

Ministry of Foreign Trade and Economic Cooperation (Order No.12 of 2001)

In accordance with the Law of the People's Republic of China on Foreign Trade and the Regulations of the People's Republic of China on the Administration of Goods Import and Export, the Measures for the Administration of Export Commodities Quotas has been approved after discussion at the 9th ministerial meeting of the Ministry of Foreign Trade and Economic Cooperation of 2001 and is hereby promulgated, and shall come into force on Jan. 1, 2002.

Shi Guangsheng, Minister

Dec. 20, 2001

Measures for the Administration of Export Commodities Quotas**Chapter 1 General Provisions**

Article 1 In order to standardize the administration of export commodities quotas, to guarantee that the administration of export commodities quotas consist with the principles of efficiency, justness, openness and transparency and to safeguard the normal exports of commodities subject to quota administration, these Measures have been formulated according to the relevant provisions of the Law of the People's Republic of China on Foreign Trade (hereinafter referred to as the Foreign Trade Law) and the Regulations of the People's Republic of China on the Administration of Goods Import and Export (hereinafter referred to as the Regulations on Goods Import and Export).

Article 2 The Ministry of Foreign Trade and Economic Cooperation (hereinafter referred to as the MOFTEC) shall be responsible for the administration of export commodities quotas of the whole country. The commissions (departments, bureaus) of foreign trade and economic cooperation of the provinces, autonomous regions, municipalities directly under the Central Government and cities under State Planning (hereinafter referred to as the local administrative authorities of foreign trade and economic cooperation) shall, based on the authorization of the MOFTEC, be responsible for the administration of export commodities quotas within their respective area.

Article 3 According to the provisions of Article 35 and Article 36 of the Regulations on Goods Import and Export, the MOFTEC applies export quota administration with respect to the commodities restricted from export by the State.

Article 4 These Measures shall be inapplicable to the following commodities subject to export quota administration:

- 1) Export commodities subject to quota bidding or paid use administration;
- 2) Export commodities subject to passive quota administration according to the provisions of multilateral or lateral agreements;

3) Commodities listed in the appendixes of these Measures.

Article 5 These Measures shall be applicable to the exports of the commodities subject to quota administration in various trade forms.

Article 6 The valid term of export commodities quotas shall expire on December 31 of their current year.

Chapter 2 The list of export commodities subject to quota administration

Article 7 The list of export commodities subject to quota administration shall be formulated, adjusted and promulgated by the MOFTEC.

Article 8 The list of export commodities subject to quota administration shall be promulgated at least 21 days before the implementation; and in case of emergency, shall be promulgated not later than the day of implementation.

Chapter 3 Total Amount of Export Quotas

Article 9 The total amount of export commodities quotas shall be determined and promulgated by the MOFTEC.

Article 10 When determining the total amount of export commodities quotas, the MOFTEC shall take the following factors into consideration:

- 1) Needs of guaranteeing the safety of national economy;
- 2) Needs of protecting the limited domestic resources;
- 3) Development planning, objectives and policies of the State on the relevant industries;
- 4) Demands of the international and domestic markets, and the production and sales status.

Article 11 The MOFTEC shall promulgate the total amount of export quotas of the next year before October 31 of each year.

Article 12 The MOFTEC may adjust the total amount of export commodities quota according to the actual needs, but the relevant adjustments shall be finished and promulgated no later than September 30 of that current year.

Chapter 4 Application for Export Quotas

Article 13 The export enterprises that have the license or qualification for import and export management and have no violation of laws and rules in economic activities in the last 3 years may apply for the export commodities quotas.

Article 14 The enterprises under local administration shall file the applications for quotas to the local administrative authorities of foreign trade and economic cooperation; the local administrative authorities of foreign trade and economic cooperation shall, after examining and gathering the applications of the enterprises of their respective area, report to the MOFTEC according to the requirements of the MOFTEC. The enterprises under central administration shall directly apply to the MOFTEC for the export commodities quotas.

Article 15 The export enterprises shall file the quota applications in formal written

form, and shall submit the relevant documents and materials according to the requirements.

Article 16 The MOFTEC shall accept the applications for the export commodities quotas of the next year presented by the local administrative authorities of foreign trade and economic cooperation and the enterprises under central administration, and shall not accept the applications filed at other time.

