

SECTION 2: CHINA'S PROLIFERATION

“The Commission shall investigate and report on—

“PROLIFERATION PRACTICES—The role of the People’s Republic of China in the proliferation of weapons of mass destruction and other weapons (including dual-use technologies), including action the United States might take to encourage the People’s Republic of China to cease such practices.

“ECONOMIC TRANSFERS—The qualitative and quantitative nature of the transfer of United States production activities to the People’s Republic of China, including the relocation of high technology, manufacturing, and research and development facilities, the impact of such transfers on United States national security, the adequacy of United States export control laws, and the effect of such transfers on United States economic security and employment.

“REGIONAL ECONOMIC AND SECURITY IMPACTS—The triangular economic and security relationship among the United States, [Taiwan], and the People’s Republic of China (including the military modernization and force deployments of the People’s Republic of China aimed at [Taiwan]), the national budget of the People’s Republic of China, and the fiscal strength of the People’s Republic of China in relation to internal instability in the People’s Republic of China and the likelihood of the externalization of problems arising from such internal instability.”

Introduction

In his testimony before the Commission, Ambassador Donald Mahley, Acting Deputy Assistant Secretary of State for Threat Reduction, Export Controls, and Negotiations, defined proliferation as “the spreading or transfer of capabilities or the technology and knowledge to support capabilities of the production of weapons of mass destruction, but also of the enhancement of military capabilities to areas that did not previously possess [them] and particularly in which we do not have a clear indication [they] will be responsibly used once ... acquired.”¹²⁷ In this sense, China’s relationships with and military sales to several states, notably including Iran, North Korea, Burma, and Sudan, raise fears not only about the spread of weapons of mass destruction (WMD) but also about the continued proliferation of advanced conventional weapons and technology that could destabilize regions throughout the world. Additionally, given China’s willingness to use weapons and force

against its own populace, China's close relationships with and arms sales to governments that are willing to do the same against their populations are sources of concern.

In the 1990s, China actively proliferated weapons and technology related to WMD and their delivery systems. While most experts acknowledge that China's overt state-to-state proliferation has diminished, Administration officials testified before the Commission that China's nonproliferation record is "mixed," noting that some Chinese businesses and individuals continue to seek opportunities to proliferate.¹²⁸ Deputy Assistant Secretary of Defense for East Asia David Sedney stated, "Chinese businesses, including state-owned enterprises, those that have close relations to PRC officials, and those without government ties, continue to supply items and technology useful in weapons of mass destruction, their means of delivery, and advanced conventional weapons programs, often when these items are not explicitly on international [export control] lists."¹²⁹ The continued imposition of U.S. sanctions on Chinese companies underscores this claim. In addition, officials noted that China's often unbridled proliferation of conventional weapons—not governed by multilateral or bilateral commitments made by China—does not support China's bid to be recognized as a responsible stakeholder and promoter of peace and stability in the international community.¹³⁰

China's Nonproliferation Policies and Commitments

Since the 1990s, China has adjusted its policy regarding proliferation. It has signed and ratified a number of international nonproliferation agreements, and also has taken a number of steps to institutionalize a system of export controls to monitor and limit the transfer of weapons and weapons technology.

Most, if not all, Chinese companies that have been sanctioned by the United States are state-owned. Nonetheless, when Chinese state-owned companies are caught proliferating, the central government routinely claims that these companies are operating without government authorization or knowledge. There are more than 30,000 officers in China assigned to police the Internet for ideological purity.¹³¹ In contrast, a training program is being completed for only 5,000 export control and border security officials whose work is key to preventing Chinese proliferation.¹³²

China's current official policy toward proliferation is stated in its White Paper, *China's National Defense in 2006*:

China is firmly opposed to the proliferation of weapons of mass destruction and their means of delivery. It supports the United Nations in playing its due role in non-proliferation. China is a party to all international treaties on non-proliferation and related international organizations. It has established a complete legal regime for controlling the export of nuclear, biological, and chemical weapons, missiles and other related sensitive items and technologies, and all defense items. China follows strict procedures in approving exports, to ensure effective export control.¹³³

Additionally, the Beijing government "... believes that countries may cooperate in the peaceful use of nuclear energy under the premise of observing their international obligations and that relevant cooperation should help safeguard and strengthen the principles and effectiveness of the international nonproliferation mechanism."¹³⁴

China's ratification of multilateral nonproliferation treaties has created obligations for China not to employ weapons of mass destruction (WMD) and to engage in efforts to prevent the spread of WMD technology, materials, and delivery systems. Below is a summary of China's participation in multilateral regimes and the principal commitments China consequently has or has not made:

