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Chasing the Dragon

Assessing China's System of
Export Controls for WMD-Related
Goods and Technologies

Evan S. Medeiros

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Summary

The Chinese government's system of export controls on sensitive equipment, materials, and technologies used to produce weapons of mass destruction (WMD) and WMD delivery systems has undergone a significant evolution in the past 25 years. Chinese export controls have evolved since the early 1980s from highly underdeveloped and ineffective administrative procedures to a comprehensive collection of laws, regulations, circulars, and measures that incorporate the prevailing standards for international export control. The central government in recent years has also made efforts to improve interagency coordination on export control decisions. However, the Chinese government's inability to *consistently* and *effectively* implement and enforce these new controls is a persistent and glaring weakness of the current system. Further improvements will be gradual, and mixed, unless the Chinese government devotes more resources and political capital to bolstering its export control practices. Such an effort serves as a key indicator of the government's ability to fulfill its stated goal of acting like a "responsible major power" in global affairs, especially as related to WMD nonproliferation.

The Evolution of China's Export Control System

In the early 1980s, as China began to emerge as an active trading nation, its controls on sensitive WMD-related exports were extraordinarily weak and, in many instances, nonexistent. At the same time,

the incentives to export such items, especially nuclear and missile goods, were substantial and growing. Until the mid-1990s, many controls were merely internal procedures that were opaque to foreigners and Chinese alike. The government used only administrative export controls that were a legacy of China's planned economy. (A similar system of "planned export" solely by state-designated entities also functioned in the Soviet Union until its collapse in 1991.)

China's system of weak and ineffective administrative controls began to change in the late 1980s and early 1990s as the government came under international pressure to better regulate exports of conventional military and WMD-related goods and technology to potential proliferators, especially in the Middle East and South Asia. During the latter half of the 1990s, Chinese leaders also began to recognize the negative impact on China's international image of being a supplier of WMD-related goods and technologies.

In response, China began transitioning to a system of legally based export controls in the mid-1990s. The government began promulgating laws, regulations, and measures that outlined government procedures for internally vetting pending exports of sensitive nuclear, chemical, missile, and conventional military goods and related technologies.

The evolution of China's controls on sensitive exports can be understood through the following evolutionary process, which occurred in nine overlapping stages: (1) limited internal/administrative controls and government policies that rhetorically supported *proliferation* as a tool of statecraft; (2) limited internal/administrative controls applied to some military-specific goods and government support for *nonproliferation*; (3) growing internal/administrative controls bolstered by narrow interministerial consultations and very limited high-level oversight of arms and WMD-related exports; (4) public, legally based export controls on conventional weapons and some nuclear and chemical weapons-related items; (5) public, legally based controls on *dual-use* nuclear and chemical items; (6) adoption and incorporation of international *control lists* (lists of materials, equipment, and technologies that are controlled under specific regulations) into existing regulations; (7) public and explicit controls on dual-use mis-

sile/aerospace and biological weapons–related goods; (8) full disclosure of the structure of the export control decisionmaking process and the policy standards used in decisionmaking; and (9) establishment of additional bureaucratic structures to implement and enforce existing export controls.

Several factors influenced the evolution of China's system of WMD export controls. First, the more specific an international treaty is about requiring export controls, the more responsive China has been in adopting explicit export control regulations related to that commitment. Second, bureaucratic weaknesses in implementing WMD-related export controls hampered the evolution of the system; in the 1980s, the government was not organized to make such decisions, and it took years to develop such institutional capabilities. Third, international pressure, mainly from the United States, played an important role in shaping China's policies on export regulation of sensitive goods and technologies. Lastly, changing Chinese views about the contributions of nonproliferation to Chinese foreign policy and national security interests were additional factors that influenced the evolution of China's export control system. These considerations, to vary degrees, continue to shape Chinese policymaking on WMD nonproliferation and export controls.

Structure of China's Export Control System

China has established a nascent but extensive interagency system to vet applications of sensitive exports. Several key government ministries actively participate in government decisions about licensing sensitive exports. The top-tier players in the process include the Ministry of Commerce (MOFCOM), the Ministry of Foreign Affairs (MFA); the General Administration of Customs (GAC); the China Atomic Energy Agency (CAEA); the CWC Implementation Office (CWCIO); the Commission on Science, Technology, and Industry for National Defense (COSTIND); the Ministry of Public Security/Public Security Bureau (MPS/PSB); and, in some cases, the General Armaments Department (GAD) of the People's Liberation Army

(PLA). High-level offices in the State Council and the Central Military Commission can play a role in controversial decisions about particularly sensitive exports. Provincial bureaus of these agencies are also active in some aspects of export control administration.

Within the Chinese bureaucracy, there is also a host of secondary actors that contribute to export control administration, education, implementation, and enforcement. They include both government and nominally nongovernmental organizations, such as industry associations, government research institutes, think tanks, and major universities.

As a result of its efforts to reform its export control system, China has gradually created over the years a law-based “system” for controlling exports of WMD-related goods and technologies. The evolution of this system involved issuing laws, regulations, measures, circulars, and notices that collectively codified China’s policy statements regarding nonproliferation. Another key step in creating this system involved incorporating various international standards for nonproliferation export control, such as erecting a registration and licensing system for sensitive exports, control lists, end-user and end-use certifications, “catch-all” principles (See Chapter Four), customs supervision, and punishments and penalties for violators of export control regulations. These elements are now part and parcel of the government’s system of nonproliferation export controls.

