

## Working Paper

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# Lifting the EU arms embargo against China. U.S. and EU positions

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# Lifting the EU arms embargo against China. U.S. and EU positions\*

The plan of lifting the European arms embargo against China, most strongly supported by French President Chirac and German Chancellor Schroeder, has led to growing criticism in the U.S. over the last couple of months. The U.S. sees lifting the embargo as a threat to its security interests in the region. The issue is especially troublesome at a time when the U.S. and Europe are trying to overcome the rift created by the war in Iraq.

## The U.S. position: Why the embargo should be kept in place

A whole range of arguments have been raised by the U.S. (and less publicly, by Japan<sup>1</sup> and Taiwan<sup>2</sup> as well) against lifting the European arms embargo:

- the human rights situation in China, which was the original reason for the arms embargo in 1989, has not fundamentally changed for the better – and some would even argue the situation has deteriorated over the past few years;
- the U.S. and EU embargoes are complementary, and the Europeans should not break out of the common front with the U.S. on this issue;
- lifting the EU arms embargo will lead to a change in the balance-of-power in the region in China's favour, especially with respect to the situation in the Taiwan Strait (arms race, destabilization of the regional situation);
- lifting the EU arms embargo could in the future lead to a situation where U.S. soldiers are confronted with weapons of NATO allies. Military conflict over Taiwan is the most likely scenario;
- the Russian Federation will drop all restrictions on arms sales to China out of fear of European competition on the Chinese market;
- lifting the EU arms embargo will lead to cooperation between European and Chinese defence industries; this could in turn lead to sensitive U.S. technology falling into the hands of China;
- China's record of proliferation is still unsatisfactory, so European arms and technology could be transferred from China to states of concern or third parties;
- the EU defence industry will become more competitive by selling arms to China and this will threaten the dominant position of U.S. industries;
- finally, it has been argued that by lifting the embargo the EU is giving away much too cheaply a powerful instrument to get concessions from the Chinese – in fact, the EU gets nothing in return. Thus, the EU is acting against its own interest.

In general, the U.S. side considers the restrictions on arms exports of the EU which will apply after the European embargo is lifted to be insufficient because they are not legally binding. For the reasons listed above, the U.S. government, Congress and basically everybody else is strongly opposed to the EU taking this step. From the American perspective, the Europeans once again seem to be driven by greed: short-term profits are given priority over the legitimate security interests of Europe's allies.

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- 1 See e.g. remarks of the Japanese Foreign Minister Nobutaka Machimura during the visit of British Foreign Secretary Jack Straw in January 2005. (Agence France Press, Jan. 20, 2005, cited from Napsnet Daily Report (Email), Jan. 20, 2005.
- 2 Taiwan's Vice-Minister of Foreign Affairs, Michael Kau, visited several European countries in January 2005 to explain Taiwan's concern about the anti-secession law and the lifting of the embargo. See "Kau seeks support against China's law", Taipei Times (online), Jan. 20, 2005, p.4.

Most of the U.S. arguments listed above are based on the assumption that at least some EU member countries will increase arms sales to China immediately after the embargo has been lifted and that economic gains from these sales are in fact the prime motive behind lifting the embargo. In contrast to the outlined American position, EU officials and political leaders of member states stress that there is no intention on the EU side to increase arms transfers to China.<sup>3</sup> They argue that lifting the embargo would be mainly a symbolic step. But how can this be guaranteed? Which safeguards will be in place after the embargo is lifted?

## The European position: Effectiveness of the embargo and the Code of Conduct

Before addressing the question of the EU Code of Conduct on Arms Exports<sup>4</sup> which is the major European instrument to control arms exports, it should be made clear that there are major differences between the US arms embargo against China and the European one:

- The U.S. arms embargo against China was made public law in early 1990, while the EU embargo was merely a political declaration of the heads of state of the European Community at their summit in Madrid in June 1989 (which falls into a time well before the Common Foreign and Security Policy of the EU was on the horizon). Therefore, the US embargo is legally binding, while the EU's is not.
- The U.S. embargo refers to the U.S. Munitions List, while the EU embargo is not specified in its scope. Rather, the interpretation of scope and the implementation of the embargo was left to the individual member states. In the late 1990s, the UK and France came forward with their respective interpretations of the embargo<sup>5</sup>. The embargo has lost more and more of its effectiveness ever since.
- While the U.S. munitions list also includes dual-use items, dual-use items are not addressed by the European embargo. It simply refers to "an embargo on trade in arms with China".<sup>6</sup>