Table 2.1 China's Nonproliferation Commitments

Nonproliferation Regime:	Description:	China's Response:
Biological Weapons Convention (BWC)	Outlaws the production, development, storage and use of biological weapons.	China acceded to the BWC in 1984.
Chemical Weapons Convention (CWC)	Outlaws the production, storage, and use of chemical weapons.	China signed the CWC in 1993, and ratified in 1997.
Nuclear Nonproliferation Treaty (NPT)	The five original nuclear states (France, China, USSR (now Russia), the United Kingdom, and the United States) agree not to use nuclear weapons against non-nuclear states except in response to a nuclear attack, and to prevent the transfer of nuclear weapons to non-nuclear states; and affirm the right of states that do not possess nuclear weapons to use peaceful nuclear technology.	China acceded to the NPT in March 1992.
Zangger Committee	Provides for maintenance of a list of equipment that may be exported by members only to facilities that have nuclear safeguards in place, and fosters coordination among states for the export of nuclear materials.	China joined the Zangger Committee in 1997.
Nuclear Suppliers Group (NSG)	Controls the export of materials that may be used for nuclear weapons development.	China joined the NSG in May 2004.

Table 2.1 China's Nonproliferation Commitments—Continued

Nonproliferation Regime:	Description:	China's Response:
Comprehensive Test Ban Treaty (CTBT)	Each party agrees to prohibit "... any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control," and to "... refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion." ¹³⁵	China signed the CTBT in September 1996, but has not ratified the treaty. (The United States is a signatory, but also has not ratified the treaty).
Container Security Initiative (CSI)	Establishes port security programs with cooperating countries to identify and screen suspect cargo containers destined for the United States in order to prevent these containers from being used by terrorists to deliver weapons, especially WMD, to the United States.	Two ports in China, Shanghai and Shenzhen, and also the port of Hong Kong, participate in the CSI.

Table 2.2 Major International Nonproliferation Efforts in which China Is Not a Participant

Nonproliferation Regime:	Description:	China's Response:
Missile Technology Control Regime (MCTR)	Provides a "set of voluntary guidelines ... to control the transfer of ballistic and cruise missiles that are inherently capable of delivering at least a 500 kg (1,100 lb) payload a distance of at least 300 km (186 mi)." ¹³⁶	China affirmed its commitment to the MCTR with an October 1994 joint statement with the United States. China is not yet a member, but has applied for membership. ¹³⁷

Table 2.2 Major International Nonproliferation Efforts in which China Is Not a Participant—Continued

Nonproliferation Regime:	Description:	China's Response:
Australia Group	Enables participating members to harmonize their export control regimes to "ensure that exports of certain chemicals, biological agents, and dual-use chemical and biological manufacturing facilities and equipment, do not contribute to the spread of [chemical and biological weapons]." ¹³⁸	China is not a member, but has applied for membership. ¹³⁹
Proliferation Security Initiative (PSI)	Members cooperate to interdict and inspect ships on the open seas suspected of transporting WMD and related goods.	China has not joined, voicing concerns about PSI's legality.
International Code of Conduct Against Ballistic Missile Proliferation	This Code is intended to supplement the MTCR, but is not restricted to MTCR members. States commit to ending the proliferation of WMD-capable ballistic missiles, to exercise restraint in developing and testing such technology, and to participate in transparency measures such as annual declarations of missile and space launch programs. ¹⁴⁰	China has not joined.
Wassenaar Arrangement	Establishes lists of dual-use goods and technologies and conventional arms for which members are to develop export controls in order to promote transparency and greater responsibility in international transfers of such arms, goods, and technologies. ¹⁴¹	China is not a member.

Ambassador Mahley noted that while China has applied for membership in the Missile Technology Control Regime (MTCR) and the Australia Group, those groups are not yet convinced that China has established sufficiently extensive and rigorous nonproliferation commitments and controls, and the means to enforce these, to merit its acceptance as a member. ¹⁴²

China's Proliferation-related Laws and Regulations

To meet the international nonproliferation commitments it has made, China has promulgated proliferation-related laws and regulations—primarily addressing the design of China's export control system and enforcement of its restrictions. In the wake of the September 11, 2001 attacks and the rising threat that rogue states and non-state actors will obtain WMD, China issued new export control regulations in 2002. These regulations require companies that sell controlled items to obtain a license and government approval for each sale, along with a guarantee from the purchaser that the item or technology will not be misused.¹⁴³ Within the government, the Ministry of Commerce holds primary responsibility for licensing and regulating the sale of sensitive items and technologies, including dual-use items and technologies. However in cases applying to PLA sales, the General Armament Department, responsible for military equipment and production of armaments, holds responsibility and controls access to these materials.¹⁴⁴ In some cases, companies are permitted to sell surplus arms from PLA depots, but cannot contract with brokers to sell weapons directly from the production line.¹⁴⁵ The final authority on export control enforcement is the State Council.¹⁴⁶