In the past five years, China has promulgated regulations and measures covering exports of nuclear and nuclear dual-use goods, chemical-weapon and related dual-use items, conventional military products, dual-use biological goods and related technologies, and dual-use missile items. Detailed control lists of sensitive goods and technologies are part of each of these regulations; for example, the nuclear regulations incorporate international control lists developed by the Nuclear Suppliers Group (NSG).

Implementation and Enforcement of Export Controls

China's implementation and enforcement of its nonproliferation export controls serve as a key indicator of Beijing's willingness and ability to fulfill its nonproliferation pledges. This report treats these two issues somewhat differently. *Implementation* represents China's effort to translate government policy into practical actions within the Chinese government and between government and industry. *Enforcement* represents efforts by the Chinese to monitor the behavior of government entities and private companies, to identify violations by these entities and companies and, most important, to hold these organizations accountable for violating government rules and regulations.

In general terms, China has made far more substantial strides toward furthering implementation of controls than toward enforcement, although continued improvements in both areas are needed.

The Chinese government has taken several steps in recent years to improve implementation of WMD export controls. The first step, which is now largely complete, was the creation of a system of laws and regulations, as described above. Second, the government has established a process of formal interagency coordination to vet possible exports of WMD-related goods and technologies. Third, since late 2003, the government has identified detailed policy standards that are used in determining whether to license a sensitive export. Fourth, China has also developed an internal "watch list" of Chinese and foreign enterprises to monitor. Finally, Beijing is trying to enforce end-use/end-user controls, albeit with limited success. Even with these steps, much more effort is needed to further the implementation and enforcement of export control.

More specifically, a critical step in boosting implementation has been the Chinese government's efforts to inform, educate, and train both government officials and Chinese businessmen about their export control obligations. Numerous national- and provincial-level seminars have been conducted to educate Chinese industry officials about those obligations. The Chinese government has also begun to use the Internet to disseminate new rules and regulations and to fa-

cilitate the license application process for sensitive goods. Nevertheless, more education and training is needed.

The government faces numerous limitations in its ability to manage various export control processes. The main ones are limited financial resources and a lack of qualified people with adequate training expertise. These limitations suggest a lack of political will by the leadership to seriously implement nonproliferation export controls. In addition, MOFCOM does not have a computerized database of past and current export licenses (applied, denied, or approved) or of end users and end uses in various countries. The Chinese Customs Agency faces similar shortcomings. These limitations hinder the government's ability to verify end users or end uses, leaving gaps in the compliance system.

China's limited enforcement of its export controls is by far the weakest link in the export control system. The government's ability to detect, catch, investigate, and penalize export control violators is significantly underdeveloped. Critical gaps exist in many aspects of export control enforcement, especially monitoring, interdiction, and penalization. To be sure, these capabilities are better than they were a few years ago, but much more work needs to be done.

Several important points about the deficiencies in export control enforcement should be noted:

- It is not clear the extent to which this weakness results from a lack of political will to conduct hard-hitting investigations, a lack of resources, or both.
- China currently seems to rely largely on intelligence from foreign governments to learn about pending exports of illicit WMD-related goods and technologies. In many cases when the Chinese government has interdicted illegal WMD-related exports, Chinese officials have relied on intelligence data from the United States, the United Kingdom, and other nations.
- Continuing weaknesses in China's ability to investigate export control violations include MOFCOM and MPS's lack of experience in this area. In particular, their attitude in approaching such investigations shows a weakness in their investigative capa-

bilities. Their approach is often reactive, relying on the provision of Western intelligence data. In addition, there is a lack of healthy skepticism of Chinese firms that is needed to effectively conduct such investigations. MOFCOM officials also appear to be unwilling to pursue investigations against large and influential Chinese state-owned enterprises.

As of April 2005, only two cases of government penalization for export control violations have been made public, but Chinese officials have stated that more are in the pipeline, including criminal cases that hold more severe penalties. There is no indication when such cases will come to fruition and/or be publicized.

Future Challenges for Chinese Export Controls

China is still several costly and time-consuming steps away from possessing a fully functioning export control system that can regularly monitor and police the activities of exporters involved in selling WMD-related goods and technologies. More resources need to be devoted to institutional development and defeating entrenched interests. Specifically, the Chinese government currently faces several challenges in erecting such a system:

- The need to regularize implementation of existing rules
- The need to significantly boost enforcement of export regulations and to communicate the cost of export control violations to state-owned and private enterprises
- The need to create incentives for better compliance by Chinese enterprises and, ultimately, to facilitate self-regulation by those enterprises
- The complexities posed by government reorganizations, which are common and often result in structural changes in the export control decisionmaking system

- The impact of the entry of China into the World Trade Organization and the resulting proliferation about Chinese companies with international trading rights
- The challenges posed by rapid enterprise privatization and the need to educate new companies about their nonproliferation obligations
- The growing foreign penetration into China's market and the increased opportunities for foreign enterprises to procure controlled items by exploiting the weaknesses in China's current export control system.