

China's national sanction system of strategic export control

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1. INTRODUCTION

Although the risk of proliferation of weapons of mass destruction (WMD) and their means of delivery has been recognized internationally since 1950s¹³⁴ and eventually led to an international obligation for non-proliferation set forth by UN Security Resolution 1540, China's legislative building of arms and dual-use export control is still at an early development stage.

Historically speaking, at the time when most of the existing non-proliferation regimes were established during the Cold War period, China has been recognized as a Soviet Country and a high-tech importer, thereby was not invited to participate in the contemporary international non-proliferation cooperation. Later, although China has become a member of the International Atomic Energy Agency (IAEA) since 1984, and acceded to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in 1992, China's importance in international non-proliferation cooperation was

134 In 1958, COCOM was established between a few NATO countries, it was later replaced by a more open and transparent dual-use regime—the Wassenaar Arrangement in 1994. Meanwhile, during, other non-proliferation cooperation regimes target specific threats including chemical and biological weapons (The Australia Group), nuclear weapons (Nuclear Suppliers Group), delivery systems (Missile Technology Control Regime), were also established between 1980s and 1990s.

not emphasised until the beginning of 21st Century¹³⁵ when China finally became a major high-tech supplier with accelerated trade and R&D capacity.¹³⁶ Accordingly, China's domestic legal procedures for export control in military and sensitive products, nuclear, chemicals, biological agents, and missile-related technologies were formally completed at the end of 2002, just a few months prior to the adoption of UN Resolution 1540 in 2004.

Due to such historical factors, it may be evident that China's legislative building of strategic export control systems is largely politically motivated by the international norm rather than its own national needs. And more evidences can be found in China's practice in drawing up its strategic export control lists. For example, as a member of NSG, Chinese nuclear control list is reportedly completely equal to the Zangger Committee and the NSG lists, and undergoes constant updates corresponding to changes made to those lists. Similarly, although China's application for admission to Australia Group (AG) and Missile Technology Control Regime (MTCR) has yet been remains stalled, such attempts indeed forced China to expand its chemical control list to signal its commitment with the AG on tighten export controls on dual-use chemicals; and to introduce missiles-related export control regulation that are roughly parallel to the structures within MTCR.

135 To note that, from the middle 1990s, China began to take a number of important steps to govern and limit the export of WMD-related products and expressed interest in joining most of the existing non-proliferation regimes. However, its effort only succeed in nuclear area – it joined the Nuclear Suppliers Group in 2004. See at: "China Joins Nuclear Suppliers Group", *Xinhua News Agency*, May 28, 2004, available at: <http://www.china.org.cn/english/2004/May/96780.htm>.

136 According to the World Bank Trade Data, in 1996, the US was by far the leading exporter of high-tech products with the value of 138 billion US dollars, followed by Japan (101 billion US dollars) and Germany (61 billion US dollars). At that time, China accounted for only 15.8 billion US dollars at the thirteenth. However, between 2000 and 2005, China was the country with the largest growth in high-tech trade, its high-tech exports and imports surged ahead at an annual average growth rate of 26.0% to 30.8%. In 2001 China was ranked as the seventh major exporter and since 2005, China has become the biggest high-tech exporter of the World. Source: World Bank, Data, High-technology exports (current US dollars). Data available at: http://data.worldbank.org/indicator/TX.VAL.TECH.CD/countries/CN-US?order=wbapi_data_value_2002%20wbapi_data_value&sort=desc&page=2&display=default.

On the other hand, while the above appears to demonstrate China's willingness to follow international norms of WMD non-proliferation, in the area of dual-use and end-user controls where nations have sole discretion to make decisions with regards to their own national security and foreign policy concerns, China's attitude is divergent from the common practice in western world. The reasons may be obvious: on the one hand, since China does not belong to the Wassenaar Arrangement and have no intention to follow the norms, principle and guidelines provided by this dual-use regime, Chinese government still resorts to UN Resolution 1540 as the legal base of its pursue of curb and monitor of dual-use goods and technologies trade. Therefore, Chinese dual-use control list only covers items relating to *nuclear, biological and chemical Weapons, missiles, and very small part of computers*,¹³⁷ which is much narrower than the Wassenaar List or the EU dual-use list. On the other hand, since China has long-lasting diplomatic and trade relationships with many developing countries which were or still are subject to western economic sanctions, its category of proscribed/sensitive countries (also known as destination or end-user) only contains two types of countries: (a) countries with no diplomatic relations with China;¹³⁸ and (b) countries subject to UN sanctions.¹³⁹ Thus, at the international level, the legal source of Chinese arms and strategic trade controls is China's voluntarily compliance with existing WMD non-proliferation regimes and its obligations under UN Resolution 1540 and UN embargo decisions.

