

Update: China Export Controls

Summer 2009

Export General License for Dual-use Items



Introduction

On 19 May 2009, Ministry of Commerce (MOFCOM) issued the Measures on the Administration of Export General License for Dual-use Items and Technologies (MOFCOM Order [2009] No.8). The measures introduced a type of blanket license called “export general license” which can be used for multiple shipments of exported goods. The Measure took effect on 1 July 2009.

Key Issues

1. License Category

The export general license for dual-use items includes 2 categories as follows:

A Category

Enable the registered exporters to export one or several dual-use items and technologies to one or several end-users in one or several countries, within the valid period.

B Category

Enable the registered exporters to export a dual-use item and technology to a fixed end-user in one country within the valid period.

The validity period of either category of general license is 3 years.

2. Applicant Qualification

Registered exporters which intend to apply for the general license of either category must meet all of the following criteria:

- Be legal foreign trader of PRC
- Have established an Internal Control Plan (ICP)
- Be engaged in export business of dual-use items and technologies for at least 2 years
- For A Category of general license, at least 40 licenses should be applied annually during the past 2 years; for B Category, at least 30 licenses for the same item should be applied annually during the past 2 years.
- Have received no penalty on criminal or administrative violation during the past 3 years
- Hold fixed sales channel and end-user

3. Application Process

Registered exporters should apply with the local MOFCOM offices by submitting an application form for general license, an explanation letter on the ICP and other relevant documents. The local MOFCOM offices should deliver the application documents to central MOFCOM for approval.

As the application criteria are not easily met, most dual-use item exports cannot qualify to apply for the license. In other words, most Chinese domestic enterprises that engage in frequent exportation of dual-use items do not have an ICP and many Foreign Invested Enterprises that have an ICP cannot reach as high as 40 license applications annually. Therefore, few, if any enterprises have successfully completed a formal application.

Impact to Business

Before this new Measure, MOFCOM adopted “one shipment, one license” mechanism, i.e. the registered exporters of dual-use items must apply for the export license on every shipment base. Hence, the introduction of the blanket license with certain limitation may dramatically increase the efficiency of export activities for frequent dual-use item exporters. This may save administrative costs as well.

Action Items

Dual-use item exporters may perform an internal analysis of the benefits from general license and the qualification to apply for general license based on the applicant standards indicated in the new regulation.

Benefits

Application of general license for dual-use items can save administrative cost and improve operating efficiency. Trade compliance performance may be improved along with the corporate reputation of the company.

The benefits include:

- Enhanced compliance levels in export control
- Maintained trade compliance and avoidance of unexpected operation disruptions.
- Increased supply chain efficiency in terms of license application cost
- Strengthened corporate reputation with government authorities

Summary

The export general license for dual-use items may increase supply chain efficiency and strengthen the corporate reputation of the company with the government authorities and customers. However, as the criteria to apply for the general license is high, it may only apply to those companies who have frequent dual-use item exports and have established a company ICP.

The introduction of general license is a practical measure for MOFCOM to encourage the dual-use item enterprises to establish an ICP. MOFCOM may issue more ‘privilege-orientated’ policies to further encourage ICP holding enterprises in future.

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