Several other factors are also important: First, the EU's "Common Foreign and Security Policy" (CFSP) is a work in progress. Therefore, the EU is not yet a fully-fledged foreign policy actor and it can not decide and act on behalf of the member states in this realm. Concerning foreign and security policy, the member states are still the relevant actors. For example, every member state has its own national laws on export controls. In the case of Germany these laws are quite strict. Even if the embargo against China falls, these national export controls will still be applicable.

Second, there are provisions on the EU level that are at least as binding as the embargo:

The EU Code of Conduct on Arms Exports was finalized in 1998 and constitutes an effort to unify and harmonize arms export policies of the member countries and to prevent undercutting. Although the Code of Conduct is not an EU law<sup>7</sup>, it is an elaborate, *politically* binding instrument. The Code sets up eight criteria

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3 See official statement of the European Council in December 2004: „It [the European Council] underlined that any result of the decision [to lift the arms embargo] should not be an increase of arms exports from EU Member States to China, neither in quantitative nor in qualitative terms.” Council of the European Union, Brussels European Council, 16/17 December 2004, Presidency Conclusions (16238/1/04 REV 1), [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/ec/83201.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/83201.pdf) (accessed Feb. 23, 2005). The remarks of French Defence Minister Michele Aillot-Marie in February 2005 in the Financial Times contradict these declared intentions of the Council. See "France urges end to China arms embargo", Financial Times, Feb. 15, 2005, p.1. It is not clear whether this statement reflects a French position which deviates from the rest of the Europe.

4 Council of the European Union: EU Code of Conduct on Arms Exports, 8675/2/98, June 5, 1998, <http://ue.eu.int/uedocs/cmsUpload/08675r2en8.pdf>

5 See SIPRI website: UK statement: <http://www.sipri.org/contents/expcon/euchiuk.html>; French statement: <http://www.sipri.org/contents/expcon/euchifra.html>.

6 European Council: „EU Declaration on China“, Madrid, 26-27 June 1989, <http://projects.sipri.se/expcon/euframe/euchidec.htm>

7 Weapons were excluded from the Common Market under the Treaty of Rome. In contrast, there is a EU regulation for the export of dual-use goods: Regulation (EC) No. 149/2003 of 27 January 2003 amending Regulation (EC) 1334/2000 with regard to intra-Community transfers and exports of dual-use items and technology, OJ L 30 of 5 February 2003, [http://europa.eu.int/comm/trade/issues/sectoral/industry/dualuse/docs/reg149\\_2003en.pdf](http://europa.eu.int/comm/trade/issues/sectoral/industry/dualuse/docs/reg149_2003en.pdf).

which have to be taken into consideration before granting an export license for military goods – the human rights situation in the recipient country and regional peace and stability are two of these criteria – and it also established mechanisms for reporting and consultation between member countries. Annual reports on the performance under the Code of Conduct have been published. These publications not only contain lists of export licenses granted and refused broken down by recipient country, but also work on further improving the Code by establishing “best practices” and pointing to issues that need to be addressed in the future. The EU considers its Code of Conduct as “the most comprehensive international arms exports control regime.”<sup>8</sup>

In light of a possible future lifting of the embargo against China, it is important to note that a review process of the Code of Conduct was initiated in December 2003. This review process is almost finished and a revised and strengthened Code could be finalized in the coming months (spring 2005). The revision comprises several dimensions:<sup>9</sup>

- A consensus has been reached to include new elements in the Code: arms brokering<sup>10</sup>, transit/transshipment, licensed production overseas, intangible transfer of software and technology, end-user certification and national reporting.
- A revised version of the “User’s Guide” providing guidelines for the implementation of the Code of Conduct was published in December 2004.<sup>11</sup>
- Temporary procedures are under discussion that would apply to countries if the EU decides to lift an existing arms embargo (“toolbox” to supplement the Code of Conduct)<sup>12</sup>.
- A stronger role is ascribed to the European Parliament (rapporteur).
- Exchange on denials of export licences with candidate countries for EU membership and countries outside the EU (first country: Norway).
- Reporting has been further harmonised (references to Military list numbers<sup>13</sup> are supplied if available) which will lead to more systematic and transparent tables.

