

No.29

Measures for the Administration on Import and Export License for Dual-use Items and Technologies were discussed and adopted by the Ministry of Commerce and the General Administration of Customs. It is hereby promulgated and shall enter into force as of the date of January 1, 2006.

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Director-General of the General Administration of Customs, Mu Xinsheng

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Measures for the Administration on Import and Export License for Dual-use Items and Technologies

Chapter I. General Provisions

Article I. These Measures are formulated in accordance with the provisions in the Foreign Trade Law of the People's Republic of China, the Customs Law of the People's Republic of China and relevant administrative regulations for the purposes of guaranteeing national security and public interests, of fulfilling the obligations in the international treaties and conventions that China has concluded and joined, and of strengthening the administration on import and export license for dual-use items and technologies.

Article II. "The administrative regulations" as mentioned in these Measures refer to Regulations of the People's Republic of China on Control of Nuclear Export, Regulations of the People's Republic of China on Export Control of Nuclear Dual-use Goods and Related Technologies, Regulations of the People's Republic of China on Export Control of Missiles and Missile-Related Items and Technologies, Regulations of the People's Republic of China on Export Control of Dual-use Biological Agents and Related

Equipment and Technologies, Regulations of the People's Republic of China on the Administration of Controlled Chemicals, Regulations of the People's Republic of China on the Administration of Precursors and Chemicals used in Production of Narcotic Drugs and Psychotropic Substances, and Measures on Export Control of Certain Chemicals and Related Equipment and Technologies.

The dual-use items and technologies as mentioned in these Measures refer to the items and technologies controlled by the aforesaid administrative regulations.

Article III. The Ministry of Commerce shall be in charge of the nationwide administration of the import and export license for dual-use items and technologies, responsible for formulating measures, regulations and regimes for the administration of the import and export license for dual-use items and technologies, for supervising and inspecting the implementation of measures for the administration of the import and export license for dual-use items and technologies, and for granting penalties on the violations.

Article IV. The Ministry of Commerce shall, in cooperation with the General Administration of Customs, formulate and promulgate the Controlling List of the Import and Export License for Dual-use Items and Technologies (please refer to Annex I, and hereinafter referred to as the Controlling List). And the Ministry of Commerce and the General Administration of Customs may make readjustments on the Controlling List and promulgate them in the form of announcement.

Article V. Authorized by the Ministry of Commerce, the Quota and License Administrative Bureau (hereinafter referred to as the License Bureau) of the Ministry of Commerce shall be nationwide in charge of the unified administration and guidance of the issuing of the import and export license for dual-use items and technologies, and it shall be responsible to the Ministry of Commerce.

The License Bureau and the provincial competent departments of commerce authorized by the Ministry of Commerce (hereinafter referred to as the issuing authorities) shall be responsible for the issuing of the import and export license for dual-use items and technologies; under the unified administration from the License Bureau, the provincial competent departments of commerce shall, within their authorized areas, be responsible for the issuing of the import and export license for dual-use items and technologies. And the Name List of the Authorities Responsible for the Issuance of the Import and Export

License for Dual-use Items and Technologies (please refer to Annex II) is annexed thereafter.

Article VI. An import or exit license for dual-use items and technologies shall be applied for, no matter in what form, the dual-use items and technologies subject to the Controlling List are import or export, passing through the territory of the People's Republic of China, transfer, and transportation of (please refer to Annex III. for the pattern of the license).

The antecedent provisions shall be applicable to the in-and-outs of dual-use items and technologies between the areas without the territory of the People's Republic of China and such customs specially-supervised zones and bonded localities as bonded zones and export processing zones etc.

The in-and-outs of dual-use items and technologies between the areas within the territory of the People's Republic of China and such customs specially-supervised zones and bonded localities as bonded zones and export processing zones etc., or between the aforesaid customs specially-supervised zones and bonded localities need no import or exit license for dual-use items and technologies.

Article VII. The exporter and importer, when dealing import and export of dual-use items and technologies, shall present to the customs authorities his/her import or exit license for dual-use items and technologies, upon which, the customs authorities concerned shall, in accordance with the provisions in the Customs Law, accept the declaration and handle the formalities of examination and clearance.

