

The Evolution of EU and Chinese Arms Export Controls

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Acronyms

ATT	Arms Trade Treaty
CACDA	China Arms Control and Disarmament Association
CMC	Central Military Commission (China)
COARM	Working Party on Conventional Arms Exports (EU)
COREU	Correspondence Européenne
ECC	Export Control Council (Sweden)
EEAS	European External Action Service
EU	European Union
Europol	European Police Office
GAC	General Administration of Customs (China)
GAD	General Armament Department (China)
ISP	National Inspectorate of Strategic Products (Sweden)
MFA	Ministry of Foreign Affairs (China)
MOFCOM	Ministry of Commerce (China)
MOFTEC	Ministry of Foreign Trade and Economic Cooperation (China)
NGO	Non-governmental organization
NORINCO	China North Industries Corporation
NPT	Non-Proliferation Treaty
PLA	People's Liberation Army
PRC	People's Republic of China
SASTIND	State Administration of Science, Technology and Industry of National Defense (China)
SIPRI	Stockholm International Peace Research Institute
UK	United Kingdom
UN	United Nations
US / USA	United States of America

1. Introduction

The global trade of conventional arms has proliferated and increased in volume, and in recent years, arms have become more sophisticated. There are more countries today with the capacity to produce and export conventional arms and dual-use technologies in mass quantities, thus fuelling a growing market and global demand. All available evidence indicates that—while lagging far behind other major arms producers such as the United States, Russia, France, UK and Germany—China’s arms exports have increased. For example, the Stockholm International Peace Research Institute (SIPRI) estimates that while China was the tenth largest exporter in 2005, it became the fourth largest in 2010.¹ This trend is likely to continue for the foreseeable future.

At the same time, the incentives and pressure to export arms and dual-use technologies are being increasingly scrutinized, with an emerging consensus and normative push—primarily through the UN Arms Trade Treaty (ATT) initiative—to help ensure that conventional arms are only transferred for appropriate use. The effective enforcement and implementation of the impending ATT, however, rests on strong political will and robust export control mechanisms from each and every arms exporting country. To that end, international co-operation on export control is an important supply-side strategy to curb the flow of arms into regional trouble spots and conflicts.

It is for precisely these reasons that the China Arms Control and Disarmament Association (CACDA) and Saferworld have embarked on this important project to deepen and expand EU-China dialogue on international arms transfers. Over the last two years, the range of activities, the levels of engagement, as well as the scope of the substantive dialogue between European and Chinese counterparts on both the official and non-governmental circles have seen measurable progress and impact. In 2009 when the Saferworld-CACDA partnership was first conceived, there was very limited substantive

¹ SIPRI Arms Transfer Database, <http://www.sipri.org/databases/armstransfers> (accessed on 30 January 2011).

knowledge among the Chinese policy community on conventional arms control issues and processes. Since then, the project has forged and sustained important channels of communication between EU officials and experts with key Chinese government agencies, defense industries, as well as the epistemic community in universities and other research institutes. It has introduced unprecedented opportunities in China and in Europe for debate on conventional arms control, whereby a much more well-informed realm of decision-makers, policy elites and experts now have a stronger capacity to engage in this field within China and abroad.

More specifically, this report is an important output of the confidence-building dialogues on the regulation and nonproliferation of the global arms trade. Many Chinese officials and policy elites are not entirely familiar with European thinking on conventional arms control, and Europeans may not fully appreciate the nuances and difficulties in China's position on the ATT and conventional arms control. The report contains four main sections: an introduction, a chapter each on China and the EU's position on the regulation of the international arms trade, and a conclusion with policy recommendations.

The chapter on China's position is drafted by Chinese specialists and captures the oft-missing contextual analysis and insights into the Chinese foreign policy 'black box' on conventional arms export control issues. The chapter provides a wealth of information and analysis, carefully tracking some of the most significant policy developments behind the evolving Chinese position on conventional arms export control while shedding light on some of the most powerful and important actors in China's intricate and somewhat ad-hoc internal decision-making mechanisms on regulating conventional arms transfers. The chapter also delves into some of China's concerns on the regulation of conventional arms, the primary of which is a call for the major arms exporters to carefully balance competing policy objectives—regulation on the one hand and reducing unnecessary and excessively intrusive restraints on the transfer of arms and dual-use technologies on the other hand. In short, from licensing to the approval processes to end-user verifications, this chapter breaks significant new ground for future studies on Chinese export control as it provides new and important

insights on issues that have hitherto been opaque and sorely understudied.

The EU chapter provides a comprehensive overview of the EU progress and trajectory on the development of common standards based upon best practice. To be sure, there were many twists and turns along the way to come to terms with standardized regional standards in regulating the arms trade. The earlier period in EU's nonproliferation policy was complicated by the fact that several member states were engaged and implicated in a number of arms transfer-related scandals in the 1980s-early 1990s. These setbacks, however, served as compelling lessons that there is an even more dire and urgent need to co-ordinate and develop a regional set of standards. By 1992, the agreement and adoption of eight common export criteria came into effect. In practice, however, each EU member state retained a high degree of autonomy with its own discretion and export control policies in place to regulate the arms trade. As such, the normative discipline of adhering to and not violating the EU common standards has consistently diffused into national export controls. The chapter provides excellent analysis and overview on the enforcement and verification mechanisms of the EU and its member states, as well as some of the most relevant issues surrounding transparency and accountability over EU arms exports and the governments' relations with the arms and defense industry.

The report concludes with policy recommendations on regulating the arms trade drawn from the China and EU chapters for changes in policy, implementation, and enforcement. One of the most important conclusions of this report is that the EU and China have mutual interests in promoting and further strengthening export controls for conventional arms. It should be noted that China's course on its nonproliferation policy is not unlike that of other arms exporting countries in Europe. Effective export control mechanisms begin by limiting and halting the illicit transfer of arms and eventually widening to include a more inclusive list of dual-use goods and technologies. There is often a time lag between the announcement of new national export control policies and regulations and their actual, systemic implementation and enforcement. In fact, often times, governments can be selective in which policies and regulations to enforce. The current state of China's conventional arms export controls is thus not unique; it reflects an earlier stage of development than that of the

standards and policies of the arms trade regulation in the EU. As such, the challenge and the opportunity for the EU and China will be to sustain continued progress to the next stage of the export control policy and capacity. The findings and policy recommendations in this timely report will serve as a critical basis and foundation for continued structured and informed discussion and engagement with officials, academics and think tanks from both China and the EU, and will ultimately contribute to the policy dialogue on the future direction and fate of the conventional arms control regime.

2. Conventional Arms Export Control in China

Arms transfers directly relate to national political, economic and security interests and are a component part of international relations. The major powers of the West have accumulated a lot of experience in establishing more sophisticated and rigorous arms export controls and legal systems. For example, the US and Russian presidents have the decisive power for major arms export and co-operative military relations with foreign countries, and the French prime minister exercises unified control over arms transfers. They formulate relevant laws and detailed regulations with control lists which are easy to operate on. The relevant government, civilian, and military agencies interact to examine, verify and approve the arms transfer projects. Over the past three decades, China has made great progress in conventional arms transfer controls, yet its arms control and legal systems need to be perfected in the coming years. This chapter attempts to gain greater insight into Chinese arms transfer control norms and policies and their practical implementation.