Chapter 5 Distribution, Adjustment and Management of Export Quotas

Article 17 The MOFTEC shall distribute the export commodities quotas to the local administrative authorities of foreign trade and economic cooperation and the enterprises under central administration; and the local administrative authorities of foreign trade and economic cooperation and the enterprises under central administration shall, within the amount of quotas of their respective area and according to these Measures and the relevant provisions of the State on the administration of goods export, distribute the quotas to the enterprises of their respective area that have filed applications.

Article 18 The MOFTEC shall distribute the export quotas of the next year to the local administrative authorities of foreign trade and economic cooperation and the enterprises under central administration before December 15 of each year; and the administrative authorities of foreign trade and economic cooperation shall distribute the quotas handed down by the MOFTEC to the applying enterprises of their respective area.

If there exist precarious factors in the international market, the MOFTEC may distribute the export quotas of the next year in two times. In the first distribution, no less than 70% of the total amount of quotas shall be distributed before December 15 of each year; and the rest part shall be distributed no later than June 30 of the current year.

Article 19 When distributing the quotas, the MOFTEC and the local administrative authorities of foreign trade and economic cooperation shall take into full consideration the export performance of that commodity, the utilization rate of quotas, the business management capacity, the production scale and the resources status, etc. of the applying enterprise or area in the last 3 years.

Article 20 Under any of the following circumstances, the MOFTEC may increase or reduce the quotas that have already been distributed to the local administrative authorities of foreign trade and economic cooperation or the enterprises under central administration:

- 1) Major changes take place in the international market;
- 2) Major changes of domestic resources take place;
- 3) The quota use paces between the areas or the enterprises under central administration are obviously unbalanced.

Article 21 The local administrative authorities of foreign trade and economic

cooperation shall, in line with the principle of increase of utilization rate of quotas, inspect the enforcement of export commodities quotas of their respective area regularly, and shall take back the distributed quotas and redistribute them with respect to those of which the utilization rate fail to meet the prescribed requirements.

Article 22 The local enterprises shall return the annual quotas that they fail to use to the local administrative authorities of foreign trade and economic cooperation in time, and the local administrative authorities of foreign trade and economic cooperation may redistribute the quotas within their respective area or hand them in to the MOFTEC in the current year.

The enterprises under central administration shall directly return the annual quotas they fail to use to the MOFTEC before October 31 of the current year.

Article 23 If the local administrative authorities of foreign trade and economic cooperation or the enterprises under central administration fail to return the quotas according to the provisions of Article 22 of these Measures, and fail to implement all the quotas of their respective enterprise or area before the end of the current year, the MOFTEC may deduct their corresponding quotas in the next year.

Article 24 The MOFTEC and the local administrative authorities of foreign trade and economic cooperation shall notify the relevant export license issuing bodies about the quota distribution and the adjustment results at the same time; the distribution results and the adjustment plans of the local administrative authorities of foreign trade and economic cooperation shall be reported to the MOFTEC for record in 30 days from the day on which the decision is promulgated.

Article 25 The export enterprises shall, based on the quota certifications issued by the MOFTEC or the local administrative authorities of foreign trade and economic cooperation and according to the provisions on the administration of export license, apply to the license issuing bodies authorized by the MOFTEC for the export quota licenses, and go through the procedures for examination and release at the customs based on the export quota licenses.

Chapter 6 Legal Responsibilities

Article 26 Where any export operator exports export commodities subject to quota administration beyond the scope approved or licensed or without approval by the means of falsely reporting the commodity name or reporting less export amount, etc., he shall be punished according to the provisions of Article 65 of the Regulations on Goods Import and Export, and the MOFTEC may cancel the export commodities quotas he has already obtained.

Article 27 Where anyone forges, alters or trades the export commodities quota certificates, documents of approval or export quota licenses, he shall be punished according to the provisions of Article 66 of the Regulations on Goods Import and Export, and the MOFTEC may cancel the export commodities quotas he has already obtained.

Article 28 Where any export operator obtains the export commodities quotas, documents of approval or export quota licenses through deception or other improper ways, he shall be punished according to the provisions of Article 67 of the

Regulations on Goods Import and Export, and the MOFTEC may cancel the export commodities quotas he has already obtained.

