



# CANADA'S CONTROLS ON ARMS EXPORTS TO CHINA

MARK BROMLEY

## I. Brief outline of Canada's export control system

The main legislation for Canada's controls on exports of military goods and dual-use items is the Export and Import Permits Act (enacted in 1947).<sup>1</sup> The 1985 version of the act sets out Canada's policy for issuing export licences, and the Export Control List (ECL) defines controlled items.<sup>2</sup> The ECL includes military goods, dual-use items, United States-origin controlled goods and a limited number of additional items that are controlled for economic reasons. Exports of automatic firearms are subject to additional controls and can only be supplied to countries included in Canada's Automatic Firearms Country Control List (AFCCCL).<sup>3</sup>

The Export Controls Division in the Department for Foreign Affairs, Trade and Development (DFATD) is responsible for issuing and refusing licences for the export of military goods and dual-use items.<sup>4</sup> As part of the process of assessing an export licence, consultations are held with different sections of the DFATD (including embassy representatives in the country of destination), the Department of National Defence and other government departments as necessary.<sup>5</sup> As a general practice, Canada undertakes in-country end-user checks. The final decision on issuing or denying an export licence rests with the Minister of Foreign Affairs.<sup>6</sup> Applications for licences to export dual-use goods to military end users are dealt with in the same way as exports of military goods.<sup>7</sup>

<sup>1</sup> Foreign Affairs, Trade and Development Canada, 'Report on exports of military goods from Canada, 2010–2011', 4 Feb. 2014, <<http://www.international.gc.ca/controls-controles/report-rapports/mil-2010-2011.aspx?lang=eng>>.

<sup>2</sup> Canadian Justice Laws website, Export and Import Permits Act (R.S.C., 1985, c. E-19), <<http://laws-lois.justice.gc.ca/eng/acts/E-19/FullText.html>> and Export Control List (SOR/89-202), <<http://laws-lois.justice.gc.ca/eng/regulations/SOR-89-202/FullText.html>>.

<sup>3</sup> Canadian Justice Laws website, Automatic Firearms Country Control List (SOR/91-575), <<http://laws.justice.gc.ca/eng/regulations/SOR-91-575/FullText.html>>.

<sup>4</sup> Foreign Affairs, Trade and Development Canada (note 1); and Canada Border Services Agency, 'Memorandum D-19-10-3, Administration of the Export and Import Permits Act (Exportations)', 15 Jan. 2010, <<http://www.cbsa.gc.ca/publications/dm-md/d19/d19-10-3-eng.html#s2-2>>.

<sup>5</sup> Foreign Affairs, Trade and Development Canada (note 1).

<sup>6</sup> Foreign Affairs, Trade and Development Canada, *Export Controls Handbook*, 'Section A.1. What is an export permit?', Feb. 2012, <[http://www.international.gc.ca/controls-controles/export-exportation/TOC-exp\\_ctr\\_handbook-manuel\\_ctr\\_exp.aspx?lang=eng](http://www.international.gc.ca/controls-controles/export-exportation/TOC-exp_ctr_handbook-manuel_ctr_exp.aspx?lang=eng)>.

<sup>7</sup> Foreign Affairs, Trade and Development Canada (note 6), 'Section B. Objectives of export controls', 'Section F.3. Policy review', and 'Section F.4. Consultations'.

\* The key findings of this project are presented in Bräuner, O., Bromley, M. and Duchâtel, M., *Western Arms Transfers to China*, SIPRI Policy Paper no. 43 (SIPRI: Stockholm, Jan. 2015). The project was supported by funding from the Norwegian Ministry of Foreign Affairs.

## SUMMARY

● Despite the imposition of Western arms embargoes on China in 1989, China's efforts to modernize its defence forces' industrial and technological capabilities have continued to benefit from the transfer of military-relevant Western goods and technologies, including military goods, dual-use items (goods and technologies that have the potential to be used in both civilian and military products) and other non-controlled items.

This Background Paper details the policies of Canada on transfers of military-related technologies to China. As such the paper provides additional context in support of the analysis provided in SIPRI Policy Paper 43 on transfers of military-related technologies to China. The paper notes that Canada has not formally adopted an arms embargo on China. However, a range of issues—including the application of national export criteria and the application of US re-export controls—ensure that Canada's exports of military-relevant technologies to China are extremely limited.



Decision making on whether to grant or deny an export licence is based on policy guidelines mandated by the Cabinet. These guidelines include the consistency of the export with Canada's foreign and defence policies and the potential impact on regional peace and stability, taking into account civil conflict and human rights.<sup>8</sup> Under these export control guidelines, Canada closely controls the export of military goods and technology to countries: that pose a threat to Canada and its allies; that are involved in or under imminent threat of hostilities; that are under United Nations Security Council sanctions; or whose governments have a persistent record of serious violations of the human rights of their citizens, unless it can be demonstrated that there is no reasonable risk that the goods might be used against the civilian population.<sup>9</sup>

Canada's decision making is also informed by the criteria of the European Union (EU) Common Position on Arms Exports and consensus decisions of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies.<sup>10</sup> Canada's Export and Import Permits Act, the United Nations Act, the Special Economic Measures Act and the Area Control List (ACL) allow for the implementation of catch-all controls on exports to certain destinations regardless of the article's characteristics.<sup>11</sup> UN arms embargoes are implemented via individual regulations under the ACL.<sup>12</sup>

