

Several Provisions on the Administration of Export License

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Several Provisions on the Administration of Export License (Promulgated by the Ministry of Foreign Trade and Economic Cooperation on January 2, 1996)

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[Preamble]

With a view to strengthening and improving the administration of export license, and in pursuant to the Foreign Trade Law of the People's Republic of China (hereinafter referred to as the Foreign Trade Law) and the Interim Measures on the Management of Export Commodities, these Provisions are hereby formulated.

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I. - Competent Authority for Export License Administration

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Article 1

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The Ministry of Foreign Trade and Economic Cooperation (MOFTEC) is the competent authority for the administration of export license in China, and shall be responsible for the formulation, modification and interpretation of State rules and regulations on export license as well as the supervision of the implementation of export license administration.

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Article 2

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MOFTEC shall, in accordance with the Foreign Trade Law, identify and adjust the scope and catalogue of commodities subject to licensing administration as well as the scope of products under the jurisdiction of each license issuing authority.

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Article 3

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The Quota and Licensing Administration of MOFTEC (hereinafter referred to as the "MOFTEC Administration"), the Special Commissioner's Offices of MOFTEC (hereinafter referred to as the " Special Commissioner's Offices") and the Foreign Economic Relations and Trade Commissions (Bureaus or Committees) of various provinces, autonomous regions, municipalities directly under the central government and cities listed separately on the State plans (hereinafter referred to as the " local foreign economic and trade administrative authorities") are the issuing authorities of export licenses as authorized by MOFTEC, and shall be responsible for issuing export licenses within their respective scope of authority.

II. - The General Principle for the Issuance of Export Licenses

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Article 4

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Export license is a legal certificate based upon which the State exercises administration over the exit of goods. Import and export enterprises of all types shall apply for export licenses at the designated issuing authorities as stipulated before exporting any commodity subject to the export licensing administration (except those listed in the Exemption Clause of these Provisions). Customs authorities shall accept declaration of export commodities upon presentation of export licenses.

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Article 5

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The issuance of export licenses shall be administered under a tiered framework.

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(1) The MOFTEC Administration shall

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1. issue export licenses to all kinds of import and export enterprises in China engaging in the export of commodities listed in the catalogue for license issuance formulated by MOFTEC;

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2. issue export licenses to import and export enterprises under the administration of various sectoral* ministries of the Central Government which are subject to the single track plans or national trade companies (industrial companies) subject to the double-track plans in their own export of commodities subject to licensing administration (Please refer to Annex 1 for the lists of companies and enterprises. Same below); and

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3. issue export licenses to entities other than foreign trade enterprises (organizations, institutions, enterprises and non-profit making entities. Same below) when such licenses are required for the shipment of goods.

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(2) The Special Commissioner's Offices shall

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1. issue export licenses, according to the catalogue of commodities requiring the issuance of export license formulated by MOFTEC, to all kinds of import and export enterprises in provinces, autonomous regions, municipalities directly under the central government and cities listed separately on the state plans under the jurisdiction of such Offices as well as subsidiaries of national foreign trade companies (industrial companies) under sectoral* ministries of the central government located in areas under the jurisdiction of such Offices which are subject to the double-track planning system;

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2. issue export licenses, according to the catalogue of commodities requiring the issuance of export license formulated by MOFTEC, to local subsidies of all kinds of import and export enterprises in areas under the jurisdiction of such Offices engaging in export commodities subject to quota bidding; and

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3. other entities as specified. 22

(3) Local foreign economic and trade administrative authorities shall 23

1. issue export licenses, according to the catalogue of commodities requiring the issuance of export license formulated by MOFTEC (unless otherwise specified), to various local import and export enterprises as well as local subsidiaries of national foreign trade companies (industrial companies) under the sectoral* ministries of the central government which are subject to the double-track planning system. The Foreign Economic Relations and Trade Committee of the Tibet Autonomous Region shall issue export licenses for commodities listed in the Notice of MOFTEC on Defining the Terms of Reference of the Foreign Economic Relations and Trade Committee of the Tibet Autonomous Region concerning the Issuance of Import and Export Licenses ([1995] wai jing mao guan fa no.673);and 24

2. issue export licenses to local non-foreign trade entities when such licenses are required for shipment of goods. 25