Historical overview of China's policy development on arms export control

Since the reform and opening up in the late 1970s, China's arms export control policies towards weapons of mass destruction (WMD) and conventional arms have experienced drastic changes, due to the different stages of social and economic development that China has gone through and the different policy of orientations borne out of the dogmatic or ideological considerations. However, especially since 1990s, in parallel to China's economic development, the country's increasing role in the international community and its embrace of international nonproliferation principles, China's export controls have undergone a significant reorganization and restructuring process.

China now attaches great importance to arms control, disarmament and nonproliferation of WMD, i.e., nuclear, biological and chemical weapons, and their delivery means. It has signed, in the last decades, numerous international treaties and conventions, including the Treaty

of Nonproliferation of Nuclear Weapons (NPT), Comprehensive Nuclear Test-Ban Treaty, Chemical Weapons Convention, and Biological Weapons Convention. China has become a member of the Zangger Committee and Nuclear Suppliers Group (NSG), which govern the export activities in nuclear field. China has also applied for the membership of the Missile Technology Control Regime. In this process of joining to the international export regimes, China has promulgated and published a number of decrees and regulations.² China considers the proliferation of WMD a detrimental and destructive factor for its own national interests and for regional and global strategic stability and security. As nuclear and missile proliferation is becoming a serious problem, China sees proliferation as a direct threat to its own security, instead of a problem affecting only western countries. Therefore, China is getting more proactive vis-à-vis international nonproliferation initiatives and has exerted greater efforts compared with a relatively passive attitude in the past.

From a Chinese perspective, conventional arms play an even more important and sometimes crucial role in national security and international relations than WMD, as the latter are generally not used in conflicts and wars. In fact, all the conflicts and wars that occurred in different parts of the world after World War II have been conducted with conventional weapons. Therefore, the export of conventional arms has a more direct impact on reality. The international community has made great efforts in this field. However, a set of universally accepted global regimes or norms is still missing. In the 1970s, China used to criticize Western countries for using embargoes on arms and technologies export as leverage for what are often ideological purposes. Likewise, during that era, China also held a

² For the purpose of nonproliferation, China has published a number of regulations related to WMD: in the nuclear field, The Regulations of PRC on Nuclear Export Control on 10 September 1997, the related Listed Items of Nuclear Export Control on 28 June 2001 and The Regulations of PRC on Nuclear Dual-use Items and Related Technologies on 1 June 1998; in the biological field, The Regulations of PRC on Export Control of Biological Dual-use Items and the Related Equipment and Technologies, and the related Items List on 1 December 2002; in the chemical field, The Administrative Regulations of PRC on Monitoring the Chemicals and the Related Various Chemicals Monitoring Lists, The Implementation Details of the Administrative Regulations of PRC on Monitoring the Chemicals on 27 December 1995 and the Export Control Regulations on the Related Chemicals and Their Equipment and Technologies on 19 November 2002; in the missile field, Export Control Regulations of PRC on Missiles and the Related Items and Technologies and the accompanying Items List on 22 August 2002.

different view on arms sales. For example, a typical motto at that time was “China should never be a merchant of death.” Although there were exports of arms to foreign countries, the actual quantity of armaments transferred was in fact rather small. Therefore, arms export control was a rare term in Chinese policy. Besides, as the economy at that time was planned and administrated by the central government, the actual arms control (exercised by administrative means) could be considered as one of the tightest and strictest in the world.

When China started to reform and open up in the late 1970s, because of its small percentage of conventional arms exported (relative to both the Chinese economy and to the total international arms trade), export control was still not a very prominent policy priority in China. The Government followed the administrative approach to govern the limited arms export control. From the late 1980s, with the development of the Chinese economy, conventional arms export started to increase and more companies showed their interest in becoming involved in it.³ At the same time, China had started to adjust its attitude towards the international nonproliferation regimes like the NPT. It started to concentrate on the adoption of best standards and international practice on export control regulations of WMD and conventional arms. From the mid-1980s, during which there was a rapid development of a legal system in China’s wider social and economic affairs, a legislative approach was adopted, with concrete legislation on arms export control introduced in the mid-1990s. By early 2000, the relevant laws, regulations and policies for governing conventional arms export controls had been promulgated. The new norms made clear that arms transactions in violation of the relevant laws and regulations would bear grave consequences. Law enforcement agencies and governmental institutions co-operate not only to enforce the laws and regulations, but also to implement the international commitments on nonproliferation, anti-terrorism, peace, security and stability that have been undertaken by the Chinese Government.

³ According to the US Congressional Research Service, China’s arms sale was only 2.3% of the world’s arms trade in 2001-2004 and 2.9% in 2005-2008. SIPRI statistics show that China’s arms trade in 2004-2008 was 2% of the world’s arms trade volume, ranking as the 12th weapons supplier country. USA, Russia, France, UK, Germany are the world’s top five arms exporters with about 40%, 20%, 8%, 5% and 4% of total export volume respectively.

Today, as the world's second largest economy, China's defense technologies and defense industry capabilities are also rapidly improving and developing. China will inevitably become more interested in entering into the international conventional arms market. From a long-term perspective, efforts by China to transfer conventional arms in better quality and larger quantity should not come as a surprise. While China's increase of its share in the arms market will be a gradual process, and it may take time to see significant changes, this development is both obvious and inevitable. At the same time, China is strongly pursuing a peaceful and responsible image within the international community. China attaches great importance to its 'soft power diplomacy'. Appropriate arms transfers are meant to reinforce the recipient country's national defense capabilities. However, if the recipient countries do not properly abide by their commitments - for example if there are complications in the recipient country with violations of internationally-agreed human rights or humanitarian laws - China will be cautious and meticulous in the implementation of its arms transfer controls, balancing economic interests with international obligations and geopolitical factors. So, while China will become more active in the international arms sales market, it will also be more attentive to the responses from abroad on its decisions. Chinese traditional culture emphasizes universal applicable principles and rules. Discriminatory policy towards specific country in arms export as endorsed by western countries will have little chance to be publicly accepted in China's foreign policy. Meanwhile, as the Chinese economy grows, the differences between China and the western countries in understanding human rights and humanitarianism are getting less marked. Applying human rights and humanitarian principles to arms sales decisions should not be difficult for China. Such principles are bound to be more strictly observed as China's image as a responsible international actor continues to grow. Chinese interests and capability in participation in the new international rules formulation processes keeps increasing. These elements will set the basic framework for China to interact with the rest of the world in the future ATT negotiation and implementation.

China's policy on arms export and relevant legal system

1. Official policy

The Chinese government insists that it adheres to an independent foreign policy of peace and follows the road of peaceful development. While working hard to safeguard its own national interests, China stresses that it also attaches great importance to respecting the security interests of other countries and paying special attention to promoting the common interests of all countries. China follows the new security concept of mutual trust, mutual benefit, equality and co-ordination. China adopts a cautious and responsible approach towards the export of conventional weapons. As such, it has established a set of principles and guidelines that inform whether arms and dual use items are approved for export. There are three key principles regulating the export of conventional weapons:⁴

- (1) Arms export should only be conducive to reinforce the self-defense capabilities of the recipient country;
- (2) There should be no injury to the peace, security and stability of the region concerned and the world as a whole;
- (3) There should be no interference in the internal affairs of the recipient country.