At the national level, China government's legitimacy to control trades toward third countries is generally granted by the Foreign

137 The most recently updated Chinese dual-use list is available at: <http://images.mofcom.gov.cn/aqygzi/201506/20150630150011045.pdf>.

138 There are currently 22 countries that have not establish diplomatic relations with China, see the list at: <http://cs.mfa.gov.cn/zlbg/bgzl/qtzl/t1094257.shtml>.

139 See UN sanction lists at: <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list#compositionlist>.

Trade Law of the People's Republic of China.¹⁴⁰ Under articles 16 and 17 of the Foreign Trade Law, it provides that the state has explicit power to take necessary measures to regulate national imports and exports for reasons of safeguarding "national security, public interests or public ethics" and "under the international treaties or agreements to which the People's Republic of China is a signatory or has entered".¹⁴¹ Article 19 sets up a licence administration on goods and technology whose import or export is restricted "in accordance with laws and administrative rules",¹⁴² and Article 18 requires the State Council and other relevant departments under the State Council to act as the relevant competent authorities to draw up, revise and publish those control lists. In order to effectively implement the export control regulations, China has established a system involving licence application, licence review, document issuance, Customs control and inspection which applies to all related exporters and other stakeholders. The competent authorities of Ministry of Commerce (MOFCOM) and General Administration of Customs (GAC) have formulated a various types of export control lists, and are exercise supervision over export control co-ordinately to promote the government's capability to effective.

It is notable that, although China has reportedly commenced to enact an overall export control law to govern its national export control activities, prior to this article, legislations related to Chinese export control framework are still fragmented. The first fragmentation is the shared competence between governmental agencies where export control of items in different categories (e.g. nuclear, chemical, biological, missiles, and dual-use) are executed separately

140 Foreign Trade Law of the People's Republic of China was passed on 12 May 1994 during the 7th meeting of the Standing Committee of the Eighth National People's Congress and amended during the 8th meeting of the Standing Committee of the Tenth National People's Congress on 6 April 2004. [Hereafter as "Foreign Trade Law"].

141 Paragraph 1 and 11 of Article 16 of the Foreign Trade Law.

142 Paragraph 10 of Article 16 and Article 19 of the Foreign Trade Law.

by different competent authorities.¹⁴³ Such division of power and responsibility leads to the second fragmentation at legislative level, where individual competent authorities have the power to issue separate administrative regulations¹⁴⁴ to stipulate the controlled items list, licencing requirements, administrative procedures and legal liabilities for items subject to them. Moreover, because the control list of those export control Regulations only covers conventional weapons and WMD-related dual-use products, if China government plans to impose provisional or additional export control measures for unlisted items to third countries on the basis of UN Sanctions, those decisions and provisional control lists will

143 China's export control system has an inter-agency coordinating mechanism which involves the participation and cooperation of a number of Chinese Governmental agencies: China's nuclear export control is executed by the State Administration of Science, Technology and Industry for National Defence (SASTIND) and the Ministry of Commerce (MOFCOM) of the Government of the People's Republic of China, in coordination with other relevant governmental agencies. Arms control, including the export control of missiles, and facilities and key equipment used directly for the production of missiles is executed by SASTIND and competent department under the Ministry of National Defence. While the export of nuclear dual-use items and technologies for civilian use fall under the control of the MOFCOM, decision should also be made jointly with other competent governmental agencies. For example, the export of nuclear dual-use items and missile-related dual-use items and technologies is subject to joint examination by MOFCOM and SASTIND. The export of dual-use biological agents and technologies related to animals and plants is subject to examination by MOFCOM, in consultation with the Ministry of Agriculture if needed. The export of dual-use biological agents and technologies related to humans is subject to examination by MOFCOM, jointly with National Health and Family Planning Commission, in consultation with Ministry of Industry and Information Technology if needed. The export of controlled chemicals is subject to examination by the State Development and Reform Commission, jointly with and MOFCOM.