Article VIII. In accordance with the provisions in relevant administrative regulations, where the exporter knows or should know or receives notices from relevant administrative authorities of the State Council that his/her items and technologies to be exported have the risk of being used in weapons of mass destruction and their related means of delivery, an export license shall be applied for towards the items and technologies concerned, whether included in the Controlling List or not, and an export license for dual-use items and technologies shall be handled in accordance with these Measures.

In case that the exporter, when dealing export, finds that his/her items and technologies to be exported have the risk of being used in weapons of mass destruction and their related means of delivery, he/she shall timely report to relevant administrative authorities

of the State Council and actively cooperate to adopt measures to cease the function of the contract.

Article IX. The exporter and importer shall initiatively present to the customs authorities his/her import or exit license for dual-use items and technologies, and the legal liabilities arising from the exporter's failure to do so shall be assumed by the exporter himself/herself.

The customs authorities have the power to doubt whether the imported or exported commodities of the importer and exporter belong to the category of dual-use items and technologies, and the importer and exporter shall, as stipulated, apply to relevant administrative authorities in charge for an import or export license, or apply to the commerce authorities in charge for the issuing of relevant attestation indicating that the aforesaid commodities do not belong to the controlled category; and the provincial competent departments of commerce shall accept the application and put forward treatment opinions, which then shall be submitted to the Ministry of Commerce for examination and decision. The customs authorities shall handle relevant formalities for such importer or exporter as fails to present his/her import or export license for dual-use items and technologies or relevant attestation (please refer to Annex IV. for its pattern) from the Ministry of Commerce.

Article X. These Measures shall be applicable to the administration of the import and export license for temporally-controlled dual-use items and technologies.

Chapter II. The Application and Issuance of the Import and Export License for Dual-use Items and Technologies

Article XI. The importer or exporter shall, after acquiring the document of approval from relevant administrative authorities in charge, apply, upon this document concerned, to the local issuing authorities for the import or export license for dual-use items and technologies (the enterprise controlled by the central authorities in Beijing shall apply to the License Bureau for the license):

i. The document of approval for the import and export of nuclear, nuclear dual-use items,

dual-use biological agents, related chemicals, missile-related items, precursors and chemicals used in production of narcotic drugs and psychotropic substances, and computers shall be the approval sheet for the import or export of dual-use items and technologies issued by the commerce authorities in charge, hereinto, the handling of relevant formalities for the export of nuclear materials shall be based upon the document of approval from the Commission of Science, Technology and Industry for National Defense.

The application of the foreign-funded enterprise for the import or export license shall be based upon the Approval Sheet of the Ministry of Commerce for the Foreign-funded Enterprise on the Import/Export of Precursors and Chemicals used in Production of Narcotic Drugs and Psychotropic Substances.

ii. The document of approval for the import/export of controlled chemicals shall be the approval sheet for the import/export of controlled chemicals issued by the State Leading Group Office for the Implementation of the Convention on the Banning of Chemical Weapons, and the importer/exporter of controlled chemicals shall apply to the License Bureau for the import/export license for dual-use items and technologies.

Article XII. The export of dual-use items and technologies in the forms of international communication, exchange, cooperation, donation, assistance, service etc. shall be regarded as normal export, and the exporter shall, as stipulated, apply for the export license, and an export license for dual-use items and technologies shall be handled in accordance with these Measures.

Article XIII. The application of the import/export license for dual-use items and technologies may be advanced through the Internet, and when import/export license for dual-use items and technologies is applied for, these documents as follows shall be submitted:

- i. Relevant document of approval as stipulated in Article XI. of these Measures; and
- ii. The original copy of the official letter (letter of introduction) of the importer/exporter, the effective identity certificate of the receiver of the importer/exporter, and the application form for the import/export license for dual-use items and technologies submitted through the Internet.

With regard to such special circumstances as that the applicant/receiver is of different

locality from the issuing authorities, etc., as result of which, other person needs to be entrusted to apply/receive the import/export license for dual-use items and technologies, the entrustee shall submit the original copy of the official letter of entrust (thereinto the reason for entrust and the identity of the entrustee shall be specified) issued by the importer/exporter and the effective identity certificate of the entrustee.

Article XIV. The issuing authorities, after receiving the document of approval (including electronic text and data) and relevant documents issued by relevant administrative authorities in charge and checking for faults, issue the import/export license for dual-use items and technologies within 3 work days.