These are the highest guiding principles for arms export control in China. While they are quite general, Chinese officials maintain that this gives the Government more leeway to stop an arms transfer that is deemed unsafe. Opposition from any of the agencies involved in the authorizing process may stop the arms deal if it runs contrary to these three principles.

Furthermore, there are a number of considerations that inform the decision whether or not to authorize the export of weapons which includes: China's existing international obligations and commitments; potential harm to China's security and public interests; compatibility with China's foreign policy; potential harm to the international

⁴ Article 5, Regulations of the PRC on the Administration of Arms Exports.

nonproliferation situation; whether the recipient country is subject to a UNSC arms embargo and whether its internal political environment is stable; whether exported items may be used for the development of WMD; and whether arms will be re-transferred to a third country without prior consultation with and consent of China. Lastly, it should be noted that China only provides weapons to sovereign countries and never to non-state actors.

2. Arms export regulations

China's transition from an administratively based arms export control system to one based in law and official regulations represents the most significant development in the evolution of Chinese arms transfer controls. The key norms governing China's arms exports are: The Regulations of the PRC on the Administration of Arms Exports and the Regulations of the PRC on Export Control of Missiles and Related Items and Technologies, with the List of Export Control of Missiles and the Related Items and Technologies.⁵ By codifying China's export principles, by requiring the adoption of an export licensing system, and by specifying procedures and legal responsibilities for license application, consideration and approval, these regulations are more transparent than previous administratively based and ad-hoc arms export controls, which took the form of executive decrees.

The Chinese Government attaches great importance to law enforcement and has adopted a series of effective measures to ensure the implementation of laws and regulations on arms export control of conventional weapons. Other supplementary regulations are: Measures on the Administration of Export Registration for Sensitive Items and Technologies (promulgated in November 2002); Provisional Measures on the Administration of Export Licenses on Sensitive Items and Technologies (promulgated in December 2003); and the Export Licensing Catalogue of Sensitive Items and Technologies (promulgated in December 2003).

⁵ Ministry of Foreign Affairs of the People's Republic of China, National Report of the People's Republic of China on the Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, and of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (2010), p 7.

The Regulations of the PRC on the Administration of Arms Exports were promulgated by the State Council and the Central Military Commission in October 1997 and were amended in 2002 with the adoption of an Administrative List of Export of Military Products listing the specific military goods controlled under the regulations. The Regulations include six Chapters and 30 Articles. They cover definitions of export of military products, the principles, administrative management and systems, export sequences and the relevant legal responsibilities.

Article Two covers the scope of export of military products and refers to the commercial export of military-purpose equipment, special facilities for production and other materials, technologies and their services. This means that the non-commercial export of military equipment and technical aid, as well as the export of equipment and materials not for military purposes, such as for sports or for hunting, are not included in this Regulation. It should be noted that, as specified in Article 29, the export of equipment for police is included in the regulations.

The Regulations stipulate that all the exported military products are included in the Administrative List of Export of Military Products. The 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. Valuable foreign experiences are also taken as references in making the list. The list is comprised of 14 categories of defence goods that are subject to the license requirement:

1. Light weapons;
2. Artillery and other launching devices;
3. Ammunition, landmines, aquatic mines, bombs, anti-tank missiles and other explosive devices;
4. Tanks, armored cars and other military vehicles;
5. Military engineering equipment and facilities;
6. Military vessels and their special equipment and facilities;
7. Military aircrafts and their special equipment and facilities;
8. Rockets, missiles, military satellites and their auxiliary facilities;
9. Electronic products for military purposes and devices for fire control, range finding, optics, guiding and controlling;

10. Explosives, boosters, incendiary agents and the related compounds;
11. Training aids;
12. Protective equipment and facilities against nuclear, biological and chemical weapons attacks;
13. Logistic equipment, military supply and other auxiliary equipment; and
14. Other products.

This list of conventional arms is more detailed than the seven major categories of conventional arms that are included in the UN Register of Conventional Arms.

In an effort to better integrate international standards on military and dual-use goods into China's existing export control legislation, the State Council issued in November 1998 export control regulations covering 183 dual-use technologies. In 2002, an amendment was made to the regulations to cover most of the Wassenaar Arrangement's core list of dual-use technologies. The Ministry of Foreign Trade and Economic Cooperation (MOFTEC) also released a Catalogue of Technologies restricted or prohibited from Export. At the end of 2009, the Ministry of Commerce (MOFCOM) and the General Administration of Customs jointly issued the Catalogue of Dual-Use Items and Technologies subject to Import and Export License Administration, which came into effect on January 2010 and covers nuclear, biological, chemical, and missile-related dual use items and goods. According to Chinese experts, a new dual-use goods list has been developed by MOFCOM with some revisions and already become publicly available.

3. Other Related Laws and Regulations

The legal basis to punish violations of the laws and regulations on arms export control is provided by the following legal acts:

- The Criminal Law of PRC;
- The Foreign Trade Law of the PRC (promulgated in May 1994, amended in April 2004);
- The Administrative Punishments Law of the PRC (promulgated in March 1996);
- The Customs Law of the PRC (promulgated in January 1987, amended in July 2000);

- Amendments to the Criminal Law of the PRC (promulgated in December 2001);
- The Regulations of the PRC on the Import and Export Control of Technologies (promulgated in December 2001);
- The Regulations of the PRC on the Import and Export Control of Goods (promulgated in December 2001).

Punishments for violations of the regulations include administrative and criminal penalties. The administrative penalties include: warnings, financial fines, and the temporary suspension and withdrawal of the permit to export military products. The criminal penalties are measured according to criminal law.

4. The Catch-all Principle

China applies a catch-all principle, which is designed to deny exports that are directly or indirectly related to the manufacture of nuclear weapons and their delivery systems. This is done by imposing licensing requirements on the export of goods which the exporter bears the risk of being used in connection with WMD activities. In such cases, the licensing requirement applies even if the goods 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. When such a risk exists, the exporter needs to apply to the relevant government authorities for an export license.

This principle is therefore demonstrated in two ways: Firstly, the exporter is responsible for anticipating whether the recipient of the imported items might use them directly for the development of WMD and their delivery means, and must therefore apply for a license from the competent authorities. Secondly, the government authorities are required to consider the prevention of weapons proliferation and anti-terrorism at the start of their license assessment. They should give a comprehensive consideration to the obligations China has undertaken in international arms control and nonproliferation, and the impact of the exported items on China's public security and safety and on international, as well as regional, peace and stability. They should give overall evaluation of the end-user and end-use, and make a judgment on whether there is a risk of proliferation, or that such items could fall into the hands of terrorist organizations and/or

individuals. If there were such a risk, the competent authorities are required not to issue a license and terminate the export application.

