

Sharing perspectives on achievements and challenges relating to export controls of dual-use items and technologies

1st workshop of the Technical Expert Working Group on Dual-Use Trade Controls

Summary report

18 September 2015 | Beijing, China

Introduction

The 1st workshop of the Technical Expert Working Group (TEWG) on Dual-Use Trade Controls was held in Beijing on 18 September 2015. The main goal of the workshop was to initiate a dialogue among TEWG members and provide an opportunity to share experiences and discuss areas of common interest. Participants discussed issues related to the implementation and enforcement of export controls, with a focus on dual-use items and technologies and relevant international standards and best practices. These included: the legal basis of export controls, licence reviewing procedures, item-classification procedures, and internal compliance programmes (ICP). Participants gained valuable insights into such topics, and discussed emerging challenges and opportunities for cooperation. Presentations reflected different national systems in place, risk management strategies, as well as achievements and challenges relating to export controls of dual-use items and technologies.

On the margins of the workshop, three members of the TEWG from the UK, Russia and ROK met non-proliferation experts from the China Arms Control and Disarmament Association (CACDA), China Institutes of Contemporary International Relations (CICIR) and the National Defence University (NDU). The discussions focused on norms and control mechanisms for the export of dual-use goods and technologies in China, the UK, ROK, and Russia, as well as the experience and challenges of international export control regimes.

This report provides a summary of the technical workshop proceedings and the additional meetings held in Beijing, as well as a collection of the main messages and recommendations emerging from such

discussions. Although important common ground exists, there are different opinions and perspectives within the group. Saferworld has strived to gather and represent the views of all the members in an accurate and balanced way.

Strengthening Technical and Operational Aspects of Chinese Dual-Use Trade Controls

The workshop was held under a new project on 'Strengthening Technical and Operational Aspects of Chinese Dual-Use and Arms Trade Controls', which breaks new ground in terms of the examination of the opportunities and challenges that China and other leading producers and exporters of arms and dual-use goods and technologies have in promoting and further strengthening export controls.

Building on a previous four-year project on 'Strengthening awareness, dialogue and capacity to work on conventional arms controls in China', the new project is being jointly implemented by Saferworld and the Chinese Academy of International Trade and Economic Cooperation (CAITEC) of China's Ministry of Commerce. Under this project, the implementing partners have established an informal dialogue that engages experts from China and other leading producers and exporters of dual-use goods and technologies, trying to explore how implementation and enforcement of dual-use trade controls can be strengthened and mutually reinforced. The engine of the dialogue process is a Technical Expert Working Group (TEWG) of 12 policy experts and practitioners from China, the Republic of Korea, Russia, the UK and the USA.

It is hoped that the findings and recommendations in this summary report may serve as a basis and foundation for continued structured and informed discussion among TEWG members, which will ultimately contribute to more effective export control procedures and mechanisms.

Seminar proceedings

The purpose of the workshop was not to agree on any common statement or consensus paper on the different aspects under discussion, but to exchange views, concerns and experiences, and to make suggestions for future cooperation between China and other key producers and exporters of dual-use goods and technologies on export controls-related issues that have hitherto been opaque and understudied. In order to help participants to get the most from their interaction and feel free to talk openly and gain insights from each other, the meeting observed the Chatham House Rule.

The event was divided into three parts. During the first part, experts from China, Russia and the ROK gave a closer view of their national export control regimes, concentrating especially on licensing guidelines for the export of dual-use goods and technologies. The second part was designed to be more technical and practice-oriented. It brought together dual-use export control practitioners from China, the UK and the USA to discuss concrete national transfer control practices and provide new insights on the role of technical experts in dual-use export controls, the implementation of catch-all controls and internal compliance programmes. It also discussed challenges in the implementation of national and regional systems, and possibilities to improve current practices through increased information exchange and coordinated measures. In the third part, participants were asked to present their views and come up with concrete ideas for specific topics of common interest to concentrate on in future meetings of the TEWG.

