



Strengthening dialogue between China and the Wassenaar Arrangement

Vienna, 10 June 2014

On 10 June 2014, a seminar entitled ‘Contributing to International Security and Stability – Strengthening Dialogue between China and the Wassenaar Arrangement’ was held in Vienna, aiming to strengthen mutual understanding of policies and practices of the Wassenaar Arrangement and China in transfers of conventional arms and dual-use goods and technologies.

This seminar was cohosted by Saferworld, the Austrian Institute for International Affairs (OIIP) and the China Arms Control and Disarmament Association (CACDA), with sponsorship from the UK Foreign and Commonwealth Office (FCO), and support from the Secretariat of the Wassenaar Arrangement (WA). Altogether 26 officials and representatives from the WA Secretariat and Participating States, as well as Chinese and other international export control and non-proliferation experts participated in this event.

During the seminar, senior officials from the WA Secretariat and main working bodies were joined by Chinese experts from CACDA, and the Chinese Academy of International Trade and Economic Cooperation (CAITEC) to introduce the frameworks and practices of the export control systems of China and the WA. A number of presentations were followed by an open discussion.

Understanding respective approaches to export controls

China’s export control systems – a Chinese view

The Chinese experts noted that in the past three decades, China’s stances and policies on issues related to arms control and disarmament have shifted gradually from a critical view on the international non-proliferation discourse to serious participation and contribution to relevant debates and international negotiations. The 1990s witnessed China’s increasingly active participation in multilateral debates within the framework of the United Nations (UN) and other bodies. In the following years, China signed all

international treaties on non-proliferation and export control and joined the relevant international organisations. While supporting the leading role of the UN in international non-proliferation efforts, China holds the view that international non-proliferation mechanisms should be constantly improved, and export controls of individual countries should be further strengthened. It recognises that China’s own national export control mechanism needs to be developed and improved, and its legal framework needs to be enhanced through further normative and regulatory improvements.

At the same time, China holds the position that proliferation issues should be dealt with through dialogue and international cooperation. With the aim of mutual learning and experience sharing, China maintains constant dialogue and communication with other countries and regional organisations such as the United States (US) and the European Union (EU), as well as multilateral export control regimes. China has joined the Zangger Committee and the Nuclear Suppliers Group (NSG). It has formally applied to join the Missile Technology Control Regime (MTCR) and keeps contact and exchanges with the MTCR, the WA and the Australia Group, and has held rounds of dialogue and consultations with numerous countries. Through its constant dialogue with other countries and export control regimes, the current range and practices of China’s export controls have evolved to be basically in line with the above-mentioned mechanisms in the fields of nuclear, biological, and chemical items and missiles.

The Wassenaar Arrangement

Since its establishment in 1996, the WA has been working to strengthen international controls and cooperation on transfers of conventional weapons and dual-use goods and technologies. It was established to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilising accumulations and acquisitions of weapons and dual-use goods by terrorists. As the only multilateral export control

regime that deals with conventional arms and related dual-use goods and technologies, the WA complements and reinforces other export control regimes concerned with weapons of mass destruction (WMD) and their means of delivery.

The WA currently has 41 Participating States. The WA continues to reach out to interested non-WA participating states, as well as to industry and other relevant organisations, to promote best practices in export controls. Outreach activities have been conducted in several non-WA states including China, and collective briefings on the results of WA Plenary meetings and changes to the Control Lists have also been provided in Vienna.

Understanding different practices

China's export control architecture

After decades of evolution, China's non-proliferation export control has been transferred from an administrative control to one based on laws, with relevant measures that are basically in line with common international practices.

Three laws, seven regulations and a series of ministerial decrees form the legal framework of the export control system, which is supplemented by control lists that cover nuclear-, biological-, chemical-, and missile-relevant items and technologies, as well as conventional military products.¹ China implements licensing systems for military exports and exports of dual-use items and technologies and has a mechanism of end-use and end-user control.

China's export control on military products

Competent authorities

The State Council and the Central Military Commission (CMC) of People's Republic of China are the highest decision-making bodies responsible for the development of regulations and approval of important arms sales. Under their supervision, the competent departments, such as the State Administration of Science, Technology and Industry for National Defense (SASTIND), the Ministry of Defence (MOD), the Ministry of Foreign Affairs (MFA) and the General Administration of Customs (GAC), exercise joint supervision and administration of arms export throughout the country in accordance with the regulations and control lists. The MFA is responsible for evaluating the proliferation risk of exports and for

the adoption and implementation of China's international commitments and treaty obligations; while SASTIND reviews export applications for conventional military products.