144 In particular, export control regulations including: Regulations of the People's Republic of China on Control of Nuclear Export, Regulations of the People's Republic of China on Control of Nuclear Dual-Use Items and Related Technologies Export, Regulations of the People's Republic of China on Export Control of Dual-Use Biological Agents and Related Equipment and Technologies, Regulations of the People's Republic of China on the Administration of the Controlled Chemicals, Measures on Export Control of Certain Chemicals and Related Equipment and Technologies, Regulations of the People's Republic of China on Export Control of Missiles and Missile-related Items and Technologies, The Measures on the Administration of Export Registration for Sensitive Items and Technologies, The Measures for Administration on Import & Export Licencing of Dual-use Items and Technologies, The Measures for Classification Administration of Civil Aviation Parts Export and The Administrative Measures for the General Licence for the Export of Dual-Use Items and Related Technologies.

be issued in the form of domestic decree. Similarly, because all of those export control regulations are at the administrative level, if exporters violate those Regulations or decrees, officials always need to resort to “catch-all” liability clauses set forth in laws of higher level – such as Criminal Law, Foreign Trade Law, Customs Law or Administrative Punishments Law¹⁴⁵ – to identify the particular legal consequence of such violation, especially criminal liabilities. Since the liabilities of export control violations are defined quite scattered over a numbers of Chinese legislations, it therefore leads to the third fragmentation at the enforcement level.

Within the national export control legal framework, a valid law enforcement mechanisms must be guaranteed to ensure the effectiveness of the whole system. To this end, this chapter aims to look into China’s intricate national provisions related to its implementation of penalties – also known as internal sanctions – in case of violations of strategic trade controls. Meanwhile, since China starts to play a more and more important role in international non-proliferation cooperation, this chapter also explores how a UN Sanctions can be implemented within China’s export control framework.

2. CHINESE INTERNAL SANCTION SYSTEM FOR THE INFRINGEMENT OF EXPORT CONTROL LAWS AND REGULATIONS

2.1. Competent authorities and decision-making process of ascertaining liabilities for export control violations

Because Chinese Government has established an inter-agency coordinating mechanism for export control and set out in detail the duties, division of tasks and work procedures of relevant export

145 To note, the Regulations of the PRC on the Import and Export Control of Goods and the Regulations of the PRC on the Import and Export Control of Technologies can also provide legal basis for China’s non-proliferation export control.

control departments in different regulations or laws, the liabilities of the violation of certain legislation are mainly rest in a set of export control regulations, Foreign Trade Law of the PRC, the Customs Law of the PRC, the Administrative Punishments Law of the PRC, and the Criminal Law of the PRC.

Generally speaking, the Criminal Law of the PRC is one of the oldest and most important Basic Laws under China's legal system, it has the solo competence to stipulate criminal liabilities for illegal acts which may constitute crimes.¹⁴⁶ Since the legislative process of enacting or amending of Criminal Law is much stricter and more time-consuming than that of administrative regulations,¹⁴⁷ China's internal sanction system for export control was designed through a bottom-up approach, whereby the Customs authority will firstly resort to particular export control Regulations which nominate the types of crimes and stipulate administrative penalties of a certain illegal export activities. If a crime is constituted, the Customs authority will leave the case for criminal court to decide its criminal penalties. For example, as a typical penalty clause, Article 18 of Regulations of the People's Republic of China on Export Control of Dual-Use Biological Agents and Related Equipment and Technologies states that "Those who export dual-use biological agents and related equipment and technologies without being licenced ... shall be investigated for criminal liability in accordance with the provisions of the criminal law on *the crime of smuggling, the*