In an attempt to strengthen public and industry awareness of prohibited items and technologies, in January 2004, China issued an export-licensing catalog—a list of sensitive items and technologies prohibited from export, including missile technologies and equipment.¹⁴⁷ In November and December 2006, the State Council approved two sets of revised export control regulations that harmonized export controls related to nuclear exports with Nuclear Suppliers Group standards, and increased punishments for violations.¹⁴⁸ These controls include software contained in the multilateral control list that pertains to nuclear weapons development and manufacture. These regulations also require that a commitment be obtained from the entity importing these items that it will neither reproduce the nuclear goods or technologies it receives for export nor transfer them to a third party.¹⁴⁹ Also, the State Council introduced “‘permanent measures’ on licensing dual-use items and technology trade that specifically contain language that could be viewed as expansion of ‘catch all’ controls in China.”¹⁵⁰

A University of Georgia Center for International Trade and Security report concludes, “The promulgation of new legal authorities for export control in 2002, recent institutional reforms and improvements, and increasing integration with the multilateral export regimes have gone a long way toward closing what once seemed a persistent gap between Chinese and international export control standards.”¹⁵¹ In May 2004, the Ministry of Commerce fined two Chinese companies for violations.¹⁵²

China's Implementation of Its Domestic Laws Is Insufficient to Meet Its International Nonproliferation Commitments

Ambassador Mahley testified that China has included items on export ban lists that parallel those specified by international nonproliferation regimes. However, it remains unclear the extent to which China will implement and enforce these laws and regulations.¹⁵³ Deputy Assistant Secretary Sedney noted in his testimony

that China has not demonstrated the national level commitment required to achieve the changes it has promised.¹⁵⁴ Chinese agencies tasked with customs and export control responsibilities are understaffed.¹⁵⁵ Furthermore, Dr. Brad Roberts of the Institute for Defense Analyses testified that, "... it's clear that different parts of the Chinese government and state apparatus bring different levels of enthusiasm to the policing of the behaviors of state entities with regard to China's commitments."¹⁵⁶

China provides insufficient training for its customs and export control officials, its capacity to regulate border traffic is weak, and problems in its judicial system make it difficult to prosecute violations successfully.¹⁵⁷

One successful example in China's enforcement of its domestic laws is the arrest of four men from Hunan province for attempting to sell "yellowcake" uranium¹⁵⁸ acquired through an illegal mining operation. They were apprehended during a sting operation conducted by Chinese authorities, and currently are on trial.¹⁵⁹

China's Approach to its Nonproliferation Commitments

In his testimony, Dr. Roberts stated that China's approach to proliferation has changed in recent years to align more closely with international norms and U.S. expectations. However, he noted that a significant gap remains.¹⁶⁰ Dr. Roberts testified that this gap stems from a different interpretation of what multilateral and bilateral agreements require, and explained that the Chinese government thinks the United States has asked it to go beyond the literal requirements of the treaty regimes to which it is a party.¹⁶¹ China views the United States as asking China to address its proliferation problems according to the "spirit of the law," which addresses intent to abide by the commitment to halt proliferation, in addition to fulfilling the actual provisions of the agreements. China takes a legalistic approach that acknowledges the literal requirements of its commitments—that is, the "letter of the law." It has not adopted a fundamental change in perspective toward the issue of proliferation and a determination to recognize and halt its harmful consequences.¹⁶²

On the issue of conventional weapons transfers, the United States is concerned that China's sales to Iran and other nations will have a destabilizing effect on global security and are not in the interests of either the United States or China. However, China has made no bilateral or multilateral legal commitment to restrict such transfers and no prohibition pertains.¹⁶³ Deputy Assistant Secretary Sedney told the Commission that China's legalistic approach, which requires the minimum amount of effort, does not support China's claim to be a responsible world power. In fact, "the standard [the Chinese] have set for themselves by those claims [that China is a responsible stakeholder] are called into question by the activities that they carry on in the conventional sphere with Iran."¹⁶⁴

Moreover, two of the world's most troubling nuclear threats—North Korea and Iran—received technology and equipment from China either directly or indirectly that aided their efforts to develop nuclear weapons and weapons technology. Questions remain

about the extent of China's knowledge of, and assistance to, North Korea's nuclear weapons program, but the U.S. government has disclosed that North Korea received most of its equipment and technology from Pakistan, a country to which China directly supplied nuclear technology.¹⁶⁵

After acceding in 1992 to the Nuclear Nonproliferation Treaty (NPT)—which obligates signatories to prevent the spread of nuclear weapons to non-nuclear states but does not define violative acts—China continued to assist Iran to develop nuclear reactors and enrich uranium despite concerns that Iran may be developing nuclear weapons.¹⁶⁶ China does not appear to have violated its commitments under the NPT.¹⁶⁷ It is unclear, however, whether China has fulfilled its obligations under recent U.N. Security Council Resolutions directed against Iran that prohibit transfers of military- and nuclear-related items.¹⁶⁸

China also has been aiding Pakistan in the construction of its second nuclear power plant. According to Mr. Chaim Braun, a Science Fellow at the Center for International Security and Cooperation at Stanford University,