Article 29 Where the local administrative authorities of foreign trade and economic cooperation distribute the quotas in violation of the provisions of these Measures or the provisions of the State on the administration of state-run trade or designated management, they shall be punished according to the relevant provisions of the Administrative Penalties Law, and the MOFTEC may notify them to make corrections and give them warnings.

Article 30 Where anyone has objections against the decisions on quota distribution or decisions on penalties made by the MOFTEC, he may either apply for administrative review according to the Administrative Review Law, or bring a lawsuit before the people's court.

Chapter 7 Supplementary Provisions

Article 31 The export commodities quotas of foreign-funded enterprises shall be handled according to the relevant provisions.

Article 32 The power to interpret these Measures shall remain with the MOFTEC

Article 33 These Measures shall come into force on January 1, 2002. The Provisional Measures of the Ministry of Foreign Trade and Economic Cooperation for Reporting, Distributing and Enforcing Export Commodities Quotas promulgated by the MOFTEC on October 6, 1998, and the Detailed Rules for the Implementation of Provisional Measures for Reporting, Distributing and Enforcing Export Commodities Quotas promulgated by the MOFTEC on January 2, 1999 shall be repealed simultaneously.

<http://wms.mofcom.gov.cn/aarticle/zcfb/d/p/200209/20020900039844.html>

中华人民共和国对外贸易经济合作部 2001 年第 12 号令 《出口商品配额管理办法》

根据《中华人民共和国对外贸易法》和《中华人民共和国货物进出口管理条例》，《出口商品配额管理办法》已经外经贸部 2001 年第 9 次部长办公会议讨论通过，现予发布，自 2002 年 1 月 1 日起施行。

部长 石广生
二 00 一年十二月二十日

出口商品配额管理办法

第一章 总 则

第一条 为规范出口商品配额管理，保证出口商品配额管理工作符合效益、公正、公开和透明的原则，维护配额管理商品的正常出口，根据《中华人民共和国对外贸易法》（以下简称《对外贸易法》）和《中华人民共和国货物进出口管理条例》（以下简称《货物进出口条例》）的有关规定，制定本办法。

第二条 对外贸易经济合作部（以下简称外经贸部）负责全国出口商品配额管理工作。各省、自治区、直辖市及计划单列市外经贸委（厅、局）（以下简称地方外经贸主管部门）根据外经贸部的授权，负责本地区出口商品配额管理工作。

第三条 根据《货物进出口条例》第三十五条、第三十六条的规定，外经贸部对部分国家限制出口的商品实行出口配额管理。

第四条 下列出口配额管理商品不适用本办法：

- （一）实行配额招标或有偿使用管理的出口商品；
- （二）根据多、双边协议的规定，实行被动配额管理的出口商品；
- （三）本办法附件中所列商品。

第五条 本办法适用于各种贸易方式下配额管理商品的出口。

第六条 出口商品配额有效期截止到当年 12 月 31 日。

第二章 出口配额商品目录

第七条 实行配额管理的出口商品目录，由外经贸部制定、调整并公布。

第八条 实行配额管理的出口商品目录，应当至少在实施前 21 天公布；在紧急情况下，应当不迟于实施之日公布。

第三章 出口配额总量

第九条 出口商品配额总量，由外经贸部确定并公布。

第十条 外经贸部确定出口商品配额总量时，应当考虑以下因素：

- （一）保障国家经济安全的需要；
- （二）保护国内有限资源的需要；
- （三）国家对有关产业的发展规划、目标和政策；
- （四）国际、国内市场需求及产销状况。

第十一条 外经贸部应当于每年 10 月 31 日前公布下一年度出口配额总量。

第十二条 外经贸部可以根据实际需要对本年度出口商品配额总量作出调整，但有关调整应当不晚于当年 9 月 30 日完成并公布。

第四章 出口配额的申请

第十三条 依法享有进出口经营许可或资格，并且近三年内在经济活动中无违法、违规行为的出口企业可以申请出口商品配额。

第十四条 地方管理企业向地方外经贸主管部门提出配额申请；地方外经贸主管部门对本地区企业的申请审核、汇总后，按外经贸部的要求，上报外经贸部。中央管理企业直接向外经贸部申请出口商品配额。