The administrative system of arms export control

1. The decision-making process

The Chinese Government stresses that it adopts a cautious and responsible approach towards the export of military products. This is guaranteed by a rather comprehensive and competent system of administration, which involves numerous ministries and departments under the State Council, such as the Ministry of Foreign Affairs (MFA), the People's Liberation Army (PLA), economic and trade agencies, banks, the customs and the public security sector, etc. The functional agencies cover the lifespan of arms exports: from the research and development of defence goods, to the production, storage, shipment, banking transactions and verification of import and export commodities. The State Council and the PRC Central Military Commission (CMC) are the highest decision-making bodies responsible for the development of regulations and approval of important arms sales. Any pending issue not settled by the functional agencies is submitted to either or both these bodies for a final decision. The MFA, the General Armament Department (GAD), the State Administration of Science, Technology and Industry of National Defense (SASTIND) and the General Administration of Customs (GAC) are involved in the process of drafting and formulating laws and regulations. They are also involved in the implementation of laws and regulations in this regard.

The GAD and SASTIND are in charge of accepting and evaluating export license applications and issuing export licenses for armaments and products included in the control lists. GAD, which is under the control of the CMC, focuses on vetting and authorizing the export of the equipment that is still in service within the PLA. In contrast, SASTIND is in charge of approving or denying the export of goods produced by the Chinese defense industry, and maintaining and developing the capabilities of the defense industry.

The basic approach for reviewing and approving an arms export deal is based on interagency consultation and coordination. This applies

to all arms exports. The MFA provides advice on the security and stability of the region where the armaments are meant to be exported, as well as the internal political situation of the recipient country. It also examines if the export conforms to the international obligations and commitments that China has undertaken. Where the export items entail significant impact on national security and the public interest of China, the competent departments shall, jointly with other relevant departments, submit the case to the State Council and the CMC for approval.

The GAC is responsible for the supervision and control of the export of armaments and technologies, and it also participates in investigating and handling cases of illegal exports. The GAC has the authority to question whether the exported items and technologies are sensitive, and to request the exporters to follow the regulations and apply to competent government departments either for an export license or for certificates showing that the exported goods are not controlled items.

2. Exporters of Military Products

In China, only qualified and authorized companies are allowed to engage in arms export activities. Currently, there are 11 companies which are authorised to export military products and related technologies:

- China Electronics Import and Export Co.;
- China Aeronautical Technology Import and Export Co.;
- China North Industries Co. (NORINCO);
- China Vessels Industry Trading Co.;
- China Precision Machines Import and Export Co.;
- Poly Science and Technology Co.Ltd.;
- China Xinxing Import and Export Co.; (logistics only)
- China Jing'an Import and Export Co.;
- China Electro-Sci-Tec International Trading Co.Ltd.;
- China Vessels Heavy Industry International Trading Co.Ltd.,
and
- Space Long March International Trading Co.Ltd.

Each company is designated the import and export of specific goods. For example, China Electronics Import and Export Corporation is designated the export of electronic military equipment; NORINCO

deals with conventional weapons export; China Xinxing Import and Export Co. only with logistic equipment and armaments; and China Jing'an Import and Export Co. is authorized to deal only in police equipment. However, because of the closely related competencies and technologies involved, there are sometimes overlaps in the production and/or export and import of certain items among these companies.

Application and approval of licenses and institutional interaction

This part elaborates on the procedures for license application and approval, and the interactions amongst the various relevant actors.

1. Special Operation Mechanism

As the export of arms is considered a 'special business', a Special Operation Mechanism is required for the export of military products. Any arms trading entity must legally obtain the operational qualification for arms export. Any other units or organizations are not allowed to engage in arms export operations. The Law prohibits the involvement of individual citizens in the arms trade.

2. The Licensing System of Applications and Approvals

There is a rigid licensing system for the export of military products. The licensing system includes: a business operation (project) permit, a production permit, a contract permit, a transport permit, an export license and a customs permit. The application, examination and approval of the licensing system can be summarized as "Three Applications and Three Approvals". Before the weapons and equipment with the relevant technologies are to be exported abroad, an application must be submitted for the permit to manufacture the products to be exported. This application must be jointly approved by the GAD of the Ministry of National Defense and/or SASTIND. Major projects require further approval by the State Council and the CMC. Only after this approval can the arms trading company start marketing its products.

Once a client is found, the next step is to file an application to GAD and/or SASTIND for the export of the goods. After this approval, the company is allowed to sign an export contract with the foreign counterpart. Once this contract has been approved, the project and contract can come into force. Before exporting the products, the company is required to take the approved contract to GAD or SASTIND⁶ and apply for an export license, which, once granted, will be valid for six months. Finally, the Customs authorities will verify the validity of the license and issue one Customs permit.

3. End-user and End-use Verification

The exporting company should provide the certificates of end-user and end-use from the recipient government at the time of applying for the export license. The competent licensing authorities will use the information available in their database to analyze and judge whether: the importing country is qualified to receive the exported items; the end-user is reliable; the end-use is for national defense; the exported items will not be transferred to a third country or to a third party.

In practice, however, the national authorities find it difficult to monitor the use of the exported items due to the changing international situation and the limits of diplomatic relations. Another potential problem is that the imported arms are delivered and paid for, but the ‘strong-willed military men’ who receive them are then often very reluctant to answer questions about the whereabouts of the arms. This again adds to the difficulties in tracing the end-user and end-use. However, the Chinese authorities have encouraged exporting companies to sign end-user visit agreements with recipient entities and undertake end-user visits to them.

The defense attaches of the Chinese diplomatic missions play a role in confirming the authenticity of the contracts and end-user certificates, but they are not involved in practical military or commercial activities.

⁶ This depends on whether the product is still within service of the PLA, or if it is produced by a defense industry

4. The Contingency Mechanism

If a pending arms export is politically sensitive and potentially controversial due to international proliferation risks, then the application can be reviewed by an Inter-agency Commission, which was set up in May 2004. There are detailed procedures for an emergency response mechanism that revolves around the Commission. In addition to GAD and SASTIND, the Commission includes agencies from the Ministry of National Defense, the MFA, the Ministry of Public Security, the Administration of Industry and Commerce, and the Administration of Commodities Quality Examination and Control. Some individual cases also involve the General Administration of the Customs, the Civil Aviation Administration and the security agencies. This mechanism, according to the Government, functions well and has successfully handled quite a few cases of arms exports having major implications.

5. Public Education and Internal Compliance in Export Control

Arms export companies are encouraged through different channels and in various forms, such as seminars, workshops and troubleshooting courses, to instill in their employees acknowledge and appreciation for the laws and regulations governing export controls. They are also urged to establish internal compliance mechanisms. SASTIND holds training courses or seminars for arms exporter corporations every year. NORINCO has been an example for export control and self-compliance among Chinese industries. It has established special internal compliance departments and rules in its organic structure and procedure. Regular export control seminars are held every year. Within NORINCO, export control education is part of the training course held for new employees each year. Other companies have also realized the significance of self-compliance mechanisms for reducing risks in their transactions. Arms export control is no longer considered a remote concept by arms exporters. They have gradually taken it onboard as part of corporate image and social responsibility.

