Control Reform Act, ECRA) 之國家安全範疇後，新增新興科技及基礎科技兩種被管制項目，擴大出口清單之管制面向。出口管制制度傳統上以規範軍事使用之相關科技及貨品為主，然而隨著科技的演變，軍事使用與軍民兩用項目之區分界線日益模糊。美國對出口管制改革法之變革不僅影響出口管制科技項目之內涵，也影響到出口人責任。出口人不得違反出口管制條例 (Export Administration Regulations, EAR) 之規範，且需要依照條例向主管機關申請輸出許可證。隨著受管制科技項目的增列，美國出口人之責任不斷被提高，也影響到美國貿易夥伴的法律遵循義務。

本文從出口管制之架構出發，先討論出口管制制度之三大核心規範：出口管制清單、出口人責任、出口管制法規遵循，接著從近年來美國出口管制法規條例之修正及 2019 年美國聯邦快遞 (FedEx Corporation) 對美國商務部 (U.S. Department of Commerce) 提出之訴訟，分析目前出口人所承受之責任。另一方面，美國、歐盟及其他國家在俄羅斯軍事入侵烏克蘭後，對俄羅斯進行多項經濟制裁，並以限制俄羅斯取得科技及相關產品為目的，全面向俄羅斯進行科技項目的出口管控。美國依其出口管制條例下的商業管控清單 (Commerce Control List)、軍事終端使用者及用途 (military end-use and end-user) 限制、實體清單 (Entity List)、外國直接貨品原則 (Foreign-direct Product Rule) 對俄羅斯採取出口管制措施，此舉除擴大美國軍商兩用出口管制項目，更影響到需要遵循法規的出口人。本文亦將從烏俄戰爭引起的本次出口管制條例法規修正中，討論全球出口管制聯盟 (Global Export Controls Coalition) 之形成。

關鍵字：出口管制改革法、出口管制條例、出口人責任、外國直接貨品原則、
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Abstract

In 2018, the United States passed the Export Control Reform Act (ECRA) that served to tie the economic interests of the United States closer with its security interest by through identifying emerging technology and fundamental technology that it would include into its export control measures. Export control regimes have traditionally been focused on the control of military-use goods and technology, but as technology have evolved, the line between military-use and dual-use items have begun to blur. The impact that ECRA has brought not only influences the technology that it seeks to control, but has impact on the extent of exporter liability. Exporters are held liable for not following the Export Administration Regulations (EAR), and they need to apply for export license as the regulations mandate. As technologies subject to control continues to increase, the liability imposed on exporters also expands, inadvertently influencing the regulatory compliance capabilities of the United States trading partners.

The paper starts from the structure of export control and discusses the three core principles related to the export control regime: Export control lists, exporter liability, and export regulation compliance. The paper then moves on to discuss the amendments made to EAR and the lawsuit between FedEx Corporation and the United States Department of Commerce in analyzing the impact that these lawsuits have on exporter liability. On the other hand, the United States, European Union, and other countries have imposed economic sanctions against the Russia after the Ukraine invasion, and in order to restrict Russia from obtaining the relevant technologies, technology items have been restricted from being exported to Russia. The United States used EAR's Commerce Control List (CCL), military end-use and end-user restrictions, Entity List, and foreign-direct product rule to impose export control restrictions against Russia. This increased the items subject to United States dual-use export control and influences the liability for exporters. The paper will look at the Russia and Ukraine conflict and the EAR amendments to discuss the formation of the new Global Export Controls Coalition.

Keywords: Export Control Reform Act, Export Administration Regulations, Exporter liability, Foreign-direct Product Rules, FedEx v. U.S. Department of Commerce