Article XV. The import license for dual-use items and technologies shall be subject to the mechanisms of "one license, more uses" and "one license to one customs", and such words as "not used for once only" shall, at the same time, be printed in the remark column of the import/export license for dual-use items and technologies.

The export license for dual-use items and technologies shall be subject to the mechanisms of "one license, one use" and "one license to one customs". In case that the export license for the same commodity subject to the same contract needs to be handled lot by lot, the exporter shall, upon application, submit documents of approval of corresponding quantity for the export of dual-use items and technologies issued by relevant administrative authorities in charge. And the number of lots for the same turn of application shall not exceed 12 at most.

The mechanism of "one license, more uses" refers to that such license may be used for more than once but less than twelve times within its term of validity and that the customs authorities shall sign on each imported volume of goods on the column of "Customs Clearance Remark" at the back of such license; the mechanism of "one license, one use" refers to that such license may only be used once upon declaration; and the mechanism of "one license to one customs" refers to that such license may only be used for declaration upon one customs.

Article XVI. The import/export license for dual-use items and technologies is of four copies in duplicate, among which, the first copy is used for the customs authorities to handle formalities, the second copy for the customs authorities to keep record and check, the third copy for the bank to handle settlement of exchange, and the fourth copy for the

issuing authorities to keep record.

Article XVII. The importer/exporter, when applying for the import/export license for dual-use items and technologies, shall act according to the facts and practice no fraud, and such fraudulent and illicit means as using counterfeit contracts and documents are strictly prohibited in obtaining the import/export license for dual-use items and technologies.

Chapter III. Treatment for Special Cases

Article XVIII. The exceeded volume of the large and/or bulk dual-use items subject to the mechanism of "one license, one use", upon customs declaration, shall not be above 5% of the given volume in the export license for dual-use items and technologies. With regard to the large and/or bulk dual-use items subject to the mechanism of "one license, more uses", each actual import volume of them shall be deducted from the total licensed volume, and when the last import volume under the same license undergoing customs declaration, the exceeded amount shall be calculated according to the actual remaining licensed volume, which shall be within 5% of the given upper limit for exceeded volume.

Article XIX. With regard to the items on display for the exhibitions in the areas without the territory of the People's Republic of China, the exporter shall, upon the document of approval issued by the examination and approval authorities in charge of economic and trade exhibitions in the areas without the territory of the People's Republic of China, apply, as stipulated, for the export license for dual-use items and technologies, and such license shall be handled in accordance with these Measures.

With regard to the not-for-sale items on display, such words as "not-for-sale items on display" shall be specified in the remark column of the export license for dual-use items and technologies. And the exporter shall, within 6 months as of the end of the exhibitions, transport exactly the not-for-sale items on display concerned into the territory of the People's Republic of China, and the customs authorities shall verify and cancel these items concerned upon the exit documents. Under special circumstances, a deferment may be applied for to the customs authorities, and such deferment shall not be above 6

months at most.

Article XX. Such sample goods or experimental samples belonging to the category of dual-use items and technologies as are to be transported into the territory without the People's Republic of China shall be regarded as normal export, and the exporter shall apply, as stipulated, for the export license for dual-use items and technologies, and such license shall be handled in accordance with these Measures.

Article XXI. The precursors and chemicals used in production of narcotic drugs and psychotropic substances and potassium permanganate carried about by the entry-exit personnel shall be subject to the provisions in the Regulations of the People's Republic of China on the Administration of Precursors and Chemicals used in Production of Narcotic Drugs and Psychotropic Substances, accepting supervision and control from the customs authorities.

Article XXII. Another provisions, if existing, for the administration of such specially-supervised exported dual-use items and technologies as the parts and components for civil aviation etc. shall be abided by.

Article XXIII. Relevant prerequisites shall be necessary for the exporter dealing with such dual-use items and technologies as involved in the state-owned trade management and the commodities subject to export quota.

Chapter IV. Supervision and Inspection

Article XXIV. The import/exit license for dual-use items and technologies shall be exclusively used by the applicant of such license.

No import/exit license for dual-use items and technologies may be sold, transferred, altered, forged or changed.

