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China arms embargo: political pledge, real compliance risks

Are you exporting dual-use or military goods to China? Whether you need a licence, and whether you will get one, may depend less on what you are exporting than on where in the European Union (EU) you are exporting from. A political declaration made in 1989 continues to shape the compliance landscape for exporters across the EU.

- The EU's arms embargo on China is political, but its practical effects depend on how national authorities interpret and apply it.
- For non-listed dual-use goods with a potential military end-use, that interpretation can determine whether an export licence is required.
- For military goods, the embargo can weigh against granting an export licence, even though it is not legally binding at EU level.

Key conclusion: For exports to China, the embargo's political status does not remove licensing risk. Check the competent authority's approach to both whether a licence is required and whether it is likely to be granted; do not assume the answer is the same across the EU.

A political embargo with practical consequences

Since 1989, the EU has maintained a political arms embargo on China. This embargo rests on a political declaration and has never been transposed into a harmonised legal instrument. That said, its informal status does not render it without effect. In practice, competent national authorities across the EU have taken varying positions on whether, and to what extent, the political embargo should inform their licensing decisions. Its scope and practical implications therefore vary significantly across EU Member States, creating compliance uncertainty for exporters.

The consequences are felt at two critical junctures: when determining whether a licence is required at all under the "catch-all clause" of the EU Dual-Use Regulation, and when assessing the prospects of obtaining one.

Dual-use exports: uncertainty at the classification and licensing stage

As mentioned in a previous client alert, under Regulation (EU) 2021/821 (**EU Dual-Use Regulation**), exporters must first assess whether their products are listed in Annex I. If they are not, many assume that no export licence is required. That assumption, however, does not tell the full story. Under the "catch-all clause" of article 4 of the Dual-Use Regulation, a licence may still be required for non-listed items if they are, or may be intended, in whole or in part, for a military end-use in a country subject to an arms embargo.

For exports to China, this raises an immediate threshold question: is China a country "subject to an arms embargo"? The answer depends entirely on how the relevant national authority interprets the political embargo. Some may treat the political declaration as sufficient, while others may not. The same item, destined for the same end-user, may therefore require a licence in one Member State but not in another.

National authorities also assess whether to grant an export licence against EU-level criteria set out in Common Position 2008/944/CFSP, one of which expressly concerns respect for arms embargoes. The political status of the China embargo therefore creates uncertainty not only at the classification stage, but also at the licensing stage.

Military goods: impact on licence assessment

For military goods listed in the EU Common Military List, national authorities also assess each export licence application individually against the eight criteria set out in Common Position 2008/944/CFSP.

In this context, the political arms embargo on China may thus weigh against a licence being granted, notwithstanding its non-binding character. Exporters of military goods destined for China should therefore factor in the real possibility that their applications for the export of a military item to China could face heightened scrutiny or be denied outright.

Diverging Member State approaches

In the absence of a harmonised legal framework, national practices have diverged significantly, and the picture that emerges is one of genuine inconsistency.

Belgium illustrates this uncertainty. While Wallonia has not adopted a clear and explicit policy on the application of the embargo on China, the Flemish authorities explicitly state that exports and transfers of defence-related products with a known end-use in China are prohibited, as is the export of dual-use goods that carry a risk of military application. Export licences for dual-use items with end-use in China are thus granted by the Flemish authorities only when the applicant can provide credible assurance that the products will be used solely for civilian purposes.

At the same time, according to data published by the European External Action Service, it appears that other EU Member States, including Germany, Italy, the Netherlands and Spain, have issued licences for the export to China of military goods listed in the EU Common Military List.

These examples show that the outcome of a compliance analysis can differ depending on the Member State from which the export takes place. The fact that several Member States have continued to grant licences for military goods to China does not mean that others will necessarily take the same approach, and the same applies in reverse.

Key takeaways for EU exporters

EU exporters conducting business with China should consider taking the following steps:

- **Conduct jurisdiction-specific assessments.** Check whether the competent authority in your Member State has published explicit guidance or adopted a declared policy on the China embargo.
- **Integrate catch-all risk analysis into export procedures.** For non-listed items destined for China, your compliance process should include a specific assessment of whether the intended end-use could qualify as military end-use within the meaning of article 4 of the EU Dual-Use Regulation.
- **Engage with licensing authorities where appropriate.** Where uncertainty exists, proactive engagement with the competent authority can help clarify its position and reduce compliance risk.
- **Ensure alignment across EU operations.** Companies exporting from multiple Member States should not assume that a compliance clearance obtained in one jurisdiction automatically covers other group entities based in different Member States. Group-level compliance frameworks should be stress-tested against the diverging national approaches described above.

VBB is ideally placed to assist you in navigating the implications of this topic, and we invite you to get in touch with the authors below, a member of our Defence and Security core team or your usual VBB contact, to discuss how this impacts your organisation.

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