(4) Various import and export enterprises across the country shall apply for export licenses at the designated export license issuing authorities when dealing in commodities listed in the catalogues of commodities requiring the issuance of export license of such designated issuing authorities (including the Special Commissioner's Offices and foreign economic and trade administrative authorities in major production areas). The designated issuing authorities at such major production areas shall formulate, in line with these Provisions, measures on the issuance of export licenses for commodities within their scopes of authority, which shall be implemented subject to MOFTEC approval. 26

Article 6 27

The administration of export license shall generally follow the “ one license for one batch” system with the following exceptions: 28

1. commodities exported by enterprises with foreign investment; 29

2. export commodities under compensation trade arrangements; 30

3. rice, Soya bean, corn, live pigs, live cattle, live sheep, live poultry, frozen beef, frozen mutton, frozen pork, frozen sucking pigs, frozen poultry, frozen sucking pigeons, river crabs, swimming crabs, chestnut, Ya pears, Hami melon, fragrant pears, tea, fire works and fire crackers, toilet paper, drawn work, carpet, crude oil, finished oil products and coal, altogether 27 items. 31

Article 7 32

No entities or individuals shall be allowed to revise the contents of the export license once 33

issued. The original issuing authority shall cancel the original license and issue a new one within the validity period when such revision is necessary.

III. - Validity of Export License

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Article 8

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The export quotas shall be valid for the current year (unless otherwise specified), and the import and export enterprises of all types shall apply for export licenses at the issuing authorities no later than December 16th of the same year.

Article 9

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The issuing authorities may issue export licenses for the following year starting from December 15th of the current year, on the basis of the preliminary export quota allocation made by MOFTEC for the next year. The date of issuance shall be January 1st of the following year (Exports shall not be advanced), and the number of licenses so issued shall be included in the statistics of the following year.

Article 10

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Each export license of commodities subject to the “one license for one batch” system shall be valid for no more than three months from the date of the issuance and shall only be used once for customs declaration; each export license for commodities other than those subject to the “one license for one batch” system (with the exception of fresh, live and frozen products for Hong Kong and Macao) shall be valid for no more than six months from the date of issuance and may be used for repeated customs declarations with the total number of declarations not exceeding 12 times and with the quantity of goods shipped each batch clearly indicated and signed by the Customs. Each license for fresh, live and frozen products for Hong Kong and Macao (excluding those transhipped) shall be valid for one month and shall become invalid thereafter.

Article 11

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Export licenses not used or not used up due to certain reasons within the valid period may be returned within that period to the original issuing authorities who shall return the export quotas, cross out the original export licenses and issue new licenses after examination and verification.

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Article 12

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The issuing authorities may directly extend the validity of export licenses of the current year, which need to be carried over to the next year, to the next year with the end of February as the latest, and the carried-over export licenses shall not be extended again.

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Article 13

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Export licenses need not be replaced by new issues of the new issuing authorities in case of adjustment in the issuing authorities at year end and the validity of such licenses shall not exceed the end of February of the next year. Temporary changes in the issuing authorities shall be made according to local provisions.

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IV. - General Items to be Examined before Issuing Export License

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Article 14

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The Application Forms of Export License submitted by the export enterprises shall be examined.

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All kinds of export enterprises shall submit to the issuing authorities, when applying for export licensees, relevant approval documents for commodities to be exported and export contracts (all of which shall be copies of the original), and each shall fill in a copy of the Application Form of Export License (the original) carefully. The issuing authorities shall strictly examine the conformity of the filled contents in the Application Form against relevant provisions as well as relevant contents in the export contracts, and shall verify and issue export licenses accordingly.

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Article 15

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The right of export enterprises to deal in the commodities in question shall be examined. The issuing authorities shall strictly carry out the examination according to the Several Provisions on the Allocation of Export Quota formulated by MOFTEC ([1995] wai jing mao guan fa no.761)

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Article 16

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Checking the export price, the issuing department should focus on checking the export price when examining export contracts. The price on the export license should agree with that of the export contracts. And when the price on the export contract is lower than the

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coordinated price designated by Chambers of Commerce of Export and Import, the issuing department should turn down the application for export license.