*China [became] a member of the [Nuclear Suppliers Group] in 2004, and as a member is forbidden by NSG Guidelines from supplying nuclear equipment to countries that did not sign the NPT and did not accept full scope safeguards. However, China claims that its contract negotiations with Pakistan regarding [this] construction have been ongoing even before its accession to NSG membership, and are thus 'grandfathered' [and therefore exempt] from its NSG obligations.*¹⁶⁹

Understanding China's approach to nonproliferation, and specifically to the legal commitments of its nonproliferation agreements, is important for understanding the utility of nonproliferation agreements with China. Ambassador Mahley testified, "What you're trying to do is to put in place a framework by which [China] can find ... means to operate in an acceptable fashion for the international community and for joint interests ... So, in that sense, another agreement is useful because it gives the Chinese something in language which they've agreed to ... which they can now use as a means of dictating their behavior."¹⁷⁰ According to this view, if China joins another nonproliferation regime such as the MTCR, the very least the international community can expect is for China to abide by the letter of that agreement, and perhaps, as Ambassador Mahley indicated in his testimony, this may be an improvement on China's past behavior.¹⁷¹ Another option is placing language in such agreements that broadens China's commitment, and therefore requires an expansion of its efforts. For example, including requirements in future nonproliferation agreements with China that it establish "catch-all" provisions in its domestic laws potentially would produce a ban on transfers by China to a particular place of concern, even if China has not included particular items of concern on its control list.¹⁷²

China's Proliferation Practices

In his testimony before the Commission, Mr. Joseph Cirincione, Vice President for National Security at the Center for American Progress, argued that "... while there are serious issues with China's commitment to the international nonproliferation regimes, in general the trends are positive. [Its] performance has improved dramatically in recent decades, and ... the issues that we have are manageable and can be worked out by a policy of constructive engagement with China."¹⁷³

Ambassador Mahley also acknowledged some positive developments.¹⁷⁴ China "has acknowledged that the acquisition of nuclear weapons by Iran and North Korea is not in [its] interest,"¹⁷⁵ and has supported U.N. resolutions to sanction Iran and North Korea for their illicit nuclear activities. (Each resolution was the subject of intense debate, and China supported them only after Chinese representatives worked successfully to weaken their punitive measures.)

According to Ambassador Mahley, China has demonstrated in some ways a new willingness to address nonproliferation concerns¹⁷⁶—for example, playing a positive role in securing North Korea's participation in the Six-Party Talks to obtain a suitable resolution to that nation's nuclear program and weapons. After North Korea test fired missiles in July 2006, the U.N. Security Council responded with Resolution 1695 imposing targeted punitive sanctions against North Korea and requiring states, in a manner consistent with their own laws, to prevent transfers of materials, goods, technology, and financial resources in relation to North Korea's missile or WMD programs.¹⁷⁷ China voted in favor of the resolution only after it worked successfully to obtain removal of language that imposed the sanctions under the authority of the Security Council.¹⁷⁸

When North Korea announced in October 2006 that it had conducted a nuclear test, and the U.N. Security Council considered Resolution 1718 that included a provision calling on states to take "cooperative action including thorough inspection of cargo to and from the DPRK as necessary,"¹⁷⁹ China voted to approve that resolution as well. Throughout the diplomatic process, China's support was contingent upon weakening the enforcement mechanisms and criticisms contained in the resolutions proposed by the United States and Japan.¹⁸⁰ Deputy Assistant Secretary Sedney testified that North Korea's nuclear and missile tests called to China's attention that its past tolerance of North Korea's provocative behavior had "eroded the very stability [in the region and on China's borders that China] claims to seek."¹⁸¹ While China and the United States had some very different motivations for negotiating with North Korea in the Six-Party Talks, the two nations share sufficient common ground to try to work together to address North Korea's nuclear activities.

The Six-Party Talks and North Korea's Nuclear Program

It appears possible as this report is being finalized that the year 2007 will be seen as an important year in the Six-Party effort to obtain an agreement from North Korea to halt its nuclear program and dispose of its nuclear weapons, and then to fulfill that agreement. On February 13, 2007, the six parties signed an Initial Action Agreement that intends to fulfill the requirements of the September 2005 Agreement that was dormant for more than a year. In announcing the agreement, Secretary of State Condoleezza Rice specifically thanked China for its role in the negotiations,¹⁸² and later in that same month, Ambassador Christopher Hill, the U.S. lead negotiator for the Talks, expressed the view that China has been a vital partner for the United States in this process. Furthermore, in his testimony to the Commission, Ambassador Mahley testified that Chinese support is "absolutely essential" to the fulfillment of those February 13 commitments.¹⁸³ However, these laudatory statements may have been made more to serve diplomatic purposes than to clarify the historical record. Mr. Sedney testified that although China has taken concrete steps in pursuit of denuclearizing North Korea, there are more steps that China can and should take.¹⁸⁴