Control list

The Chinese military export control list is an important part of the arms export control system, and the main basis for the functional departments of the Government to evaluate and approve the export of military products. The list is composed on the basis of China's practice of arms export control, its military's possession of defence equipment and the range of products made by China's defence industry. The list contains 14 categories. Each category is further divided into several sub-categories containing information that includes weapon definitions, weapon categories, main systems or components of weapons, and the parts and components, technologies and services directly related to the weapon equipment. The list is adjusted from time to time.

Procedure for approval

In China, only designated entities are authorised to handle military products. Only those trading companies that have obtained the authorisation of business operation on arms export may engage in arms export activities within the approved scope of business. China forbids any individual to engage in any arms export business activity. By the end of 2012, altogether 12 arms trading companies had been granted the business operation rights of arms export.

China implements a licensing system for arms exports. Proposals for negotiations with potential buyers and applications for arms exports must go through a process of examination and approval by the competent authorities on a case-by-case basis. As for the transportation of arms and military equipment, the authorised trading company must apply to the authorities for a licence, and then seek customs clearance.

China's export control on dual-use goods and technologies

Competent authorities

The Ministry of Commerce (MOFCOM), with its newly established Bureau of Industry Security, Import and Export Control, is the leading agency in export control decisions of dual-use items and technologies. It reviews all export applications for dual-use sensitive goods and technologies and coordinates interagency consultation with other agencies such as the China Atomic Energy Agency (CAEA), National Chemical Weapons Convention Implementation Office (NCWCIO), MFA and SASTIND. MOFCOM issues licences for most of those approved export applications and investigates illicit exports of sensitive goods and technologies.

¹ Since 1987, China has promulgated a series of regulations and control lists, and amended relevant laws to form a comprehensive export control system to regulate nuclear, biological, chemical, missiles and other sensitive items and technologies, as well as all military products, among which the most recent updates were the promulgation of 'Measures on Administration of Import License of Dual-Use Goods and Technology' (2006), 'Measures on General License for export of Dual-Use Items and Technology' (2009) and the updates of 'Catalogue of Dual-use Items and Technologies Subject to Import and Export License' (annually since 2006).

Control list

MOFCOM formulates and makes adjustments to the Control List for the Import and Export of Dual-use Items and Technologies. It then promulgates the Catalogue of Dual-Use Items and Technologies Subject to Import and Export License Administration jointly with the GAC. Any item or technology that falls into the control scope is subject to the Dual-use Items License for exportation or importation. The current Control List contains 816 items, of which around 70 per cent contain one-to-one encoding.

Procedure for licensing

In order to obtain authorisation for importation or exportation, Chinese entities need to register themselves with the Bureau within MOFCOM, and then apply for authorisation for exporting any dual-use nuclear, chemical, or missile items and technology through local authorities. The competent authorities will review the application as part of an interagency decision-making process. Upon approval of the application, licences will be issued by the Bureau. The licences, together with other documents required by the regulations, will enable exporters to obtain customs clearance.

The WA mechanism of export control

Main bodies

The WA Plenary is the decision-making and governing body of the Arrangement. It is composed of representatives of all Participating States, who normally meet once a year in Vienna, usually in December. At present, the main WA subsidiary bodies are the General Working Group (GWG), dealing with policy-related matters, and the Experts Group (EG), addressing issues related to the lists of controlled items. Once a year, a Licensing and Enforcement Officers Meeting (LEOM) is held, which serves as a unique venue for export control practitioners to exchange information and experiences, and to disseminate national solutions and approaches for issues that may eventually confront all Participating States.

Control lists

The WA Participating States have agreed to maintain national export controls on items included in the Munitions List and the List of Dual-Use Goods and Technologies. The Munition List contains 22 main entries with approximately 300 items specially designed for military use;² while the Dual-Use List contains nine categories (with approximately 1000 items) and two annexes: 1) Sensitive List and 2) Very Sensitive List. The Lists are reviewed annually. Throughout the year, the EG and its working sub-groups meet several times to discuss national proposals. Changes to the Lists agreed at EG level are submitted for approval to the December Plenary.

² The current comprehensive control lists can be viewed at the website of the WA, <http://www.wassenaar.org/controllists/index.html>.

Information exchange

In order to enhance transparency, the WA Participating States agree to exchange general information associated with transfers of conventional arms and transfers in dual-use goods and technologies, which will assist in developing common understandings of the risks associated with these transfers. WA Participating States also agree to share specific information on transfers of eight categories of arms, sensitive dual-use items and all dual-use denials.