V. The Scope of Control and Issuing Basis for Export License

Article 17

MOFTEC shall implement globalization of licensing control over export commodities with plan and initiative quotas (or export quotas as follows) and commodities with normal licensing control. (the catalogue of commodities shall be in conformity with the “ Classified Issuing Catalogue For Commodities subject to Export License ”issued by MOFTEC)

(1) As to commodities subject to export quota control, the issuing department shall issue export license in accordance with the export quota assigned by MOFTEC and the quota quantity in the second distribution by local responsible departments.

(2) Apart from chemicals both for civilian and military purposes, chemicals capable of making poisons, heavy water and computers, the issuing department shall issue export license to normal licensing control export commodities in accordance with valid export contracts (similarly hereinafter) signed by export enterprises.

(3) The export commodities within the above mentioned two clauses which are subject to quota control and non-gratuitous bidding can acquire export license with the name-list of the selected corporations, the bidding quantity assigned by MOFTEC and the “certificate of application for export license to quota control and non-gratuitous bidding commodities” signed by the Bidding Committee . And the export commodities subject to gratuitous bidding shall acquire export license by presenting the name-list of the selected corporations, the bidding quantity assigned by MOFTEC and the certificate for bid winners signed by the Bidding Committee.

(4) The export of chemicals both for civilian and military purpose in any trade pattern, by any corporations shall be referred to the Ministry of Chemical Industry for approval and the issuing department shall issue export license with ratification documents of the Ministry of Chemical Industry.

(5) The export of heavy water and chemicals capable of making poisons, by any corporations shall be referred to MOFTEC for approval and the issuing department shall issue export license with ratification documents of MOFTEC.

(6) The export of computers subject to export license control, by any corporations shall be referred to MOFTEC for technical examination, and the issuing department shall issue export license with The Technical Examination Form for Computer Export ratified by MOFTEC.

Article 18

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For re-export of commodities processed with inward materials subject to export license control, the export license shall be handled according to the following rules in addition to Customs examination and control:

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(1) For all commodities but steel , pig iron, zinc and sugar that are subject to export license control, the issuing department shall issue export license based on the document of inward materials processing approval by MOFTEC or local foreign economic and trade administrative authorities and the export quota assigned by MOFTEC; as to normal licensing control export commodities not subject to export quota control, the issuing department shall issue export license in accordance with the document of inward materials processing project approval by MOFTEC or local foreign economic and trade authorities, the export contract signed by the export enterprise and the inward materials processing manual.

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(2) For the re-export of processed inward materials of steel, pig iron, zinc and sugar, the issuing department shall issue export license based on the document of inward materials processing project approval by MOFTEC, the inward materials processing manual (original copy) and the export contract, without any use of annual export quota.

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Article 19

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The export of commodities produced by a foreign-invested enterprise subject to export license control (including re-export of processed inward materials) shall be dealt with as follows:

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(1) For the approved exports by a foreign-invested enterprise, the issuing department shall issue export license in accordance with the export quota assigned by MOFTEC.

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(2) Where the foreign-invested enterprise is already approved prior to the adjustment of the Catalogue of Commodities requiring the issuance of export license, and this adjustment makes the export products of this enterprise be new export-license-control-commodities, MOFTEC may assign an export quota to the foreign-invested enterprise according to the approve scope of business and the production/export scale, and the issuing department shall issue export license according to the export quota.

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(3) Any investment project of a foreign-invested enterprise involving export of commodities subject to export license control, shall obtain the approval from MOFTEC at the stage of establishment of the project, before going through specified examination and ratification procedures. To the projects that have not duly approved, MOFTEC shall not assign any annual export quota and the issuing department shall not issue export license.

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Article 20

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The raw and semi-processed materials, parts and accessories as investment contributions by a Chinese-foreign equity joint venture, or a Chinese-foreign contractual joint venture or a Chinese capital enterprise established outside China, or the materials that need to be supplied from China after the enterprise is put into operation, shall be deemed as general trade exports, and the issuing department shall issue export license in accordance with Article 17, of these Regulations.