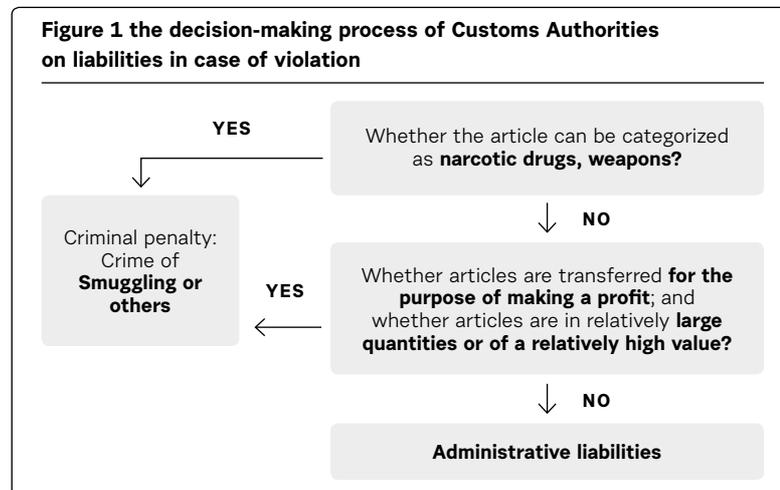
146 Article 8 of the Legislation Law of the PRC states that "Only national law may be enacted in respect of matters relating to... crimes and criminal sanctions". It echoes with the wording of Article 9 that "... National People's Congress and the Standing Committee thereof have the power to make a decision to enable the State Council to enact administrative regulations ..., except where the matter relates to crime and criminal sanctions, the deprivation of a citizen's political rights, compulsory measure and penalty restricting the personal freedom of a citizen..."

147 According to Legislation Law of the People's Republic of China, Basic Laws such as Criminal Law of the PRC is enacted and amended by the National People's Congress which meets once a year; General Laws such as Foreign Trade Law of the PRC, the Customs Law of the PRC, the Administrative Punishments Law of the PRC are enacted and amended by the Standing Committee of National People's Congress which meets every two months; and administrative regulations are drafted by the relevant agencies of the State Council when it deems necessary to enact an administrative regulation.

crime of illegal business operations, the crime of divulging State secrets or other crimes; if such acts are not serious enough for criminal punishment, by distinguishing different circumstances, they shall be punished in accordance with relevant provisions of the Customs Law, or be given a warning, confiscated of their illegal income, and fined not less than 50,000 yuan but not more than 250,000 yuan...”.

In this light, although the liability of a certain violation seems to be decided jointly by both administrative and judicial jurisdictions, the major work such as detect and investigation are mainly conducted by officers in Customs authorities.

In general, when an exporter was caught by the Customs for exporting goods and technologies without proper licence, the Customs authority will exert its power of investigation, and based on their findings, the Customs authority need to make two decisions regarding the nature, quality and value of certain articles: (a) are those exported articles related to narcotic drugs or weapons?¹⁴⁸ (b) If not, are those articles in large quantity and of a high value while the exporter have intention of making profit?



148 The word “weapons” here refers to not only conventional arms, but also WMD weapons and nuclear, missile-related items.

If the articles can't be categorized as nuclear, weapons or drugs, and *are neither* large in quantity or of high value *nor* exported for the purpose of making profit, the Customs authority can resort to relevant export control regulation to determine administrative liabilities¹⁴⁹, including warning, confiscation of illicit proceeds, fines, suspension or even revocation of foreign trade licences.

On the other hand, if there is a “yes” for either questions in the figure, such illegal act will be considered as crime of smuggling, and in accordance with the Criminal Procedure Law, certain case shall be filed for investigation by the internal anti-smuggling investigation organ of the Customs Authority at the place where the crime of smuggling is committed.¹⁵⁰ Since a criminal case of smuggling is complicated and has many links to other illegal activities such as forging export licence, divulging State secrets, or even the abuse of power of State officials, this anti-smuggling Customs organ will be in charge of investigating, collecting evidence, deciding the application of law¹⁵¹ and filling criminal charges before the case is submitted to local Prosecuting Authority for criminal prosecution. The judges in criminal court will thereby determine the criminal punishment according to the relevant provision in Criminal law of the PRC, including fines, prison sentences or even death penalties.

2.2. Different types of export control violations and related liabilities

While the punishments for violations of the export control Regulations are determined by fragmented legislations and jurisdictions under Chinese legal system, certain administrative and criminal liabilities are defined in accordance with the law breakers' particular actions and position. For example, illegal export activ-

149 According to articles 47 and 48 of the Custom Law of the PRC.

150 Judicial Interpretation of Supreme People's Court, Supreme People's Procuratorate and General Administration of Customs, *Notice on Issuing the "Opinions on Some Issues concerning the Application of Law for Handling Cases of the Crime of Smuggling"*, July 8, 2002, – [2002]139 –.