3. EU Progress towards Common Regional Standards Regulating the Arms Trade

The evolution of EU export controls can be viewed as an unfinished journey: many proposals and initiatives that at one point appeared infeasible are now firmly established in policy and practice. Over the past two decades much progress has been made within the EU in the development of common standards based upon best practice. While it is important to acknowledge the rapid pace at which developments occurred—particularly in the decade following agreement on the EU Code—it is arguable that implementation has lagged behind in some areas and much remains to be done to ensure that the principles and policies agreed by EU member states are fully enacted.

During the 1980s and early 1990s EU Member States were implicated in a number of arms transfer-related scandals, including the arming of both sides in the 1980-1988 Iran-Iraq War and the continued sale of arms to Saddam Hussein's Iraq in the period preceding the 1990 Iraqi invasion of Kuwait. By mid-1991 pressure had grown within the then 12 Member States of the EU, leading to agreement, at the Luxembourg Council of Ministers' summit of June 1991, on seven Common Criteria for arms exports that required EU Member States to take into account factors such as the human rights record, the internal and regional situation and the international standing of a potential recipient prior to granting an export license. A further single criterion was added at the Lisbon summit in June 1992 which required Member States to take into account the technical and economic or developmental impact of any arms transfer.

The eight Common Criteria, to be applied on a case-by-case basis, served to supplement the pre-existing EU arms embargo mechanism whereby the Council of Ministers could, in response to a situation of grave concern, agree to impose restrictions (often in the form of a blanket prohibition) on the sale of arms and military equipment to particular governments, territories or entities. Currently there are 19 EU arms embargoes in force, of which ten implement UN embargoes at the EU level (a standard procedure). Of the remaining nine, seven

apply to countries not under UN embargo, while the other two can be seen as related to but going further than current UN embargoes. The eight Common Criteria were therefore intended as a means of encouraging consistent levels of proportionality and restraint in the arms transfer decision-making processes of EU Member States. This was a direct challenge to the hitherto standard defense of arms transfers that raised concerns among Member States' electorates that "if we don't sell [arms to a particular end-user], someone else will."

The EU Code of Conduct on Arms Exports and User's Guide

It is important to note, however, that the agreement of the eight Common Criteria did not in any way alter the competence, or national discretion, of the Member States in the field of arms transfers. All decisions on the manufacture, transfer and acquisition of arms remained (and continue to remain) at the discretion of the national governments. Moreover, within a very short period of time, following the agreement of the Common Criteria, it became apparent that little progress was actually being made towards a convergence in the Member States' arms transfer policies. This was particularly the case with regard to arms exports to countries and regions of concern—such as Indonesia and sub-Saharan Africa—where the arms transfer policies and practices of the Member States continued to diverge. In response to this, calls were made in non-government and parliamentary circles for further steps to be taken towards harmonization of EU arms export controls through establishment of an EU Code of Conduct on Arms Exports (EU Code). Following five years of intensive work by non-government organizations (NGOs) and parliamentarians to build support for this idea among EU governments, an EU Code was agreed by the Member States in June 1998. The EU Code, which had been a joint UK-French proposal within the EU Council of Ministers, constituted a major step forward in the development of common EU standards for arms transfer control and represented a watershed moment in efforts to establish best practice at EU level.

The EU Code established guidelines—of varying detail—for the assessment of prospective arms transfers based on the eight Common Criteria.

It also contained a number of operative provisions which elaborated on how Member States should implement the agreement in terms of both national and co-operative practices. Important among these was a denial-notification and consultation mechanism (operative provision 3 of the EU Code) whereby Member States agreed to inform each other when they denied an export license. A Member State considering approving a license previously denied by another Member State for an “essentially identical transaction” was first to consult with the Member State that issued the original denial. The second Member State was still entitled to issue the license following such consultations (i.e., a denial by one Member State did not bind any other Member State), however the EU Code committed the second Member to advise the first in the event of such an ‘undercut’. The EU Code also incorporated an annual review process whereby Member States were required to present a report on their arms exports and implementation of the EU Code for discussion at an annual meeting, in turn paving the way for the production of a joint or ‘Consolidated Report’ on the EU Code. The first Annual Review process was undertaken in the second half of 1999, under the Finnish Presidency of the EU. Although the EU Code did not specify that the Consolidated Report ought to be made public, the Finnish Presidency decided to publish the first—a precedent followed every year since.

In late 2003 another significant development in the evolution of EU arms transfer controls occurred with the publishing, by the Member States’ Working Party on Conventional Arms Exports (COARM), of the first edition of the EU Code User’s Guide. This was initially focused upon establishing agreed practice with regard to the operation of the denial notification mechanism. Subsequent revisions, however, added a considerable amount of detail relating to *inter alia* best practices for arms export licensing—e.g., for end-user certificates—as well as guidance for interpreting the criteria of the EU Code and a national reporting template.

It is worth noting at this point that the development of common approaches to arms transfer control has extended beyond the realm of arms exports to include several other agreements relating to

transfers of arms (including particular types of arms) and of dual-use goods. For example:

- in 1995 the EU agreed an EC Regulation on Dual-Use Goods, since updated (most recently in 2009) allowing free movement of dual-use goods throughout the EU;
- in 1998 the EU agreed a Joint Action on Small Arms, which set out a comprehensive approach to tackling the proliferation of small arms, particularly in countries affected by an excess of these weapons;
- in 2003 the EU agreed a Common Position on Arms Brokering, which set out common standards for the Member States to adopt in the control of arms brokering;
- in 2009 a Directive on Intra-Community Transfers of Defense Products was adopted in an effort to reduce barriers to the free movement of defense equipment throughout the EU.

The impact of these agreements has varied widely, for different reasons. For example, the EU Joint Action on Small Arms was, to a large extent, superseded by agreement at international level in 2001 on the UN Programme of Action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects with this agreement providing the principal focus for efforts to combat small arms proliferation in the wider Europe and beyond. On the other hand, the Common Position on Arms Brokering has proved instrumental in the adoption of licensing regimes governing arms brokering activities in over 20 Member States.

The EU Code review and its transformation into a Common Position

In 2003, EU Member States began a review of the EU Code. While first conceived of as no more than an opportunity to update the existing agreement in light of lessons learned from its first five years of operation, ultimately the review process resulted in the politically-binding Code being transformed into a legally-binding Common Position.

Beyond this transformation of status, the main changes stemming from the review were as follows:

1. The reference in the EU Code to export license applications (against which the Code criteria were to be applied) was further defined in the Common Position to include physical exports, including for licensed production of military equipment in third countries; brokering; transit and transshipment; and intangible transfers of software and technology.
2. Respect for international humanitarian law, referred to only obliquely in the EU Code, became a fundamental part of the licensing assessment process of the Common Position.
3. The Common Position created a new obligation on Member States exporting strategic equipment or technology to publish national reports on those exports, and formalized the established practice of publishing each year a Consolidated Report.

All these changes were negotiated and agreed at the COARM level by summer 2005, however it was not until the tenth anniversary of the EU Code, in December 2008, that the Common Position was finally adopted.