Despite 30-day and 60-day action timelines specified by the February 13 agreement, North Korea stalled on fulfilling its commitments by asserting it would not implement the agreement until the United States released funds the U.S. Department of Treasury froze in September 2005 based on charges they were associated with illicit activities. In March 2007, the Department of Treasury announced that the United States and North Korea had reached an agreement on the frozen funds.¹⁸⁵ This agreement required communication and coordination of policies with Macanese and Chinese authorities. In June, North Korea announced it was ready to begin shutting down its Yongbyon reactor, and International Atomic Energy Agency (IAEA) inspectors arrived to begin negotiating those processes.¹⁸⁶ In September, China delivered its first shipment of fuel oil to North Korea as part of its commitments.¹⁸⁷

In December 2006 and March 2007, China voted to approve U.N. resolutions 1737 and 1747, respectively, addressing Iran's nuclear activities. Resolution 1737 imposed sanctions on Iran for failing to halt its uranium enrichment program following the adoption of Resolution 1696 in July 2006. Specific sanctions included banning supply of nuclear-related materials and technology to Iran, and freezing the assets of key individuals and companies related to the enrichment program.¹⁸⁸ Resolution 1747 tightened the sanctions that had been placed on Iran for failing to halt its nuclear enrichment program. The resolution strictly prohibited procurement of arms from Iran by U.N. member nations and their nationals, and selling or transferring to Iran military-related equipment and other materials that would aid Iran in the accumulation of arms.¹⁸⁹ The resolution also expanded a preexisting freeze of assets related to

the enrichment program. Additionally, the resolution encouraged state and international financial institutions not to provide funds to Iran, except for humanitarian or development aid.¹⁹⁰

Continued Proliferation in Violation of China's Policy and Commitments

Concern about China's proliferation activities remains. The Administration has labeled China's nonproliferation record "mixed," noting that some Chinese businesses and individuals continue to seek opportunities to proliferate and sell items that are contrary to the government's official commitments.¹⁹¹

With regard to North Korea, China has adopted a risk-averse strategy that appears to place a greater value on maintaining stability on the Korean peninsula than on aggressively pursuing denuclearization.¹⁹² China has been the leading provider of food, fuel, and trade outside the provisions of the February 13 agreement, and this lessens the impact of international pressure on North Korea through the Six-Party process.¹⁹³ China has not implemented a ban on exporting luxury goods to North Korea as Resolution 1718 requires.¹⁹⁴ Deputy Assistant Secretary Sedney testified that Chinese firms are the sources of dual-use items for North Korea that can be used by North Korea's missile-related programs.¹⁹⁵ Ambassador Mahley noted that China generally accepts without question or skepticism end-use guarantees from North Korea; this enables China to sell arms to North Korea while complying with China's export control requirements for such sales.¹⁹⁶ This practice could result in the transfer of weapons or technology to North Korea that could destabilize the military balance on the Korean peninsula and further entrench that regime's dictatorship. Additionally, China has allowed North Korea to use its ports and airfields for transshipment of military-related items to Iran and other countries of concern.¹⁹⁷

China has continued to sell weapons to Iran, notwithstanding evidence Iran is supplying and funding terrorist groups in Iraq, Lebanon, and Afghanistan, and is seeking to destabilize the Middle East.¹⁹⁸ Deputy Assistant Secretary Sedney testified,

We have repeatedly asked China to stop its transfers to Iran of conventional weapons and technologies. China's response that these transfers are not governed by any international regime or treaty and therefore are "allowed," is irresponsible and is at odds with the statements by Chinese leaders that China is prepared to be responsible and seeks a cooperative partnership with the United States. Partners do not provide weapons to people who support those who kill our troops and those of our allies.¹⁹⁹

Ambassador Mahley testified that since the passage of U.N. Resolutions 1737 and 1747, China has made some unspecified transfers that the United States believes violated the terms of those resolutions and aided Iran's nuclear program. China acknowledges that the transfers took place, but offers as justification its view that the United States is wrong in its assertion that the U.N. resolutions ban these items.²⁰⁰ China also has helped Iran establish

self-sufficient production of ballistic missiles. The United States has communicated to China that China could much more effectively support the objectives of the international efforts opposed to Iran's nuclear program if it suspends its investments in Iran's oil and gas sectors in order to bring more financial pressure on the Iranian government.²⁰¹

China also continues to transfer conventional arms and dual-use technologies to Sudan,²⁰² despite U.N. resolutions prohibiting the sale or supply of weapons and military equipment to belligerents in the Darfur conflict.²⁰³ These sales suggest that China places greater emphasis on its commercial and energy supply interests than on concerns about human rights or international opprobrium.²⁰⁴ Deputy Assistant Secretary Sedney stated,