151 See next section for the laws that can be applied to export control violations.

ities undertaken by exporter side including not only export items without licence but also export items beyond the approved scope, or forge, alter, buy or sell export licences; and officials in competent authorities may also be committed violation due to their negligence or abuse of power. According to those penalty clauses in existing export control Regulations, an outline of the liabilities in relation to particular violations is provided as follows:

→ **LIABILITIES FOR ILLEGAL EXPORT
OF GOODS OR TECHNOLOGY**

Exporters who export certain nuclear, biological agents, chemicals and related equipment and technologies without being licenced or export certain items beyond the scope of the export licence without authorisation, shall be investigated for criminal liability in accordance with the Article 151 (smuggling of arms), Article 153 (smuggling of less sensitive items), Article 225 (illegal business acts), Article 398 (divulging State secrets) or other relevant provisions of the Criminal Law.

In particular, the smuggling of arms, missiles or other ammunitions, or nuclear materials shall be sentenced to imprisonment of over 7 years, with a fine or forfeiture of property; for the less serious offenses, an imprisonment of 3-7 years with fine shall be sentenced. Offences of an extraordinarily serious nature shall be punished with life imprisonment or death, with forfeiture of property.¹⁵² The illegal export of less sensitive items or provisionally restricted items shall be respectively punished according to *the value* of smuggled goods, for example: for goods carrying a tax of over

152 It is notable that, the indicators of seriousness are not confined to the nature, quantity and value of the articles but also law breaker's attitude, the course of action, even his position in the illegal dealing. According to past judicial practice, the punishment for arm related smuggling can be very severe. A case in 2011 shows that, the person who continuously bought and sale guns and bullets between China and Thailand for three times, and instigates others to join his business. He eventually sold nine guns and 200 bullets in total and led to life imprisonment, a fine of 100,000 yuan, and deprivation of political rights. Judgement of Guangxi High Court, 24 May 2014, (2013). For details see: <http://www.chinacourt.org/article/detail/2013/10/id/1104164.shtml>.

500,000 yuan, the exporter shall be punished with imprisonment of over 10 years or life imprisonment, with a fine of 1-5 times of the evaded taxes; for goods carrying a tax of over 150,000 yuan but less than 500,000 yuan, the exporter shall be punished with imprisonment of over three years but less than 10 years, with a fine of 1-5 times of the evaded taxes.

If exporters, either intentionally or negligently, transfer items or technology that may result to revealing of state secrets, they shall be given a criminal detention or fixed-term imprisonment for up to 7 years, according to the seriousness of circumstances.

In the circumstances that such acts are not serious enough for criminal punishment, by distinguishing different circumstances, they shall be punished in accordance with relevant provisions of the export control Regulations and Customs Law, certain administrative punishments includes warning, confiscation of illegal income, fines up to 5 times of illegal turnovers, and suspend or even revoke the licencing for their foreign trade operations.

→ **LIABILITIES FOR FORGING, ALTERING OR BUYING EXPORT CONTROL LICENCE**

If exporters or other individuals are found to counterfeit, alter, buy or sell export licences, they shall be penalized in accordance with the provisions of relevant laws and administrative regulations. The criminal liability is based on Article 225 (illegal business acts), Article 280 (forge, alter, or trade officials documents) or other relevant provisions of the Criminal Law. It is notable that, for exporters who use illegal licencing document or obtain licence by fraud or other illegal means, such violations are normally committed on the basis of illegal business acts¹⁵³, which leads to less than 5 years of fixed-term imprisonment, fines for the amount between 1-5 times of illegal income, and confiscation of property. And for non-exporters, their

153 According to Article 225 of the Criminal Law, the person who purchase and sell import-export licences, certificates of origin, and operation permits or approved documents stipulated by other laws and administrative regulations can be punished under the crime of illegal business acts.

violations shall be punished under the crime of forge, alter, or trade officials documents, which leads to fixed-term imprisonment for up to 3 years, criminal detention, control, or deprivation of political rights, and when the circumstances are serious, the sentence is to be 3-10 years of fixed-term imprisonment.

For cases that do not constitute crimes, the Customs Authorities shall impose administrative penalties, including confiscation of illicit proceeds, fines for up to 5 times, and the MOFCOM can suspend or revoke the licencing for exporters' foreign trade operations.