## II. National controls on exports to China

Canada has never formally adopted an arms embargo on China, and China is not among the countries on which Canada currently has sanctions in place.<sup>13</sup> In addition, despite aligning itself with the EU Common Position, Canada does not apply the EU arms embargo on China.<sup>14</sup> However, China is not listed in the AFCCL, which means that it cannot receive automatic firearms from Canada.<sup>15</sup>

### **Application of national export controls on transfers to China**

Even though Canada's export control system does not contain formal restrictions on China, the combination of Canada's export licensing criteria and US re-export controls results in restrictive policies on transfers of mili-

<sup>8</sup> Foreign Affairs, Trade and Development Canada (note 1).

<sup>9</sup> Foreign Affairs, Trade and Development Canada (note 1); Canadian Justice Laws website (note 3).

<sup>10</sup> Canada joined the Wassenaar Arrangement in 1996 and aligned itself with the EU Code of Conduct on Arms Exports in 1999 (replaced by the EU Common Position on Arms Exports in 2008), <<http://www.wassenaar.org/publicdocuments/2012/Basic%20Documents%202012.pdf>>, p. 5. See also First Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, *Official Journal of the European Communities*, C315, 3 Nov. 1999, p. 1.

<sup>11</sup> Foreign Affairs, Trade and Development Canada (note 1).

<sup>12</sup> Information on destination restrictions other than those imposed by the ACL can be found in Foreign Affairs, Trade and Development Canada (note 6), 'Section D.3. Export prohibitions'. All sanctions are listed at Foreign Affairs, Trade and Development Canada, 'Current sanctions measures', <<http://www.international.gc.ca>>.

<sup>13</sup> Foreign Affairs, Trade and Development Canada (note 12).

<sup>14</sup> Government of Canada official, Telephone interview with author, 25 July 2014.

<sup>15</sup> Canadian Justice Laws website (note 3).



tary goods and dual-use items to China. Licences for exports to China are assessed on a case-by-case basis against Canada's export licensing criteria. Concerns about the risk of diversion are an important consideration for all assessments.<sup>16</sup>

Since the mid-1950s, the Canadian and US defence industries and markets have been closely integrated. Canadian companies are able to bid on US military contracts on equal terms with US companies, while US companies enjoy equivalent privileges in Canada. In addition, US companies are able to export many controlled goods to Canada, and Canadian companies can do likewise to the USA without applying for an export licence. As a result, a significant share of Canada's arms exports contain US-origin goods and are subject to US re-export controls and US restrictions on exports to China<sup>17</sup>. In 2001 the Canadian Government introduced the Controlled Goods Program (CGP) in order to address US Government concerns about the application of US re-export controls in Canada.<sup>18</sup> Under the CGP, Canadian companies are required to provide Canada's Export Controls Division with proof of US re-export authorization for any exports of goods subject to US re-export controls.<sup>19</sup>

### **What is being licensed and exported to China?**

No transfers of major conventional weapons from Canada to China have occurred since 1950. According to Canada's annual reports on arms exports, CAN\$695 920 (\$693 681) of military goods have been exported to China between 2003 and 2012. The annual value of exports has fluctuated between zero in 2005 and 2006 to CAN\$415 761 (\$321 150) in 2003, with no discernible trend over the years. While detailed information on the transfers (such as the types of goods and end users involved) is not available, they are likely to include exports to both the civilian and security sector in China. However, the values concerned indicate that there have not been any large-scale acquisitions by the Chinese military or defence industry. Canada does not publish information on denials of export licences for military goods nor information on issued or denied licences for exports of dual-use items.

### **The view of industry**

Based on available information, there appears to be little interest among Canadian companies in supplying military goods to China or dual-use items to the Chinese military. This position is no doubt influenced by an awareness of the restrictiveness of Canadian and US policies with regard to exports to China and the likelihood that any licence application would be denied.

<sup>16</sup> Foreign Affairs, Trade and Development Canada (note 6), 'Section B. Objectives' and 'Section E.3.3.2. End-user'.

<sup>17</sup> See Bräuner, O., Bromley, M. and Duchâtel, M., *Western Arms Transfers to China*, SIPRI Policy Paper no. 43 (SIPRI: Stockholm, Jan. 2015).

<sup>18</sup> Canadian Association of Defence and Security Industries (CADI), 'Submission of the Canadian Association of Defence and Security Industries to the aerospace review', 29 June 2012, <[http://aerospacereview.ca/eic/site/060.nsf/vwapj/CanadianAssociationDefenceSecurityIndustries.pdf/\\$FILE/CanadianAssociationDefenceSecurityIndustries.pdf](http://aerospacereview.ca/eic/site/060.nsf/vwapj/CanadianAssociationDefenceSecurityIndustries.pdf/$FILE/CanadianAssociationDefenceSecurityIndustries.pdf)>.

<sup>19</sup> Canadian Justice Laws website, Export Permit Regulations (SOR/97-204), <<http://laws-lois.justice.gc.ca/eng/regulations/SOR-97-204/>>, s. 3 (2)(b).

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SIPRI BACKGROUND PAPER

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