*China is a major supplier of arms to Sudan, weapons that are important to a Sudanese military that supports actions in Darfur that are causing immense human suffering and threaten the stability of that region of Africa. China is seen as Khartoum's primary patron and benefactor. While China has declared its intent to restrict arms sales to uses outside Darfur and appointed an envoy for Darfur, we are concerned that China is not using the full weight of its relationship with Sudan to stop the suffering in Darfur and bring Khartoum into compliance with international norms.*²⁰⁵

Ambassador Mahley acknowledged that the appointment of a special Chinese envoy to Sudan may hold some promise that China will begin to use its influence there to push the Khartoum government to resolve the conflicts in that country and comport its actions responsibly.²⁰⁶ China's contribution of troops to the U.N.'s peacekeeping force in Sudan raises new but limited expectations for China's participation in addressing international humanitarian crises.²⁰⁷

Limits to Chinese Implementation and Compliance

In spite of China's multilateral and bilateral nonproliferation commitments, and its own domestic laws, there have been repeated episodes of Chinese proliferation. Because of the opacity of China's government, it generally is difficult or impossible to know whether (1) the government objects to such transactions but is either unaware of them or powerless to stop them; (2) the transactions result from government acquiescence fostered by entrenched corruption; or (3) the government approves of the transactions in direct contravention of its official policy and commitments. There is evidence that many illicit transactions are not accidental. Ambassador Mahley told the Commission that Chinese companies have developed more complex front organizations to disguise transfers that are contrary to official policy.²⁰⁸

Dr. Roberts noted that enforcement of export restrictions may differ depending on the political influence a particular company is able to exert.²⁰⁹ Dr. Jing-dong Yuan of the James Martin Center for Nonproliferation Studies testified that because of the structure of many Chinese companies that produce weapons and technology

for export and their current or past relationship with the People's Liberation Army (PLA) as state-owned entities, it is difficult for export control officers to challenge export decisions that appear to be approved by company leaders or government or PLA officials.²¹⁰

Indeed, in any export control system, companies necessarily play a critical role. As Dr. Gary Bertsch, university professor, and founder and Director of the Center for International Trade and Security at the University of Georgia/Athens, told the Commission, "Industry is the first line of defense in restraining proliferation."²¹¹ Export controls cannot be effectively implemented, administered, and enforced without knowledgeable commitment by a nation's manufacturers and traders.

China has lagged in this dimension. Some suggest that China has recognized this problem and is taking steps to address it—motivated in part by international opprobrium, and by the economic costs of sanctions imposed by the United States and others. A case in point is the China North Industries Corporation (NORINCO) that has been designated "one of the greatest serial proliferators in China."²¹² Recently, NORINCO has claimed it is undergoing a transformation brought about by the realization that "responsible export control behavior, informed corporate officials, and an effective internal compliance program can be thought of as trade-enabling," according to Dr. Bertsch,²¹³ with whose organization NORINCO has contracted for export control training for its employees and assistance in developing an internal compliance program.²¹⁴ Dr. Bertsch maintains NORINCO's transformation is real, and stems from the company's desire to avoid stigma and U.S. sanctions, and to open new opportunities for trade with U.S. companies. The jury is out, however. Ambassador Mahley agreed this change in rhetoric demonstrates that sanctions create economic incentives to change negative behavior, but also said that it is yet to be determined whether NORINCO actually has changed its behavior or simply is seeking to mask harmful behavior behind positive rhetoric.²¹⁵

Because of China's inadequate proliferation record, Congress has required the executive branch to report on China's nonproliferation treaty compliance and to sanction firms and individuals who violate U.S. nonproliferation laws.²¹⁶ For example, the Iran and Syria Nonproliferation Act was amended in 2006 to include sanctions against persons or companies who transfer weapons and technology to North Korea.²¹⁷ The continued imposition by the U.S. government of sanctions against Chinese firms offers stark evidence that Chinese political will to enforce export control restrictions satisfying international norms, or its technical enforcement apparatus, is deficient.²¹⁸ Ambassador Mahley told the Commission that he is not satisfied that the sanctions in current law inflict sufficient pain on proliferating entities, and that in the case of entities that do little or no business with or in the United States, the sanctions have little or no effect. However, some experts believe that as Chinese firms extend their activities around the globe, they likely will want increased access to U.S. markets, and therefore will conform to nonproliferation norms in order to gain new economic opportunities and avoid sanctions. Indeed, this is the motivation NORINCO cites for its purported proliferation reversal.²¹⁹

Table 2.3 List of Sanctions Imposed on Chinese Entities Since November 2006^{220,221}

Date	Entity/Person	Controlling Statute
December 2006	<ul style="list-style-type: none"> • China National Electronic Import-Export Company • China Aero-Technology Import/Export Corporation (CATIC)²²² • Zibo Chemet Equipment Company 	Iran/Syria/North Korea Nonproliferation Act
April 2007	<ul style="list-style-type: none"> • China National Precision Machinery Import/Export Corporation (CPMIEC)²²³ • Shanghai Non-Ferrous Metals Pudong Development Trade Company, Ltd. • Zibo Chemet Equipment Company 	Iran/Syria/North Korea Nonproliferation Act