→ **LIABILITIES FOR NEGLIGENCE OR ABUSE
OF POWER OF AUTHORISED STATE PERSONNEL**

If State personnel in charge of control abuse their powers, neglect their duties or extort or accept money or properties from others by taking advantage of their positions, they shall be investigated for criminal liability in accordance with articles 383, 385 and 386 (the crime of accepting bribes), Article 397 (the crime of abuse of power and the crime of neglect of duties) and other provisions of the Criminal Law. The State personnel who accept money or properties from others and give favour to their export control licence are guilty of the crime of bribery, and can be sentenced to fixed-term imprisonment, life imprisonment or even death depending on the amount of their accepted bribes, with confiscation of properties. State personals who abuse their power or neglect their duties that causing great losses to public property and the state's and people's interests, will lead to criminal detention or fixed-term imprisonment for up to 3 years, and when the circumstances are exceptionally serious, they shall be sentenced for 3-7 years fixed-term imprisonment.

If such acts are not serious enough for criminal punishment,¹⁵⁴ they shall be given administrative sanctions according to Civil Servant Law of the PRC¹⁵⁵ for warning, demerit, gross demerit, demotion, and dismissal from position or expulsion.

→ **LIABILITIES FOR EXPORT BUSINESS THAT IS OPERATED WITHOUT REGISTRATION**

According to Article 9 of the Foreign Trade Law and export control Regulations, exporters of arms, nuclear, biological, chemical and missile-related items and technologies shall register themselves with the competent department in charge of foreign economic relations and trade of the State Council (namely the MOFCOM). If entities or individual conduct export of certain items and technologies without registration, MOFCOM shall ban such illegal activities according to law. And relevant competent departments of the State shall impose punishment thereon in accordance with relevant laws and administrative regulations, such as forbidding the company from operation of import and export of goods and technologies for up to 3 years.

→ **LIABILITIES FOR PROVIDING BROKERING SERVICE, TECHNICAL ASSISTANCE, TRANSPORTING AND FINANCIAL SERVICES OF CONTROLLED ITEMS WITHOUT THE RESPECTIVE LICENCE, REGISTRATION OR AUTHORISATION.**

According to Article 156 of the Criminal Law, whoever colludes with smugglers by supplying them with loans, funds, accounts, invoices, proofs, or such conveniences as transportation, safe-keeping, and mailing services, shall be regarded and punished as smuggling accomplices. For accomplice who instigates others to commit

154 When the amount of bribe is 1,000 – 10,000 and actively returning the illegally obtained money, or the amount is less than 5,000 yuan.

155 Civil Servant Law of the People's Republic of China, adopted at the 15th Session of the Standing Committee of the Tenth National People's Congress on 27 April, 2005.

a crime shall be punished according to the role he plays in the joint crime; for accomplice who plays a secondary or supplementary role, he shall be given a lesser punishment or a mitigated punishment or be exempted from punishment in accordance with the relevant crimes.

2.3. Intention is not a key element for determining liabilities

It is notable that, according to the above summary, in most of the cases the criteria of penalties are decided by competent authorities regarding the nature, value and quantity of the controlled items *rather than* the intention of exporters. It is mainly because that, on the one hand, China's export control system has provides two safeguards to limit legal exposure by negligence: (a) the "overall control principle" which require an exporter, if he knows or should know that there is a proliferation risk of his commodities, to apply for an export licence even if the item or technology is not; and (b) the "end-user and end-use certification" which required to be signed and submitted by end-users rather than exporter himself. On the other hand, besides the export control licencing system, China also imposes a foreign trade registration requirement to all entities and individuals who undertake cross-border trade activities, and requiring the most sensitive items—namely conventional arms, WMD weapons and nuclear-related materials to be only produced and traded by national owned entities. Those safeguards and registration requirement, along with the narrow and explicit scope of controlled item lists, can easily lead to a presumptive fact that once an exporter has conducted illegal exports, such as export without licence or forge export licence, they are deemed to have the intention to do so. Thus, the only intention that matters to the evaluation of liability for violations is "for the purpose of making profits", which is still related to value and quantity of certain commodity.