In the first session of the workshop, participants received information about the export control systems of China, Russia and the ROK. They heard presentations about China's export controls on dual-use items and technologies delivered by Dr Han Lu from the Centre for Strategic Trade and Security, CAITEC, China; about Russia's export control regime, delivered by Andrey Shevchenko, Deputy Head of Export Controls Department, Federal Service of Technical and Export Controls, Russia; about China's efforts in chemical items export control, by Cai Guanliang, Consultant, Export Control of Chemical Dual-use Items, China's Ministry of Commerce (MOFCOM); and about the ROK's export control regime, by Lee Kyung-lyung, Senior Researcher, Identification Team I, Korea Strategic Trade Institute (KOSTI), ROK.

The presentations covered a whole range of national export controls issues and generated a lively

conversation about, on one hand, the progress made by national export control systems and, on the other hand, different challenges faced in the daily implementation of export controls.

The second part of the workshop (sessions two and three) was designed to move from regulatory aspects to the more practical side of export controls and to examine some current export control practices, including: the implementation of 'catch-all' controls, ICP, national control lists of dual-use items and technologies, and experience and challenges of international non-proliferation efforts. Participants heard presentations from: An Xuejun, Senior Engineer, Institute of Computing Technology, Chinese Academy of Science, China, who spoke about the role of technical experts in dual-use export controls; Nigel Gibbons, Head of Technical Assessment Unit, Export Control Organisation, Department for Business, Innovation and Skills (BIS), UK, who focused on the implementation of 'catch-all' controls; Dr Cheng Hui from the Centre for Strategic Trade and Security, CAITEC, China, who spoke about ICP; and Scott Clever, US Embassy, on export control systems: commercial interests vs non-proliferation needs.

The presentations were followed by question-and-answer sessions and a general discussion. The challenge of implementing catch-all principles was brought up by participants, who encouraged more information sharing on the practical implementation of the principle by different countries. Several participants emphasised the importance of ICP as a useful mechanism for companies to ensure their operations are in line with legislation. However, a capacity gap exists within small companies that are unaware of export controls and do not have sufficient resources to establish and implement a comprehensive ICP. Some participants believed that ROK's categorised ICP system could shorten the licensing process for eligible companies and improve the effectiveness of the ICP system. The point was also raised that adopting and implementing control lists of dual-use goods and technologies that meet high common international standards is a prerequisite for a stringent export control system. There was a suggestion to further analyse how Chinese export control lists compare with international standards and explore existing discrepancies between the Wassenaar Arrangement's List of Dual-Use Goods and Technologies and the relevant Chinese lists.

During session four, questions on the table included participants' views on priority elements for future meetings of the TEWG and the identification of specific areas for capacity building activities to be held under this project.

The closing session heard summary remarks of the full seminar by Cai Guanliang, MOFCOM Export Control of Chemical Dual-use Items Consultant, as well as Bernardo Mariani, Saferworld's China Programme Head. They delivered CAITEC and

Saferworld's views on the workshop. They thanked participants for their active and open input to the workshop's discussions and conveyed a strong degree of support for the continuation of this dialogue process. They emphasised the usefulness of the activity, both in terms of investigating the technical and operational aspects of implementing and enforcing export controls and in building a more cooperative relationship among officials involved in the day-to-day processing of data, licences, and review of export controls.

Key topics for future information sharing and capacity building

The section below sets out a non-exhaustive list of some of the issues that members of the TEWG are recommended to interrogate and further explore as part of their dialogue process. Some point to an examination of the way export controls operate; others are of a more specific and technical nature.

End-use and risk analysis

A key question raised during the meeting was how to strengthen the efficacy of end-use and risk analysis. In particular, the workshop participants highlighted the challenges of implementing catch-all controls to ensure that problematic dual-use exports—which are not included on control lists and are therefore not normally subject to export controls—are capable of being tracked, discussed with the recipient government, or even denied as an export transaction. Although widely agreed, the principle of catch-all regulations, which prohibit the export without a licence of any equipment, software, or technology that would contribute to projects of proliferation concern, implementing such a principle in practice is challenging. The TEWG members expressed an interest to further explore issues such as the identification of particular foreign entities as end-users of concern, criteria for weeding out potentially problematic transfers and mechanisms for ensuring compliance and investigating violations. They emphasised the importance of exchanging information related to specific case studies. This would enable TEWG members to discuss different scenarios and issues to be taken into account when considering export of dual-use items and technologies that are not subject to export controls.

