

# China issued Export Compliance Guidelines for dual-use items

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On April 28, 2021, Ministry of Commerce (MOFCOM) issued Announcement No. 10 "**Guiding Opinions of Ministry of Commerce on Establishing the Internal Compliance Program for Export Control by Exporters of Dual-use Items**" (the "Compliance Guideline"). The Compliance Guideline substitutes the previous 2007 MOFCOM opinions and provides specific guidelines and suggestions for exporters to establish export compliance programs as the Export Control Law became effective on December 1, 2020.

## Scope of application

The Compliance Guideline is not mandatory but serves as reference purposes. It applies to not only the general exporters, but also the following entities:

1. The exporters applying for the Instructions on End Users and End Uses to MOFCOM
2. Exporters and importers of commercial encryption products and precursor chemicals and operators providing such services as agency, freight, delivery, customs declaration, third-party e-commerce transaction platforms and financial services for the export of dual-use items, and
3. Enterprises and scientific research institutes engaged in the research, development and production of dual-use items.

## The 9 elements of an effective export compliance program

The Compliance Guideline provides 9 elements for a good compliance system which is extremely similar to the US Export Compliance Guidelines issued by US Department of Commerce and its Bureau of Industry and Security (BIS). These elements include:

1. **Drafting a policy statement** signed by their senior executives or person in charge;
2. **Establishing an organizational structure** for the export compliance program;
3. **Conduct a comprehensive risk assessment** in light of their organizational scale, industries and modes of operation, etc.;
4. **Establishing review procedures** to clarify the specific stages that are subject to export compliance and prevent export of controlled items without review;
5. **Developing contingency measures** and set up internal reporting channels and investigation procedures;
6. **Providing compliance training** in light of circumstances to ensure timely understanding of the laws and regulation, effective implementation of compliance program, and properly dealing with export compliance issues.
7. Improving compliance audits of the reasonableness, feasibility and effectiveness of the export compliance program;

8. **Recordkeeping** of complete and accurate documents related to export control;
9. **Preparing Management Manual** on the export compliance covering the above elements and relevant laws and regulations.

## Export compliance incentives

To encourage exporters to actively establish export compliance programs, MOFCOM may give certain advantages, such as facilitating export licenses. However, the existence of a good export compliance program will not necessarily reduce or exempt any export violation. Only if exporters initiate measures to eliminate or mitigate consequences of the export violation, they will be given lighter penalties for violation.

## Conclusion

The extreme similarity of the Compliance Guideline to the US Export Control Compliance Guidelines reflects the Chinese legislators' intention not only to align with the international rules, but also to provide additional countermeasures to protect the Chinese companies. As with the recently enacted Blocking Measures and Measures on Foreign Investment Security Review in China, the actual effect and impact of the Compliance Guidelines can only be inferred through the application of specific cases overtime.

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