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Article 21

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Of the China-made equipment, materials, construction machinery shipped abroad by a foreign-project contractor for the project use, and articles for common use by the laborers, to those subject to export license control, the issuing department shall issue export license in accordance with the project contract approved by MOFTEC or local foreign economic and trade administrative authorities on a tiered administrative basis (excluding the tender-invited quota-administered commodities and fresh, live and frozen products for Hong Kong and Macao); to those not subject to export license control, the Customs examination shall be applied. Compensated tender-invited quota-administered commodities and fresh., live and frozen products for Hong Kong and Macao under quota administration shall be dealt with according to Article 17 of these Regulations.

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Article 22

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For the outward goods for self-use accompanying complete equipment exported, the issuing department shall issue export license according the specified Catalogue of Commodities requiring the issuance of export license and the equipment-export contract (excluding paid tender-invited quota-administered commodities). Paid tender-invited quota-administered commodities shall be dealt with according to Article 17 of these Regulations.

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Article 23

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As to commodities for loan repayment or for export under compensation trade, the issuing department shall issue export license in accordance with the quota of export for loan repayment and/ or compensation trade assigned by MOFTEC. For handling foreign loan payment and/ or compensation trade, an enterprise without foreign trade operating power should entrust, on a permanent basis, a foreign-trade company to be an agent responsible for applying for the export license.

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VI. - Settlement of Exceptions in Export Licensing Control 81

Article 24 82

No enterprises is allowed to export any export-prohibited commodities as stipulated in article 17 and article 21 in the Foreign Trade Law. 83

Article 25 84

No enterprises or units is allowed to export any export-prohibited commodities listed in the appendix of this stipulation. The export of copper and alloy copper processed with imported materials shall refer to specific approval of MOFTEC and the issuing department shall issue export license by presentation of export contract, ratification document signed by MOFTEC and the Registration Handbook on Products Processed with Imported Materials. The Administration of Quotas and License of MOFTEC shall issue license to national departments and import and export corporations while the Special Commissioner's office of MOFTEC stationed locally shall issue license to local import and export corporations. The re-export of copper and alloy copper processed with supplied materials shall refer to specific approval of MOFTEC and the Customs shall examine and release according to related regulations. 85

Article 26 86

The export of live pond fish, fresh vegetables, fruits (only referring to lychee, watermelon) designated to Hong Kong and Macao shall be subject to Release Certificate Administration as stipulated in related regulations. 87

Article 27 88

The re-export processed with supplied materials (excluding items with other limitations) are exempted from the application for export license. The Customs shall supervise, examine and release such products in accordance with relevant regulations. 89

Article 28 90

The exports for the projects of economic and technical assistance (excluding export-prohibited commodities) are exempted from the application for the export license. The customs shall examine and release them on the strength of the letter which entrusts the 91

task of assistance to the enterprises issued by MOFTEC or the consignment note in respect of the assistance project issued by China Completed Equipment Export and Import Corporation (Group) as well as the export entry filled in by the enterprise undertaking the foreign assistance task.

Article 29

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The administration on the export of displaying items, the displaying items for sale and the small type item for sale for trade fair held abroad is as follows:

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(1) The displaying items for the trade fair held abroad and sponsored by China (only for exhibition but not for sale) are exempted from the export license. The customs shall supervise, examine and release them after verification on the strength of the approval document signed by MOFTEC and the export entry. All the items for exhibition shall be re-imported to China after the trade fair.

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(2) As to the items for sale and small type commodities for exhibition held abroad by the foreign trade import and export corporations authorized by MOFTEC (including industrial and trade corporations), if they are subject to export license control, the issuing departments shall issue export license in accordance with exhibition approval document signed by MOFTEC. The Administration of Quotas and License of MOFTEC shall issue license to national departments and import and export enterprises and the local responsible department shall issue license to local import and export corporations. No export quota will be occupied. If the item are not subject to the export license control, the Customs shall supervise, examine and release them after verification on the strength of the export entry filled by the exporting enterprise.

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(3) As to the items for sale and small type commodities for trade fair held by the unit which is not a foreign trade enterprise, the export license shall be applied whether such items are subject to the export license control or not. The issuing department shall issue export license in accordance with exhibition approval document signed by MOFTEC. The Administration of Quotas and License of MOFTEC and local responsible department shall issue export license to central authorities and local departments respectively.