Control lists of dual-use items

Participants agreed that detailed control lists of dual-use items that are regularly kept up-to-date and correspond, at a minimum, to the lists maintained by multilateral export control regimes are essential elements for an effective export control regime. TEWG members agreed to analyse China's dual-use export control lists and Wassenaar Arrangement control lists at forthcoming meetings of the TEWG to

be held in January 2016 in London and Vienna. Non-Chinese members of the TEWG also expressed interest and asked for more information on China's self-classification list of dual-use goods and technologies.

Capacity building for export control experts

It was clear from the TEWG members' presentations and ensuing discussions that China and the other countries represented within the TEWG have already established advanced systems for dual-use trade controls. General international practices such as establishing a legal authority that controls the export of dual-use goods and technologies, having licensing mechanisms, inter-agency coordination, end-user certification, and catch-all principles, etc. are all endorsed in the Chinese export control system, as well as those of the other TEWG member countries. However, it was noted that the current state of China's export controls of dual-use items and technologies remains in a phase of development. The challenge and the opportunity will be to support progress towards the next stages of export-control policy and capacity. Technical experts from Russia, ROK, the UK and the USA agreed to continue to exchange information on best practices in export licensing procedures.

Self-compliance and enforcement

It was noted that while domestic sanctions and penalties issued against violators of export control regulations should be strictly enforced, cooperation between national authorities and industry representatives involved in the production, import or export of dual-use items is also an important component in an effective export control system. TEWG members noted that self-compliance should be instilled to all industry personnel operating in the fields of dual-use items research, production and development, and export. TEWG members agreed on the need to intensify discussions and interaction between national and international experts, government representatives and key industry stakeholders, with a focus on commercial interests vs non-proliferation imperatives, the defence industry's ICP and the challenges that companies face in order to be compliant with evolving normative requirements.

Improvements in dialogue and information sharing between China and international regimes

There was a shared view of the mutual interests that China and other leading manufacturers and producers of dual-use items and technologies have in promoting and further strengthening export controls. Some discussion was devoted to the need to improve dialogue and information sharing between China and key international processes and regimes, including

the WA, of which China is currently not a member. One participant made the point that greater engagement, dialogue, information sharing – between China and all international regimes, including those that China is currently not part of – is quite important for concerted international non-proliferation efforts. As the world is becoming ever more interconnected, individuals and companies move easily from one country to another, while new technologies are mushrooming. National export control systems are extremely important, but they are not sufficient per se to prevent proliferation, especially when standards vary from country to country. Common regimes with common standards can offer an important, additional safety net.

Outcome and the way forward

The workshop in Beijing was successful in meeting its goals and in securing a very good level of participation from the target countries. All participants were fully engaged in the discussions and exchanged their national viewpoints and approaches. The cooperation between CAITEC and Saferworld, especially the strong support from CAITEC, further contributed to the success of the event. Based on the feedback received, participants were very satisfied with the meeting. Many thought that the event improved their knowledge about how different countries address some of the challenges related to the implementation of dual-use export controls. In particular, discussions related to the implementation of catch-all principles and ICP were very well received. The Q&A sessions, especially during the second part of the workshop, were praised as the most interactive and enlightening parts of the event. The workshop also enabled identification of some of the key topics for future information sharing workshops and capacity building activities.

Following the workshop in Beijing, Saferworld is finalising the organisation of a visit to London, UK, by the Chinese members of the TEWG on 18 and 19 January 2016. The envisaged activities in London will allow for dialogue and information sharing between the Chinese members of the TEWG and UK policy experts and practitioners, including from the Export Control Organisation (ECO), the Counter-Proliferation Department of the Foreign and Commonwealth Office (FCO), HM Revenue and Customs (HMRC) and the Strategic Exports team of the UK Border Agency, as well as representatives from the UK Aerospace, Defence, Security and Space industries (ADS) group and Rolls Royce. After this, the project implementation plan will consist of an information sharing and training workshop on strengthening technical and operational aspects of dual-use and arms trade control, which is planned to be held on 21 and 22 January 2016 in Vienna. At this event, up to 20 participants, including the eight members of the TEWG, export control practitioners from China and selected Wassenaar Arrangement participating states will discuss the enhancement of practical capacities

to control exports of arms and dual-use items, focusing on end-use and risk analysis, ICP and control lists. After a theoretical overview, several case studies will be used to highlight different procedures and cover practical areas. The meeting will also allow continuing interaction between TEWG members and encourage participants to exchange their standpoints and discuss possible future cooperation, including priorities for future training workshops and other capacity building activities.