Assessing the impact of the review and the transformation of the EU Code to a Common Position is difficult. While EU Member States do report publicly on the transfers made or authorized, the level of detail included in reports makes it difficult to assess how the criteria are being applied in individual cases. This difficulty is compounded by the fact that the decision-making process is, in most circumstances, completely closed. Recent analyses of EU Member States' general practice regarding arms sales to the Middle East and North Africa suggests, however, that inadvisable transfers, i.e. where the risk of misuse appeared significant, are still being authorized, and therefore that either the language or application of the Common Position criteria needs further change.

The Common Position criteria

The EU's eight criteria for assessing whether a transfer is acceptable have undergone evolutionary change since the first seven were

agreed two decades ago. As now elaborated in the Common Position, they can be summarized in terms of the following issues:

1. Respect for international obligations and commitments
2. Respect for human rights and international humanitarian law in the country of final destination
3. Internal situation in country of final destination in terms of tensions or armed conflicts
4. Preservation of regional peace, security and stability
5. National security of EU Member States and their territories and allies
6. Attitude to terrorism and respect for international law in destination country
7. Risk of diversion within the recipient country or re-export under undesirable conditions
8. Least diversion of human and economic resources for armaments and consideration of impacts on sustainable development

Arms transfer licensing in the EU

As noted above, arms transfer licensing decisions remain within the competence of the EU Member States. Accordingly each of the 27 EU Member States has its own national legislation, regulations, export licensing system and enforcement capacity. Moreover, licensing practices vary significantly across the EU with a wide variety of national systems and approaches. For example, the French government utilizes a system of 'green lights' whereby industry must secure approval from the relevant authorities at three distinct points: firstly to enter into negotiations with a prospective buyer of arms; secondly to sign a contract for the sale of arms; and thirdly to actually export the arms in question to the approved recipient. In Sweden, informal contacts between industry and the export licensing authorities play a central role. The advice given by government about the prospects of a particular sale being authorized means that the issuing of export license denials is a relatively rare occurrence. In other Member States, such as the UK, advice may be given as to whether a particular transfer will require an individual export license. However decisions as regards actual authorizations are made through the formal export licensing channels.

Each Member State is nevertheless legally obliged, for all license applications, to follow a process of assessment against and adhere

to all of the criteria. Each State is also obliged to apply all the other provisions of the Common Position, and is expected to apply the User's Guide in its entirety when licensing transfers (export or brokerage) of equipment on the EU Common Military List or of listed dual-use goods destined for a military end-user. The User's Guide is not, however, legally binding.

Most EU Member States have up until now required entities to apply for a distinct license for every intended international transfer of arms. The UK follows this same approach in many cases, however in order to lighten the bureaucratic cost, this is supplemented by a system of open and general licenses, under which more than one transfer is permitted. These licenses are for 'less sensitive' items for transfer to 'less sensitive' destinations, and were developed to lighten the administrative cost of the arms transfer licensing system while allowing the UK to focus its attention on those cases where it has most concerns. In 2010 the UK issued 12,933 standard individual export licenses (which permit only a single transfer) and 242 open individual export licenses (which permit repeated transfers).

The turmoil in the Middle East and North Africa in 2011, which led a number of Member States to reassess extant licenses, drew attention to the fact that the rules on amending, suspending and revoking existing licenses are far from uniform across the EU. Revisiting previously-issued licenses creates complications for industry, whose production scheduling and scale is based on previous and expected permissions from governments; for the most part licensing authorities are very cautious about amending or reversing earlier decisions. However, it is likely that this issue will be considered as part of the current EU Common Position review (see below).

End-use verification

The use of standard end-use certificates is now common practice among EU Member States. Best practice for end-use certification has been agreed and established at EU level through the User's Guide, and this has also been reflected in other multilateral agreements such as the Organization for Security and Co-operation in Europe (OSCE) Handbook of Best Practices on Small Arms and Light Weapons. Requirements for end-use certificates agreed by EU Member States

include a “common core of elements that should be in an end-user certificate” as well as some discretionary elements.

Agreed minimum requirements for an end-user certificate include: details of the exporter (including name and address); details of the end-user (name and address); country of final destination; a description of the goods or reference to the relevant contract with the authorities in the final destination country; quantity and/or value of the exported goods; name, position and signature of the end-user; the date of the certificate; a non-re-export clause, where appropriate; an indication of the end-use of the goods; an undertaking, where appropriate, that the goods will not be used for purposes other than the declared use; an undertaking that the goods will not be used in the development, production or use of weapons of mass destruction or their delivery systems.

Discretionary elements listed in the User’s Guide for incorporation into an end-user certificate include a requirement that full details of any intermediaries are released; the taking of steps to ensure that any government signatory of an end-user certificate has the authority to act as such; and a requirement that the final consignee provide a Delivery Verification Certificate. In addition, prohibition or restrictions on re-export are considered optional for EU Member States. These restrictions can: take the form of an outright ban on re-export; allow for re-export dependent upon the agreement, in writing, of the original exporting state; or allow for re-export to specified countries without prior authorization from the original exporting state.

While it would appear that many EU governments do have some re-export controls in place, practice varies widely and establishing exactly how each Member State approaches this is no easy task. In France, the standard practice is that any re-export requires explicit permission from the French Government, though nowhere is this stated in law. In Germany, it would appear that the same rules are in force. However these only apply to the original importer, and not necessarily to the ultimate end-user. In Italy, any license application must include an end-use certificate that stipulates prior written consent is required from the Italian Government for re-export. In the UK, re-export restrictions have recently been put in place, but only where the onward destination is subject to an arms embargo to which the UK is party. In recent years the general direction has been

to increase re-export controls. However this is another area that would benefit from greater clarity and consistency, and that should therefore be part of the review of the Common Position (see below).

Enforcement

EU Member States are responsible for their own enforcement of national arms export controls. This involves a variety of different processes and activities. Typically Member States have in place mechanisms for preemptively maximizing compliance within industry, ensuring that individuals and companies involved in arms transfer activities are conducting their business consistent with national laws and regulations. This starts with education (which may comprise seminars, online help-points, etc., which are available for individuals and companies to use on a voluntary basis). In a number of Member States, the authorities will engage with defense manufacturers on a regular basis, checking on potential contracts and advising on the likelihood of deals receiving government approval. Some States provide for mandatory compliance visits to the premises of relevant entities which may involve, for example, comparing internal company records with declarations to licensing authorities and customs agencies.

Standard practice among Member States has been to categorize certain arms transfer control offences as criminal acts, and thus subject to criminal sanction. Practice is slightly more varied with regard to being able to address wrongdoing through civil law, which typically has the benefit of requiring a lower standard of proof and more flexibility on sentencing. Within this legal framework, EU Member States' licensing and law enforcement authorities have a range of responses to situations where they believe the law has been or may be broken. Depending on circumstances, and national preference, this may involve prosecution, license denials, or disruptions or warnings.

In addition there are export control enforcement activities undertaken at the border by customs and border officials, and backed by law-enforcement agencies, at sea ports, airports and land borders. In most cases, this will simply involve Customs and border officials checking documentation and scrutinizing cargo in order to ensure

that arms are being exported in accordance with the correct license. Similar checks are undertaken at the point of import; while arms in transit, or destined for transshipment, may also be scrutinized along with the accompanying documentation and checking licenses. Where irregularities are discovered, once again practice differs from country-to-country and case-by-case, but responses range from simple questions of clarification, turning back the items, seizure or prosecution.