Article XXV. The import/exit license for dual-use items and technologies shall be used within the approved term of validity, and shall be automatically invalidated when the term of validity expires, and no clearance may be granted by the customs authorities.

Article XXVI. The term of validity of no import/exit license for dual-use items and technologies may, in general, exceed 1 year.

The import/exit license for dual-use items and technologies may be used transannually but with a term of validity to March 31 of the next year; and a license, if the term of validity expires, may be reissued by the issuing authorities in accordance with the term of validity of the former license.

Article XXVII. Once an import/exit license for dual-use items and technologies is issued, no unit or individual may alter the contents of such license.

Where there is necessity to alter the contents of such license, the importer/exporter shall, within the term of validity of such license, reapply to relevant administrative authorities in charge for the permit of import/export, and apply, upon the former license and the new document of approval, to the issuing authorities for the import/exit license for dual-use items and technologies.

Article XXVIII. The importer and consignee as specified in the import license for dual-use items and technologies shall be consistent with the dealing unit and consignee unit specified in the customs declaration form for imported goods; and the exporter and consignor as specified in the export license for dual-use items and technologies shall be consistent with the dealing unit and consignor unit specified in the customs declaration form for exported goods,

Article XXIX. In case that such an import/exit license for dual-use items and technologies as has been received is lost, the importer/exporter shall timely report in written form to relevant administrative authorities in charge, to the issuing authorities of the lost license and to the customs authorities at such port as specified in the lost license, and publish in the national economic newspapers and periodicals a "lost property notice", upon which, the issuing authorities shall cancel this lost license after ascertaining that it has not been used in customs clearance, and reissue a new license in accordance with the contents of the former license.

Article XXX. The importer/exporter shall well keep the documents for the import/export of dual-use items and technologies and relevant data for five years, ready for the inspection of relevant administrative authorities in charge.

Article XXXI. Any unit or individual shall be encouraged to report to the Ministry of Commerce and the customs authorities about the importer/exporter's acts in violation of the provisions in relevant national laws, regulations and these Measures. The Ministry of

Commerce and the customs authorities shall keep secret for the reporters, and investigate in and prosecute these acts possibly in violation of laws and regulations; if checked and found to be true, the authorities in charge may, as stipulated, grant rewarding to the reporters.

Article XXXII. The issuing authorities shall timely transmit the license-issuing data so as to guarantee the importer/exporter's smooth customs declaration and the examination of the customs authorities; the examination data feed backed by the customs authorities shall be earnestly treated, and a periodical inspection shall be made on the utilization of the import/export license for dual-use items and technologies so as to find out the existing problems. The License Bureau shall quarterly submit to the Ministry of Commerce the checked examination data feed backed by the customs authorities.

Article XXXIII. No issuing authorities may, exceeding or beyond their powers, issue the import/export license for dual-use items and technologies, and such license issued in such ways shall be invalid.

The Ministry of Commerce shall revoke such aforesaid license, once detected. And the issuing authorities shall give clear replies to the problems concerning the aforesaid license discovered by the customs authorities during their daily supervision and control or their case-treatment.

Article XXXIV. Authorized by the Ministry of Commerce, the License Bureau shall inspect the issuing authorities. The inspection shall include the implementation of these Measures by the issuing authorities, and stress shall be put on the inspection of such problems as the possible illicit license-issuing of the issuing authorities by exceeding or beyond their powers and other violations of these Measures. The inspection mode shall be a combination of the periodical or unperiodical self-inspection by the issuing authorities themselves and the selective inspection by the License Bureau.

The License Bureau shall submit the results of inspection to the Ministry of Commerce.

Chapter V. Legal Liabilities

Article XXXV. Anyone who imports/exports dual-use items and technologies without

approval or beyond the licensed extent shall be punished in accordance with relevant laws and administrative regulations, and if a crime is constituted, criminal responsibilities shall be investigated according to law.

Article XXXVI. Anyone who smuggles dual-use items and technologies in violation of the provisions in these Measures shall be granted administrative penalties by the customs authorities in accordance with the Customs Law of the People's Republic of China and the Implementation Regulations of the People's Republic of China on Customs Administrative Penalties, and if a crime is constituted, criminal responsibilities shall be investigated according to law.