Engaging China to Strengthen Its Nonproliferation Efforts

Multilateral Efforts

Experts appearing before the Commission expressed different views on the benefits of working to expand China's participation in multilateral nonproliferation regimes and programs. Dr. Roberts suggested that it is a "chicken-and-egg" problem to decide whether regimes whose member nations share views on objectives and methods and have achieved a reasonable level of proficiency in application should accept China as a member first and then try to obtain its agreement to the objectives and methods and facilitate its proficiency, or instead should demand demonstrated agreement and proficiency before granting membership. He testified that China's general practice when joining nonproliferation activities is to comply with the letter of the law—if that—but often not the broader spirit. He suggested that complying with only the letter of the law frequently is insufficient, and that China's shortcomings in this respect are harmful to U.S. nonproliferation efforts.²²⁴ Dr. Yuan suggested that greater consultation with multilateral regimes in which China is seeking membership, such as the Australia Group, can inform China of what is expected of members, and once China moves close enough to meeting those expectations, the regime can accept China and expect further improvements.²²⁵ This position parallels that of Deputy Assistant Secretary Sedney, who said that China must improve its enforcement of nonproliferation controls and its transparency about those activities so as to engender trust, at which point the United States would be more comfortable supporting China's membership in organizations like the MTCR.²²⁶

One method to expand the appeal of multilateral controls is to work to establish and gain acceptance of and adherence to "no undercut" policies: An exporting nation notifies its allies, or other nations participating in a multilateral export control regime, of its disapproval of a request to export an item to a particular nation or end-user, and requests its partners also to deny similar requests from the same nation or end-user, so as not to "undercut" the original nation's denial of the export. This policy advances the interests of nonproliferation—making it less likely the end-user seeking the denied item will obtain it elsewhere—and the interests of the com-

pany from which the purchasing organization originally sought to purchase the item because it does not lose the sale to a company in another nation.

China and the Proliferation Security Initiative

The United States founded the Proliferation Security Initiative (PSI) in 2003 to organize nations concerned about shipments of WMD and their delivery mechanisms to identify suspected shipments and interdict them. Although China was invited to participate, it has not done so, citing concerns that international law does not permit seizure of ships, even those suspected of carrying WMD or their components or delivery systems, on the open seas.^{227 228}

Ambassador Mahley testified, “China’s commitment and participation in this program would be invaluable and we have been seeking to address Beijing’s concerns, emphasizing that PSI actions are taken in accordance with states’ domestic authorities and international law.”²²⁹

Bilateral Efforts

Nonproliferation is a very important matter for the United States, and it has engaged in repeated discussions with China on this topic at levels ranging from summits to the working level.²³⁰ The topic was addressed during President Hu Jintao’s visit to the United States in April 2006. There is a periodic Nonproliferation Dialogue conducted at the Assistant Secretary level.²³¹ The U.S. Department of Energy has engaged China on nuclear security issues,²³² and China participates in the U.S. Container Security Initiative (CSI).

China, Hong Kong, and the Container Security Initiative (CSI)

Background

The CSI was initiated in 2001 after the September 11 attacks to reduce the risk that a terrorist could use a shipping container to transport weapons of mass destruction (WMD) or weapons of mass effect (WME) directly into the United States.²³³ In this program, participating ports work with officials of Customs and Border Protection of the U.S. Department of Homeland Security to identify containers determined to pose a high risk of containing WMD or WME, prescreen them before the ships carrying them depart for the United States, and, in some cases, physically examine their contents. Participation in the program is negotiated through voluntary bilateral agreements.²³⁴ Prior to initiating the program at a port, U.S. Customs and Border Protection, the U.S. Department of Energy, the U.S. Department of State, and the U.S. Coast Guard conduct a capacity assessment to determine any weakness in controlling the flow of shipping and preventing the port from being used to transfer weapons undetected.

China's Participation in the CSI

In September 2007, CSI officers in Washington, DC provided a briefing to the Commission on China's participation in CSI. As of October 2007, the mainland ports of Shanghai and Shenzhen are participating in the CSI. The Declaration of Principles that established U.S.-China CSI cooperation allows for scanning only containers determined to be possibly related to an imminent terrorist threat. Scanning containers for other transgressions—such as possible intellectual property infringements—is not part of the CSI program, and is not allowed by Chinese customs officials.

There have been some areas of friction in the program's operation. In some instances, the U.S. and Chinese determinations of the risk posed by a container have been different, but Chinese customs officials generally have been willing to permit the CSI team to scan containers it has identified as risky and to participate in the scanning process. When a physical inspection has been indicated, U.S. CSI personnel have received good cooperation from their Chinese counterparts. China permits U.S. customs officers working in the program to reside and work in China for only one year.