EU Member States engage in co-operation on the enforcement of arms export controls in several ways. For example, since the establishment of the European Customs Union in 1968, EU customs co-operation has played a vital role in combating serious international crime such as illicit trafficking in drugs, weapons, munitions and explosive materials. The 1992 Community Customs Code (amended in 1997, 1999, 2000 and 2005) and a plethora of agreements, directives and regulations have been established to facilitate implementation of the commitments therein. This EU-level customs co-operation is also reinforced by the existence of the European Police Office (Europol) which, on request, can assist the police forces of the Member States in dealing with serious and organized crime.

Institutional capacity

As might be expected, those states with the largest arms - manufacture and -trade sectors tend to have greater institutional capacity for the regulation and enforcement of arms transfers. Conversely those Member States with a limited arms manufacturing base tend to have fewer resources dedicated to arms transfer control.

Most EU Member States have a dedicated licensing authority that is responsible for evaluating applications and issuing (and potentially for amending and revoking) export licenses. While in all cases these authorities are part of government, they may either be autonomous or they may be subsumed within another government department such as a Ministry of Trade or Economy or Ministry of Defense. Such Ministries, along with the Ministries of Foreign Affairs and Ministries of International Co-operation/Development, Customs and Home Affairs, and Security and Intelligence Services, can all be involved in

arms transfer licensing decision-making; in some cases these departments and agencies can together form an actual or virtual inter-departmental committee in order to advise on export licenses.

Information-sharing

An effective government system for controlling the transfer of conventional arms will require systems for information-sharing at national level and internationally among partner governments. As noted above, many EU Member States have internal systems for information-sharing on arms transfer-related issues, including through inter-departmental/agency co-ordination bodies. Each government ministry or agency involved will have their own particular view or perspective on the advisability of particular arms transfers; these views need to be balanced against each other before a decision is taken and a license granted or refused.

In terms of information -exchange and -sharing among EU Member States, the denial notification and consultation provisions of the EU Common Position provide a crucial framework for the sharing of information on particular arms transfers and a valuable source of information on prospective end-users, diversion risks, etc. Member States are required to circulate denial notifications to all other Member States within one month of the decision to deny using the Correspondence Européenne (COREU) system, a mechanism for confidential information-exchange among all Member State foreign ministries, the European External Action Service (EEAS) and the European Commission. In addition, the COARM Chair in the EEAS collates these denial notifications and circulates them on a regular basis to COARM members. This information is particularly useful to Member States with lesser involvement in the arms trade that do not have access to extensive intelligence and information gathering systems. As such the EU Common Position has helped to enhance the capacity of all Member States to make informed decisions about arms transfers to sensitive end-users.

Member States are free to use the COREU system to circulate information on other issues, such as instances of misuse, diversion or of problematic trade routes or intermediaries, for example, in situations that do not involve a license denial, and informal relations

among COARM members have developed to the point where informal information-sharing can be very detailed. However, such behavior is so far carried out on an ad hoc basis only. It has been clear for some time that Member States would benefit from additional information being available on a routine basis and in a form (i.e. a database) that allowed for effective interrogation of that data, but so far there are no plans to introduce such measures. Once again, the current review of the Common Position would seem to provide an excellent opportunity to address this issue.

Transparency

Over the past 15 years significant strides have been made among EU Member States towards greater transparency and accountability over arms exports. Prior to the adoption of the EU Code, only a handful of Member States produced public reports on their arms export activities. Currently 19 out of 27 Member States produce such reports on at least an annual basis, while all Member States contribute to the EU Consolidated Report. While the amount of information and level of detail provided varies significantly, the fact that the vast majority of Member States have embraced the importance of transparency in arms exports is extremely significant, particularly given the fact that several of the world's leading arms exporting nations such as France, Germany and the UK are included in this number.

At EU level the annual Consolidated Report produced on the EU Common Position contains information relating to the number of licenses issued; the value of licenses issued in Euros; and the value of arms export in Euros under the 22 EU Military List categories to individual country destinations. The Report also includes the total EU number of license refusals and the criteria on which refusals are based in any given year. While useful, this information is insufficient to allow full scrutiny of Member States arms export policy in practice given the broad nature of the EU Military List categories and a lack of information on end-users and end-use.

Other forms of transparency at EU level include scrutiny by national parliaments of arms export reports and of government policy and practice more generally, for example, in Belgium, the Netherlands

and the UK. Parliaments are usually restricted to responding ex post to government licensing decisions. However this is not always the case. In Sweden, an advisory committee, the Export Control Council (ECC), comprising individuals nominated by political parties represented in the parliament, is invited to give non-binding opinions on license applications before the licensing authority, the National Inspectorate of Strategic Products (ISP), makes its decision. The ECC sees all license applications, but opinions are given only in cases where the ISP needs preliminary advice, for example where there is a question of precedent or where the proposed transfer is of particular significance.

Interactions with industry

Industry outreach programmes are an important preventive tool in that by educating business and industry as to the workings of arms export controls can help avert unwitting breaches of national arms transfer controls. Most of the major EU arms manufacturing states have outreach programmes to industry. As noted above, in addition to the compliance visits that are paid to check on the observance of national export controls on the part of companies involved in arms trading, governments also host seminars and other events that aim to promote widespread knowledge and understanding among industry of arms transfer control legislation and regulations, and of new developments. For example the UK Export Control Organization (within the Department for Business, Innovation and Skills) has established a 'UK Customer Export Control Awareness School' which, in addition to various newsletters and online information resources, also incorporates seminars and workshops on issues such as how to complete the export licensing application process and on commodity classification.

The future evolution of EU arms export controls

2012 is likely to be an important year in the development of EU transfer controls. The Common Position provides for its own review, commencing no later than 8 December 2011. At this stage it is unclear how extensive this review will be, or how long it will take,

though the lessons of the Arab Spring suggest there are a number of fundamental questions that need to be urgently confronted. There are also several suggestions in this paper as to specific issues that the review could consider, such as improvements to the information-sharing mechanisms and, greater consistency and clarity regarding re-export controls, addressing questions around suspension and revocation of licenses etc.

Also in 2012, the 2009 Intra-Community Transfers Directive is scheduled to become operational. This Directive is intended to streamline licensing procedures for transfers of components and sub-assemblies within the EU through the use of global or general licenses (whereby a single license will permit repeated transfers) for transfers to certified companies in EU Member States. At the point at which the systems, platforms and munitions into which those component and sub-assemblies have been incorporated are exported outside EU territory, existing licensing procedures will apply, however there are concerns that this will in effect constitute a weakening of the existing system, and there are significant doubts about the consequences of this change will be for transparency and national accountability. At this stage it is unclear how many Member States will be ready to operate the system, nor is it known how many EU defense companies will seek certification, so the actual implications of this change may not reveal themselves for some time.