Article XXXVII. Anyone who forges, alters or trades an import/export license for dual-use items and technologies shall be investigated for criminal liabilities according to law in accordance with the provisions in the Criminal Code on the crimes of illegal business, or of forging, altering or trading the documents, certificates and seals of the state organs, and if the circumstance is not serious enough to be subject to criminal penalties, an administrative penalty shall be given in accordance with the Customs Law of the People's Republic of China and the provisions in other relevant laws and administrative regulations.

Anyone who acquires the import/export license for dual-use items and technologies by fraudulence and other illicit means shall be revoked of his/her license according to law by the Ministry of Commerce, and be administered a warning, or be imposed a fine of less than RMB 30,000 Yuan.

Article XXXVIII. Anyone who, in violation of the provisions in Article XIX., fails to transport back on schedule and exactly the non-for-sale items on display subject to the administration of the export license for dual-use items and technologies and to render them for verification and cancellation by the customs authorities, shall, in accordance with relevant provisions, be disposed by the customs authorities, who then shall report relevant situations to the Ministry of Commerce and the examination and approval authorities in charge of economic and trade exhibitions in the areas without the territory of the People's Republic of China. And the exporter concerned shall be administered a warning by the Ministry of Commerce or be imposed a fine of less than RMB 10,000 Yuan.

Article XXXIX. In accordance with the Foreign Trade Law of the People's Republic of China, the Ministry of Commerce may, within the time limit of more than 1 year and less than 3 years as of the date of entry into force of the administrative penalty decision in accordance with the provisions in from Article XXXV. to Article XXXVIII. or of the criminal penalty verdict, forbid the violator from engaging in relevant business activities related to foreign trade.

Article XL. The Ministry of Commerce may suspend or cancel the license-issuing entrustment of such issuing authorities as violate Article XXXIII. of these Measures by issuing license through exceeding or beyond their powers.

Article XLI. The employees of the issuing authorities, who commit such activities as neglecting their duties, engaging in malpractice for personal gain, or abusing their power, which constitute crimes, shall be investigated for criminal responsibilities according to law; and if crimes are not constituted, they shall be transferred from their posts and be given administrative sanctions according to law.

Chapter VI. Supplementary Provisions

Article XLII. Where the Ministry of Commerce makes readjustments on the entrusted issuing authorities, the former issuing authorities, as of the date of readjustment, shall no longer issue the import/export license for dual-use items and technologies. And such import/export license for dual-use items and technologies as the importer/exporter has received before the date of readjustment shall still be valid during its term of validity.

Article XLIII. The Ministry of Commerce and the General Administration of Customs are responsible for the interpretation of these Measures in accordance with their respective duties.

Article XLIV. These Measures shall enter into force as of the date of January 1, 2006.

And Interim Measures for the Administration of Export License for Sensitive Items and Technologies (Decree No.9 of the Ministry of Commerce and the

General Administration of Customs in 2003, Announcement No.74 of the Ministry of Commerce and the General Administration of Customs in 2003), Circular of the General Administration of Customs on the Issue concerning the Exit Supervision and Control of Enterprises Dealing such Services as Aviation Engine Repair etc. in Bonded Zones (Shu Fa Fa [2004] No.235), Circular of the General Offices of the General Administration of Customs and the Ministry of Foreign Trade and Economic Cooperation on the Issue concerning the Examination and Clearance of Export License for Sensitive Items and Technologies by the Customs Authorities (Shu Ban Fa [2002] No.89) and Circular of the Department of Politics and Law and the Department of Supervision and Control on the Issue concerning Specifying the Supervision and Control of the Customs Authorities on Export License for Sensitive Items and Technologies (Zheng Fa Han [2004] No.2) shall be annulled as of the same date.

And these Measures shall prevail in case that any conflict occurs between these Measures and Measures for the Administration of License for the Export of Goods (Decree No.27 of the Ministry of Commerce) and Measures for the Administration of License for the Import of Goods (Decree No.28 of the Ministry of Commerce).

Annexes:

- 1. Controlling List of the Import and Export License for Dual-use Items and Technologies (omitted)**
- 2. Name List of the Authorities Responsible for the Issuance of the Import and Export License for Dual-use Items and Technologies (omitted)**
- 3. The Import License of the People's Republic of China for Dual-use Items and Technologies (omitted)**
- 4. Relevant Attestation of the Ministry of Commerce (omitted)**

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