The U.S. government's overall assessment of China's participation in the CSI program is positive, and that the program's operation in Shanghai and Shenzhen materially contributes to the security of the United States.

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Hong Kong's Participation in the CSI

In June 2006, when a Commission delegation visited Hong Kong, it met with U.S. and Hong Kong customs officials who work on the CSI program at the Hong Kong Port. Hong Kong's customs operations, including those pertaining to CSI, are not controlled by the PRC, and its officials work with the U.S. government on the CSI under a separate agreement. U.S. CSI officials can reside and work in Hong Kong indefinitely, unlike in China. According to U.S. CSI personnel, Hong Kong is considered to be one of the program's best success stories.

Export Control Technical Assistance to China

In April 2006, the U.S. Department of Commerce and China's Ministry of Commerce formed the "U.S.-China High Technology and Strategic Trade Working Group" under the auspices of the Joint Commission on Commerce and Trade (JCCT), which is a Ministerial-level bilateral working group. Among the topics the Working Group has addressed is export control cooperation, including U.S. sponsorship of technical assistance to China to assist it to strengthen and increase the effectiveness of its export control program. In 2004, the Department of Commerce and the Ministry of Commerce also signed an agreement on end-use verification of adherence to export control license conditions. The first such agreement on end-use verification was established in 1998, after 15 years of negotiation.²³⁵ Ambassador Mahley told the Commission:

Beyond discussing our shared interest in preventing proliferation, there are a number of instances where the Chinese have expressed an interest in export control cooperation, including technical exchanges and training. To the extent that it is permissible within the law, we have endeavored to provide such assistance.

One such example of cooperation is found in the State Department's Export Control and Related Border Security (EXBS) Program, which has supported training for Chinese licensing and enforcement officials. The EXBS effort is designed to help key source, transit, and transshipment countries to establish or enhance strategic trade control systems, including border control capabilities, that meet international standards for controlling items on the control lists of the nonproliferation export control regimes, prevent the authorization of transfers to end-uses and end-users of proliferation concern, and detect and interdict illicit transfers at the border. Our EXBS cooperation with China is funded from [appropriations] for the Nonproliferation and Disarmament Fund (NDF). In addition, in coordination with the EXBS program, the Department of Energy conducts Commodity Identification Training aimed at training Chinese frontline Customs enforcement officials and technical ex-

*perts responsible for assessing exports of shipments for nuclear proliferation concerns.*²³⁶

Helping China to Be A Responsible Stakeholder Regarding Proliferation

Ambassador Mahley concluded in his testimony, “We have no realistic option but to continue to work with China to improve transparency, to strengthen enforcement, and to root out increasingly sophisticated proliferation networks and proliferation activities.”²³⁷ The combination of multilateral and bilateral efforts, including the use of U.S. sanctions, is to encourage improved enforcement of China’s international treaty obligations, as well as its own domestic laws and regulations. Deputy Assistant Secretary Sedney noted that this is the stated goal of the Chinese leadership:

*China’s leaders state that they have set their nation on the path of being a ‘responsible stakeholder’ in the international system and that they want a ‘cooperative partnership’ with the United States. These are laudable goals. China’s success or lack thereof in working with the United States and other nations to prevent the proliferation of WMD and missile technology and in preventing Iran and North Korea from behaving in irresponsible and dangerous ways is a key test of how well China’s government is meeting the goals its leaders have set.*²³⁸

Conclusions

- Since the 1990s, China’s nonproliferation record has improved, especially after it established and expanded the reach of its domestic export control system. However, serious concerns remain about the continued transfer of weapons and technology to nations of concern and nonstate actors by Chinese state-controlled and private companies.
- Because of the opacity of China’s government, when incidents of proliferation occur, it generally is difficult or impossible to know whether (1) the government objects to the incidents but is either unaware of them or powerless to stop them; (2) the transactions result from government acquiescence fostered by entrenched corruption; or (3) the government approves of the transactions in direct contravention of its official policy and commitments. Regardless, there is evidence that many illicit transactions are not accidental, and that all three of these explanations may have some validity in various cases.
- It is vital for U.S. national security that China ensure it is not the source of proliferation that is contrary to its commitments, and it is equally vital for other nations committed to nonproliferation to monitor China’s adherence to its commitments and insist that China honor them.
- If China wants to be perceived as a responsible stakeholder, it must stop providing trade and diplomatic cover to countries such as North Korea and Iran that are under international pressure to end their WMD programs.

- Continued United States cooperation with China, and U.S. technical assistance to China, on export controls, border security, customs procedures, and port and shipping security can contribute significantly to China's capacity to play a positive role in reducing proliferation and consequently to increasing the world's security from terrorism and the destructive acts of irresponsible states.
- In order for China to eliminate its proliferating activity, it must couple sufficient technical capacity with strong and unmistakable political commitment, and ensure that its government, its military, and its state-controlled companies and other organizations adhere to both the letter and the spirit of China's multilateral and bilateral nonproliferation commitments.