EU arms transfer controls have undergone major change over the last two decades, both formally and the way in which EU Member States engage with each other on this issue. Traditional suspicion has been supplanted by a level of trust which would have been unimaginable 20 years ago. Part of this is due to the way that defense manufacturing in the EU has developed in the intervening years, with the sector engaging in broader Europeanization and globalizations trends, and increasing costs and declining domestic customer bases forcing greater co-operation across borders. But part of it is due to the way in which Member State governments have proven willing, to a certain extent, to regard effective and responsible arms transfer controls as a mutual interest.

Despite these improvements, mistakes are still made and the gap between the rhetoric of rigorous control and practice on the ground still exists all too often, as most recently demonstrated by EU

involvement in arming authoritarian and ultimately discredited regimes in the Middle East and North Africa. The predetermined timing of the review of the Common Position is thus apposite.

4. Policy Recommendations

The policy recommendations in this final section of the report draw from the earlier China and EU chapters. The recommendations for the Chinese government and for EU member states may appear separate and distinct, but both sets of policy recommendations have in mind similar goals: they convey a strong degree of support for changes in their respective government's implementation and enforcement policies in regulating arms transfers to forge more effective export control procedures and mechanisms.

Perhaps the most important conclusion of this report is that the EU and China have mutual interests in promoting and further strengthening export controls for conventional arms. China's export control policy for conventional arms is not unlike that of other arms exporting countries in Europe, but it is still in an earlier stage of development. Effective export control mechanisms begin by limiting and halting the illicit transfer of arms and eventually widening to include a more inclusive list of dual-use goods and technologies. Implementation and enforcement have often lagged behind declared policies. And often times, governments can be selective in which policies and regulations to enforce. The current state of China's conventional arms export controls is thus not unique; it reflects an earlier stage of development than the standards and policies of the arms trade regulation in the EU. As such, the challenge and the opportunity for the EU and China will be to sustain continued progress to the next stage of export control policy and capacity in their respective governments.

The findings and policy recommendations in this timely report will serve as a critical basis and foundation for continued structured and informed discussion and engagement with officials, academics and think tanks from both China and the EU, and will ultimately contribute to the policy dialogue on the future direction and fate of the conventional arms control regime.

Recommendations for Chinese actors:

1. A criteria-based system for arms transfer controls. There are different views and opinions between China and Western countries concerning the conditions under which arms transfers should be authorised or not. The three principles governing China's arms export controls are unique, with Chinese characteristics. They are consistent with international norms and are meant to promote international security. However, their interpretation and application has been a source of controversy with other countries who have argued that they are too vague and broad, and do not specify criteria for a risk assessment process to determine whether an arms transfer should proceed. For example, Article 5 of the Regulations of the PRC on the Administration of Arms Exports does not specify what China's licensing authorities are required to do in the event that the final destination of the transfer is deemed an insecure and unstable recipient state. It does not suggest that a finding of instability should result in the transfer not being authorised. It is also unclear how Article 5(3), which advocates a policy of non-interference in internal affairs, might apply in situations when an internal conflict and instability exist. Because the regulations do not give explicit direction for how the general principles in Article 5 are to be applied when evaluating an export licence application, they give a great deal of discretion to individual licence administrators to approve or deny an arms export licence. From a Chinese perspective, this is consistent with its broad approach and principle. From a Western perspective, the possibility to flexibly employ these principles to justify export decisions can undermine effective arms transfer controls. Fortunately, current negotiations at the UN on an Arms Trade Treaty (ATT), which would establish a legally-binding instrument with common criteria regulating the international transfer of arms, present an opportunity to build greater international consensus on this critical issue.

2. A centralised decision-making agency. An integrated and centralised decision-making agency (i.e., similar to the current contingency mechanism directly under the State Council or the Central Military Commission) should be established to facilitate the processing of licence applications, verifications, and sanctions. The agency should include the key representatives of the relevant governmental bodies identified in the current contingency mechanism.

3. End-use controls and monitoring. China has already established a legislative system for arms export control. General international practices such as a licence mechanism, interagency co-ordination, end-user certificates and a catch-all principle are all endorsed in the Chinese arms control system, and will need to be carefully enforced and closely co-ordinated in order to strengthen the efficacy of China's arms export controls. In particular, the competent authorities should consider the establishment of end-use monitoring mechanisms showing the chain of possession from manufacturer to end-user. This would allow Chinese authorities to ensure that arms that are legally licensed for export do not fall into the black market and are not diverted to unauthorised users.

4. Self-compliance and enforcement. An export control system should be uniformly applied, further extended and strengthened within the arms industry. Moreover, the spirit and the regulations of self-compliance should be instilled to all the personnel in the fields of conventional arms research, production and development and arms export. The arms industry should further develop strong internal self-compliance systems to ensure behavior that is consistent with the laws, regulations and policies as applied by government. Domestic sanctions and penalties issued by the government agencies against violators of export control regulations should be strictly enforced.

5. Transparency. The most important element in confidence-building and improving international co-operation on arms transfer controls is transparency, both its reality and perception. Information on Chinese arms policy and practice is available but the route to it is often labyrinthine, dependent on referrals and permissions between departments. China is often the target of accusations of illicit or undesirable arms transactions, which often lack substantiating evidence. China's denials of these accusations are, in turn, typified by generalities and lack of factual information as information on Chinese arms transfers, their types, quantities and their recipients is considered secret or confidential. As a result, accusations of Chinese bad practice, whether true or false, will continue and the debate about China's role, or non-role, in the sale of arms to undesirable clients is unlikely to result in any positive action until the Chinese authorities find themselves capable of increasing access to information on Chinese arms transfers, thus making their claims and

counter-claims more plausible. It is thus clearly in China's own interest to adopt a more transparent and accountable export controls system.

Recommendations for European actors:

Set out below is a non-exhaustive list of some of the issues that EU Member States are recommended to interrogate in the current EU Common Position review. Several of these recommendations point to a significant re-examination of the way the current system operates; others are of a more specific and technical nature.

1. Consideration of whether to develop (and regularly update) a list of 'countries of concern', whereby licence applications for arms transfers to countries on this list would be assessed on a 'presumption of denial' basis (i.e., licences would be approved only where it could be established that the proposed transfer would meet a legitimate defence need and where the licensing authority was satisfied that the equipment would be used in compliance with international law and only in support of that established need).
2. Improvements in information-sharing among Member States, not least with regard to the 'countries of concern'.
3. Incorporation of dynamic factors into the licence assessment process which reflect developments in international relations discourse since the criteria were originally formulated, e.g., governance.
4. Reconceptualising 'stability' in prospective recipient states to include *inter alia* representative political systems with an ability to manage change peacefully and which respect human rights and the rule of law.
5. How to better conduct long-term or 'over the horizon' risk assessments, and to avoid an over-reliance on evidence of previous misuse.
6. How to more effectively bring external expertise into the assessment process.

7. Greater clarity and consistency with regard to re-export controls applied, and end-use monitoring undertaken by Member States.

8. Operating a more 'joined-up government' system of arms transfer controls, e.g., linking policy and decision-making in this area with government engagement on issues around development and security, peace-building, state-building, conflict prevention, conflict-affected and fragile states, security sector reform, etc.

9. Development of clear procedures for suspending, amending or revoking existing licences in the event of major changes 'on-the-ground'.