About Saferworld

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. We work with local people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people – we believe in a world where everyone can lead peaceful, fulfilling lives, free from fear and insecurity.

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

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About Chinese Academy of International Trade and Economic Cooperation

Chinese Academy of International Trade and Economic Cooperation (CAITEC) is an interdisciplinary and multifunctional institution of social science research and a consultative body directly under the Ministry of Commerce (MOFCOM) of China, which undertakes research, information consultancy, publishing, education and training. CAITEC conducts research on the world economy and international trade, economic cooperation, regional economies, country-level economies, domestic trade and market development. It also conducts important research relating to export controls. It is one of the first national high-end think-tanks in China and in recent years has played an essential role in academic research, expert team building, personnel training and international communication.

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Annex A. Agenda

9.00–9.30 Opening remarks and introductions

- ZHANG Wei, Head of Center for Strategic Trade and Security, CAITEC
- Bernardo MARIANI, Head of China Programme, Saferworld

9.30–10.45 Session 1

- **China's export controls on dual-use items and technologies**, HAN Lu, Research Associate, Centre for Strategic Trade and Security, CAITEC, China
- **Russia's export control regime**, Andrey SHEVCHENKO, Deputy Head of Export Controls Department, Federal Service of Technical and Export Controls, Russia
- **China's Efforts in Chemical Items Export Control**, CAI Guanliang, Consultant, Export Control of Chemical Dual-use Items, China's Ministry of Commerce (MOFCOM), China
- Q&A

10.45–11.00 Coffee break

11.00–12.00 Session 2

- **Republic of Korea's export control regime**, LEE Kyung-lyung, Senior Researcher, Identification Team I, Korea Strategic Trade Institute (KOSTI), Republic of Korea
- **The role of technical experts in dual-use export controls**, AN Xuejun, Senior Engineer, Institute of Computing Technology, Chinese Academy of Science, China
- Q&A

12.00–13.00 Lunch

13.00–14.15 Session 3

- **Implementation of 'catch-all' controls**, Nigel GIBBONS, Head of Technical Assessment Unit, Export Control Organisation, Department for Business, Innovation and Skills (BIS), UK
- **Internal Compliance Programmes (ICP)**, CHENG Hui, Research Associate, Centre for Strategic Trade and Security, CAITEC, China
- **Export Control Systems: Commercial Interests vs Non-Proliferation Needs**, Scott Clever, US Embassy
- Q&A

14.15–15.15 Session 4

- Plans for future meetings/workshops, Saferworld
- Identify topics of common interest to concentrate on in future meetings, TEWG members

15.15–15.30 Coffee Break

15.30–16.00 Closing remarks

- CAI Guanliang, Consultant, Export Control of Chemical Dual-use Items, China's Ministry of Commerce (MOFCOM)
- Bernardo MARIANI, Head of China Programme, Saferworld

Annex B. Participants List

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CHENG Hui, Research Associate, Centre for Strategic Trade and Security, Chinese Academy of International Trade and Economic Cooperation (CAITEC), China

HAN Lu, Research Associate, Centre for Strategic Trade and Security of Chinese Academy of International Trade and Economic Cooperation (CAITEC), China

WU Ning, Assistant Researcher, Associate, Centre for Strategic Trade and Security of Chinese Academy of International Trade and Economic Cooperation (CAITEC), China

JING Rui, Assistant Researcher, Associate, Centre for Strategic Trade and Security of Chinese Academy of International Trade and Economic Cooperation (CAITEC), China

Nigel GIBBONS, Head of Technical Assessment Unit, Export Control Organisation, Department for Business, Innovation and Skills (BIS), UK

Scott CLEVER, Political Officer, U.S. Embassy in Beijing

LEE Kyung-Lyung, Senior Researcher, Identification Team I, Korea Strategic Trade Institute (KOSTI), Republic of Korea

Bernardo MARIANI, Head of China Programme, Saferworld

Andrey SHEVCHENKO, Deputy Head of Export Controls Department of Federal Service of Technical and Export Controls, Russia

ZHANG Hui, Project Coordinator, Saferworld