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Article 30

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The administration on export of the samples is as follows:

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(1) The export of commodity samples or samples for experimental activities subject to export license control by import and export corporations, if the value of each batch is less than 5,000 RMB yuan (including 5,000 RMB yuan) they are exempt from the export license and the customs shall examine and release the goods on the strength of the export entry filled by the exporting enterprise; if the value surpasses 5,000 RMB, it is looked upon as

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normal export. Export license shall be applied and export quota shall be deducted, The issuing department shall issue export license in accordance with the classified issuing catalogue already worked out.

(2) When those units which are not foreign trade enterprises export the samples for activities such as cultural or technical exchanges, they are exempted from obtaining the export license provided that the value of each batch is less than 5,000 RMB yuan (including 5,000 yuan), no matter whether the commodities are subject to the export license control. The Customs shall examine and release them on the strength of the supporting document issued by the department in charge of the exporting unit (above the level of department and bureau). If the said value is of more than 5,000 RMB yuan, the export license shall be applied and the export license shall have the indication of "Sample". The units directly under the central Government and local units shall apply to the Administration of Quotas and License of MOFTEC and local responsible department respectively for export license by presenting certificate signed by responsible department (above the level of department and bureau) of the exporting unit. The value of each batch of export samples shall not surpass 10,000 RMB yuan.

(3) The export of the Chinese herbal medicine and traditional Chinese medicine shall still be dealt with in accordance with the Customs regulations on the limit of the value.

Article 31

Foreign tourists, Hong Kong and Macao Compatriots and overseas Chinese shall not apply for export license when taking or posting abroad the souvenir and handicraft articles they bought with the foreign exchange along with themselves. The Customs shall examine and release them after verification on the strength of the invoice and the exchange memo provided by the tourism commodities sales departments designated by the responsible department of the national tourist administrative agency. Chinese herbal medicine and traditional Chinese medicine shall be dealt with according to the Customs' regulations concerning taking or posting Chinese herbal medicine and traditional Chinese medicine abroad, no matter whether they are purchased with foreign exchange. And no low-volume export is allowed.

Article 32

The sales department of tourism products authorized by MOFTEC can accept batch volume export order of souvenir no more than US\$50,000 (including US\$50,000) (commodities subject to export license and passive quotas are not allowed to accept orders) The customs shall examine and release them after verification on the strength of export entry filled by the sales department for tourist products and the related contract.

Article 33

106

As to the bulk cargo, 5% more or less is normal according to the international trade practices. The issuing department does not indicate this on the export license. The customs shall release them. As to more than 5% more or less, the issuing department shall add the quantity of the license and deduct the export quotas accordingly.

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VII. - Checking and Punishment

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Article 34

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A checking system for the issue of export license should be established and MOFTEC shall check up the issue of export license annually. The way the issuing department carrying out this regulation shall be checked in the form of regular and irregular self-examination and selective examination by MOFTEC, the focus being issuing license beyond 0quotas or without quotas and issuing license by exceeding regulations. The regular check shall be carried out every September.

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Article 35

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The issuing departments shall report in time the issuing statistics. Those who are connected with the computer networks shall report with computer transmission while those who are not connected to computer networks shall report their disks.

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Article 36

113

The issuing department shall abide by this regulation and should not issue license beyond quotas or without quotas or issuing license by exceeding one's power, bypassing the immediate leadership and breaking regulations. Any violation of the regulations shall be punished by giving out a circular notice of criticism, warning and revoking the right to issue export license . MOFTEC shall work out measures of punishment separately.

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Article 37

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The exporters shall provide and report the truthful information when applying for export license. It is forbidden to practice fraud and obtain an export license by providing false contract or adopting other fraudulent means. It is also forbidden to transfer the export license to others. Any violation of the regulations shall be punished by giving out a circular notice of criticism, suspending or revoking the right to export.

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Article 38

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If the Customs discovers the conduct violating the regulations stipulated above on the export license, it shall be dealt with strictly in accordance with the relevant Customs Laws and regulations. And those who violate the Criminal Laws will be handed over to the judicial institutions for investigation of his crime.

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VIII. - Others

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Article 39

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The “Regulations on Administration and Application of the Export License” (1994 MOFTEC Guanfa zi No.53) issued by MOFTEC shall be repealed.

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Article 40

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These Regulations shall enter into force on the date of dispatching and shall be interpreted by MOFTEC.

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