3. CHINA'S WAY OF IMPLEMENTING EXTERNAL SANCTION MEASURES TO THIRD COUNTRIES

As referred to in the introduction section, the legal base for Chinese authorities to impose export control on unlisted items is mainly provided by Article 18 of the Foreign Trade Law which stipulates that, as the competent authority in charge of foreign trade under the State Council, Department of Foreign Trade of MOFCOM shall coordinate with the other competent agencies and make decisions to provisionally restrict or ban the import or export of unlisted special goods or technologies in accordance with international treaties or agreements.

According to China's past practice, the UN sanctions can be easily turned into generally binding and directly applicable legal obligations through administrative approach: after a UN Security Council Resolution enters into force, Department of International Cooperation will start to implement certain Resolution by sending notification to all relevant departments calling for cooperation; after a communication period,¹⁵⁶ competent authorities which normally includes Ministry of Commerce, General Administration of Customs, and other departments whose jurisdiction relating to the controlled item scope of the UN Security Council Resolution will together published the announcement of provisional control, which explicitly outlines their decision of imposing provisional export control measures, the proscribed countries and a Chinese version of controlled items list in accordance with the lists referred by the UN Security Council Resolution. This announcement will

156 For example, after UN Security Council Resolution 2094 towards North Korea was imposed on 7 March 2013, Department of International Cooperation decided to implement it and called for inter-agency cooperation on 25 April 2013; on 23 September 2013, the announcement co-decided by MOFCOM, Ministry of Industry and Information Technology, General Administration of Customs and National Nuclear Safety Administration was published and entered into force.

be published and circulated as a domestic decree between all competent authorities, and automatically become one part of Chinese strategic export control system.

For liabilities in case of violation, the criteria of liabilities for violations of such provisionally restrict or ban have been stipulated in a “catch-all” provision (Article 61) of the Foreign Trade Law. It grants the Department of Foreign Trade of MOFCOM power to order Customs authorities to rectify the illegal act, confiscate illegal gains, and impose a fine of up to 5 times of the amount of the illegal gains, revoke licence and forbidden business operation. In addition, if crime is constituted, the criminal liabilities shall be ascertained similarly by the criminal court on the basis of Criminal Law.

In addition, this chapter needs to point out that, although China’s imposition of external sanctions seems to be a pure knee-jerk reaction according to UN sanctions, it does not mean Chinese decision-makers seldom have their own foreign policy concerns in this area. On the contrary, since China is one of the five permanent members of the UN Security Council, Chinese representative has the rights to *veto* any substantive Security Council resolution which maybe against China’s interests. Thus, China’s political concern has already been embedded in every effective UN Security Council Resolution. Moreover, China’s foreign policy concerns can also be revealed when Chinese government decides *not* to impose sanctions to a third country. To pose a concrete example, the Russian military intervention in Ukraine in 2014 has prompted a number of governments to apply sanctions against Russia. Sanctions were approved by the United States, the Member States of European Union and many other countries and international organizations, voluntarily.¹⁵⁷ China, on the other hand emphasised that, because China respects “international law and norms” and “the independence, sovereignty and territorial integrity of Ukraine”, it encouraged the

157 Since Russia, as a permanent member of UN Security Council, has the right to veto UN decisions, it is not possible for the Security Council to make a collective decision and call for all Member states to imposing sanction against Russia.

relevant parties “to resolve their internal disputes peacefully within the legal framework”,¹⁵⁸ and would not provide external interference in the Russian and Ukraine.

4. CONCLUSION

To conclude, despite the absence of a particular and unified export control legislation, China does have a well-founded administrative and criminal operation system, which is capable of providing national penalties to a various type of illegal export control activities. By resorting to the penalty clauses in a set of export control regulations, the catch-all penalty clauses in Foreign Trade Law, Customs Law and the Criminal Law, China’s internal sanction system is in fact quite comprehensive and strict, because the legal liabilities are not only applied to the illegal activities of exporters but also to the illegal acts of whoever may be involved in the transaction, even the negligence of authorised officers.

On the other hand, while UN Security Council resolutions can be effectively implemented within Chinese export control system; due to its divergent foreign policy concerns and trade partnerships, China indeed holds a passive attitude to act in conformity with western countries when they decide to impose additional external export control sanctions to third countries.

158 Shannon Tiezzi, “China Backs Russia on Ukraine”, *The Diplomat*, 4 March 2014. Available at: <http://thediplomat.com/2014/03/china-backs-russia-on-ukraine>.