第十五条 出口企业应当以正式书面方式提出配额申请，并按要求提交相关文件和资料。

第十六条 外经贸部于每年11月1日至11月15日受理各地方外经贸主管部门和中央管理企业提出的下一年度出口商品配额的申请；其他时间申请的，不予受理。

第五章 出口配额的分配、调整和管理

第十七条 外经贸部将出口商品配额分配给各地方外经贸主管部门和中央管理企业；各地方外经贸主管部门在外经贸部分配给本地区的配额数量内，按本办法及国家关于货物出口经营管理的有关规定，及时将配额分配给本地区提出申请的出口企业。

第十八条 外经贸部应当于每年12月15日前将下一年度的出口配额分配给各地方外经贸主管部门和中央管理企业；各地方外经贸主管部门应当及时将外经贸部下发的配额分配给本地区的申请企业。

当国际市场存在不稳定因素时，外经贸部可将下一年度出口配额分两次分配。第一次分配应当于每年12月15日前将下一年度不少于总量70%的配额下达分配；剩余部分将不晚于当年6月30日下达。

第十九条 外经贸部和各地方外经贸主管部门进行配额分配时，应当充分考虑申请企业或地区最近三年内该项商品的出口业绩、配额使用率、经营能力、生产规模、资源状况等。

第二十条 如发生下列情况时，外经贸部可以对已分配给各地方外经贸主管部门或中央管理企业的配额进行增加或减少的调整：

- (一) 国际市场发生重大变化；
- (二) 国内资源状况发生重大变化；
- (三) 各地区或中央管理企业配额使用进度明显不均衡。

第二十一条 各地方外经贸主管部门应当本着提高配额使用率的原则，定期对本地区出口商品配额执行情况进行核查，对配额使用率达不到规定要求的，应当及时收回已分配的配额并重新分配。

第二十二条 地方企业应当及时将其无法使用的年度配额交还地方外经贸主管部门,地方外经贸主管部门可将其在本地区内重新分配或于当年 10 月 31 日前上交外经贸部。

中央管理企业应当于当年 10 月 31 日前将无法使用的年度配额直接交还外经贸部。

第二十三条 地方外经贸主管部门或中央管理企业未按本办法第二十二条规定交还配额,并且未能在当年年底前将本企业或本地区配额全部执行完的,外经贸部可以在下一年度扣减其相应的配额。

第二十四条 外经贸部和各地方外经贸主管部门应当将配额分配及调整结果同时通知有关出口许可证发证机构;各地方外经贸主管部门的分配结果及调整方案应当于该决定公布之日起 30 天内上报外经贸部备案。

第二十五条 出口企业凭外经贸部或地方外经贸主管部门发放的配额证明文件,按照有关出口许可证管理规定,向外经贸部授权的许可证发证机构申领出口配额许可证,凭出口配额许可证向海关办理报关验放手续。

第六章 法律责任

第二十六条 出口经营者以伪报商品名称、少报出口数量等方式超出批准、许可的范围或未经批准出口实行配额管理的出口商品的,依照《货物进出口条例》第六十五条规定处罚,外经贸部并可以取消其已获得的出口商品配额。

第二十七条 伪造、变造或者买卖出口商品配额证明、批准文件或出口配额许可证的,依照《货物进出口条例》第六十六条规定处罚,外经贸部并可以取消其已获得的出口商品配额。

第二十八条 出口经营者以欺骗或者其他不正当手段获取出口商品配额、批准文件或出口配额许可证的,依照《货物进出口条例》第六十七条规定处罚,外经贸部并可以取消其已获得的出口商品配额。

第二十九条 各地方外经贸主管部门的配额分配违反本办法规定或国家关于实行国营贸易管理或指定经营管理规定的,依照《行政处罚法》的有关规定处罚,外经贸部可以通知其纠正并给予警告。

第三十条 对外经贸部作出的配额分配决定或处罚决定有异议的,可以依照《行政复议法》提起行政复议,也可以依法向人民法院提起诉讼。

第七章 附 则

第三十一条 外商投资企业的出口商品配额按有关规定办理。

第三十二条 本办法由外经贸部负责解释。

第三十三条 本办法自 2002 年 1 月 1 日起施行。1998 年 10 月 6 日外经贸部发布的《对外贸易经济合作部关于出口商品配额编报下达和组织实施的暂行办法》、1999 年 1 月 2 日外经贸部发布的《关于出口商品配额编报、下达和组织实施暂行办法的实施细则》同时废止。