

## **The Ministry of Commerce of China Publishes FAQs regarding Export Control of Graphite Products**

On October 20, 2023, the Ministry of Commerce and the General Administration of Customs of China jointly issued Circular No. 39 of 2023 titled the “*Circular on Optimizing and Adjusting Temporary Export Control Measures for Graphite Items*”.

### **I. Background**

On October 20, 2023, the Ministry of Commerce and the General Administration of Customs of China jointly issued Circular No. 39 of 2023 titled the “*Circular on Optimizing and Adjusting Temporary Export Control Measures for Graphite Items*” (“*Circular 39*”), outlining export control on certain high-quality synthetic graphite and natural graphite flakes and related products.

On March 6, 2024, the Industry Security and Import/Export Control Bureau of the Ministry of Commerce released the first set of FAQs regarding the scope of control, permit application procedure, etc. in relation to *Circular 39*. Details are as follows:

### **II. Key points of the FAQs**

#### **Q1: How should exporters determine whether the graphite items they intend to export is subject to export control?**

A: Exporters shall assess whether certain graphite items slated for export is subject to control against relevant provisions in *Circular 39*. In cases where an exporter find it difficult to determine on its own whether any such item is subject to export controls, the exporter may apply for export business consultation through the unified business system platform (<https://ecomp.mofcom.gov.cn/loginCorp.html>) to the Ministry of Commerce, explaining the technical indicators, main uses, and what causes its difficulty in determining the intended export items’ control status. The Ministry of Commerce will organize assessments and provide timely responses.

#### **Q2: How to interpret the description of three indicators of high purity, high strength, and high density of synthetic graphite outlined in *Circular 39*?**

A: Synthetic graphite materials and products that meet all the three indicators are considered high-quality and fall within the scope of controlled dual-use items: ① High purity (purity > 99.9%), ② High strength (flexural strength > 30Mpa), and ③ High density (density > 1.73 grams/cm<sup>3</sup>). When processing related export license applications, operators should specify the actual values of purity, flexural strength, and density in the technical specifications or test reports of synthetic graphite materials and products.

**Q3: Does synthetic graphite powder fall within the scope of controlled dual-use items?**

A: Synthetic graphite powder with a flexural strength of no more than 30Mpa cannot simultaneously meet the criteria of high purity (purity > 99.9%), high strength (flexural strength > 30Mpa), and high density (density > 1.73 grams/cm<sup>3</sup>). Therefore, synthetic graphite powder does not fall within the scope of controlled dual-use items.

**Q4: Do graphite products reinforced with materials such as metals or fibers fall within the scope of controlled dual-use items?**

A: Graphite discs, graphite gaskets, graphite composite panels, graphite wires, and graphite rings reinforced with materials such as metals or fibers (including cotton fibers, glass fibers, asbestos, polytetrafluoroethylene, and polyvinyl chloride) **do not** fall within the scope of controlled dual-use items.

**Q5: Shall exporters provide the original version or a copy of the “End User and End Use Certificate”?**

A: The original version of “End User and End Use Certificate” shall be furnished, which shall bear the signature and official stamp of the responsible person of the end user.

**Q6: What information shall be provided to illustrate end use of exported items?**

A: Exporters shall thoroughly verify the end use of intended exported items. The description of the final use in the application documents shall be specific and accurate. For instance, exporters shall make it clear that the proposed end use of exported items is for manufacturing engine gaskets, refractory bricks, or flame retardants, instead of merely providing a broad description of possible usage.

**Q7: May an intermediary be listed as the consignee in the application form?**

A: If an intermediary acts between the importer and the end user, the intermediary may be listed as the consignee in the application form. In this case, however, it is necessary to provide supplementary information or relevant materials such as contracts/agreements between the intermediary and the importer/end user.

**Q8: What kind of explanation should exporters provide to justify their export quantity?**

A: Exporters may justify the quantities of export goods based on the export data of the end user, the production and operation scale of the end user, import demands, etc.

### III. Analysis

At present, China attaches great attention to export control. In 2023 alone, China introduced several export control measures for critical minerals (gallium and germanium and related materials), drones, graphite, and other items.

However, the vague descriptions of controlled items in the official circulars and the absence of a De minimis rule in China's export control law have led to challenges for many exporters to ascertain whether the items they intend to export are subject to export control, and this confusion concerns manufactured products of graphite items (graphite discs, graphite wires), products containing critical minerals (germanium lenses, wafers), etc. Additionally, the specific procedures and requirements for applying for permits are not clearly stated in those circulars, either.

As a result of these regulatory uncertainties, a few exporters have been fined or even faced criminal liability for exporting controlled items without permission. Meanwhile, certain Chinese enterprises are reluctant to supply related items to foreign buyers, even though these items do not fall under export control.

In practice, we communicate with competent authorities on behalf of our clients to clarify the enforcement standards case by case. The recent release of FAQs by the Ministry of Commerce is a positive step towards addressing some questions for relevant exporters, and we look forward to more FAQs being issued in the future.

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