Best practice guidelines

A set of Best Practices Guidelines and Elements has been continuously developed by the Participating States as supplementary guidance for governments and industry in implementing their national export control regulations and practices. The existing Best Practice Guidelines cover a wide range of thematic areas such as control of non-listed dual-use items, controls on Intangible Transfers of Technology (ITT), Internal Compliance Programmes (ICPs) for dual-use good and technologies, and subsequent transfer (re-export) controls for conventional weapons systems.

Strengthening China–WA dialogue

A comparison between China's practices and those of the WA on the following aspects may shed light on the further direction of such dialogue.

'Catch-all' principle

China applies a 'Catch-all' principle on exports that are directly or indirectly related to the manufacture of nuclear weapons and their means of delivery. When the exporter knows or should know the risk of such items being used for WMD related activities, export licensing requirements are compulsory, even if the intended items are not included in the Administrative List of Export of Military Products, and the List of Export Control of Missiles and the Related Items and Technologies as well as other Control Lists.

Meanwhile, a 'Catch-all' principle was agreed in 2003 among the WA Participating States. The 'Catch-all' principle applies to non-listed dual-use items when they are intended for destinations subject to UN arms embargoes or other binding embargoes, and are for military end-use, and when licensing authorities inform the exporter, or when the exporter is aware, that the items in question are intended for military end-use.

Risk assessment

While assessing exports, a series of factors are taken into consideration by the Chinese authorities, including: 1) relevant international obligations and commitments to other countries; 2) whether the export complies with international non-proliferation efforts and China's foreign policy; 3) whether the recipient country is under a UN arms embargo; 4)

whether the recipient country supports terrorist activities or has contact with terrorist groups; 5) whether the recipient country has an effective export control system.

The WA Participating States, on the other hand, agree to exchange general information on risks and concerns associated with transfers of conventional arms and dual-use goods and technologies,³ and information on regions they consider relevant to the purposes of the WA, in order to combat these risks and to assist national licensing officers.

A set of 'Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons', has been produced to assist the Participating States in considering export licence applications.⁴ The elements are framed generally in the form of questions including aspects of: 1) influence on civil armed conflicts; 2) risk of diversion to the illicit market; 3) importing state's foreign and military policy; and 4) export controls and weapons storage in the importing state.

Internal Compliance Programmes (ICPs)

The Chinese Government encourages and supports Chinese companies to establish ICPs. In its announcement regarding guidance on the establishment of ICPs within companies trading in dual-use items and technologies in 2007 (No.69/2007),⁵ MOFCOM encourages, supports and guides the companies to establish ICPs that include the following elements:

- formulation of policy statement;
- establishment of institutional framework;
- establishment of export review procedure;
- compilation of export control handbook;
- launch of training programmes; and
- record keeping.

Recognising the role of industry and academia in export controls, and that the development and implementation of ICPs by exporters will help them comply with national export controls, the WA produced a document entitled 'Best Practice Guidelines on ICPs', which contains eight categories of basic elements:

- commitment to compliance;
- structure and responsibility;
- export screening procedures;
- shipment control;
- performance review;
- training;
- record keeping; and
- reporting and corrective action.

Control lists

Although China is not a member of the WA, its military export control list is considered to be in line with the munitions list of the WA. In contrast, China's approach to determining the scope of dual-use controls differs from the practice of the WA.

As a follow-up to this seminar, a comparative research project by Saferworld and CACDA will analyse in more detail the topics discussed at the seminar. It will examine China's evolving approach to export controls, the scope and scale of China's transfer control mechanisms and capabilities against the WA standards, as well as the export control practices of China and WA Participating States, and will produce a set of policy recommendations on strengthening China-WA dialogue.

For more information on the seminar, please contact Bernardo Mariani, Saferworld's Head of China Programme, at: bmariani@saferworld.org.uk.

³ See *Guidelines & procedures, including the initial elements, IV.1*, <http://www.wassenaar.org/guidelines/docs/5%20-%20Initial%20Elements.pdf>

⁴ This document was amended by the Plenary in 2004 and 2011.

⁵ See the announcement in Chinese : <http://exportcontrol.mofcom.gov.cn/article/t/z/200709/20070905071699.shtml>

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About Saferworld

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We are a not-for-profit organisation with programmes in nearly 20 countries and territories across Africa, Asia and Europe.

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