In sum, the process triggered by the European debate about lifting the embargo against China has had positive effects that go beyond the question of China (strengthened Code, closing of loopholes, “toolbox”, exchange with countries outside the EU). Moreover, due to the latest EU expansion in May 2004, new member states like the Czech Republic had to commit to the Code of Conduct. All these measures should lead to improved controls and more transparency in arms exports than before.

## Why lift the embargo?

On the political level, the EU argues that China has come a long way since 1989. Although grave deficits with respect to the human rights situation remain, there has been progress in some fields. Major concerns for the European side are labour camps, the number of death sentences, administrative detention, minority and religious rights (Tibet, Xinjiang, Christians).

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8 See Sixth Annual Report on the Implementation of the Code of Conduct, November 11, 2004, 13816/04. In addition to the now 25 member states of the EU, Norway, Romania, Iceland, Bulgaria, Canada and Croatia declared that they share the objectives of the Code and aligned themselves with its criteria and principles. All annual reports on the Code can be found on the SIPRI Website under <http://www.sipri.org/contents/expcon/annrep.html>.

9 See Sixth Annual Report, pp.7-9.

10 The June 2003 Common Position on the control of arms brokering is to be included in revised Code of Conduct (problem: not all countries have national laws on arms brokering)

11 User’s Guide to the European Union Code of Conduct on Exports of Military Equipment, 16133/1/04, <http://ue.eu.int/uedocs/cmsUpload/st16133-re01en04.pdf>.

12 See Sixth Annual Report, p.4. There is no information yet on the specific provisions of this “toolbox”.

13 EU Common Military list categories: See Sixth Annual Report, pp.12-13. The revised Common Military List of the European Union (Nov. 17, 2003) to which the Code of Conduct refers to can be found under [http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c\\_314/c\\_31420031223en00010026.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c_314/c_31420031223en00010026.pdf).

The EU sees the rise of China, its growing economic and political weight, as an opportunity and challenge, as a process that should be accompanied and supported from the outside. Engagement on every possible level – bilaterally and multilaterally – is seen as the best chance to bring China as a responsible player into the international community. In view of the commonalities identified (multilateralism, UN and international regimes) the EU views China as a future strategic partner. (Admittedly, France identifies slightly different commonalities with China – multipolarity as a counterweight to the United States.)

As a future strategic partner, it does not seem appropriate to put China into the same category as Zimbabwe or Burma/Myanmar – countries that are also subject to an arms embargo. Getting rid of the arms embargo is seen as the last step of normalizing relations with China rather than as a reward for anything. (This is reflected on the Chinese side's interpretation of the embargo as political discrimination.) The EU wants to move on with its relationship with China and sees lifting the embargo as a necessary measure on the way forward.

Therefore, from the EU perspective lifting the embargo is mainly a symbolic move without practical implications for arms sales. If this is the case, the EU can hardly use this move to extract substantial concessions from China. However, the EU and governments of several member countries have been communicating to China that it would be helpful – albeit not a precondition – for lifting the embargo if China would, for example, ratify the International Covenant on Civil and Political Rights.<sup>14</sup> The EU Parliament and national parliaments in several countries voted against lifting the embargo before more substantial progress in the human rights situation becomes visible.<sup>15</sup>

## Towards a new transatlantic rift?

Has the EU – as Jack Straw recently stated – simply been unable to communicate that lifting the embargo is not about exporting arms and military technology to China? Are the different standpoints on both sides of the Atlantic only due to misunderstandings? That might be part of the problem, but it is hardly all of it.

There seems to be a general attitude on the American side that the EU embargo should be lifted under no circumstances whatsoever. The conditions for lifting the embargo and the timing only play a very marginal role for the American position. Lifting the embargo seems only acceptable to the U.S. if she herself deems it wise to take the initiative to lift her own embargo. If this interpretation is correct, nothing that the Europeans do to strengthen the Code of Conduct or introduce other safeguards will change the U.S. position. The Europeans certainly would like to satisfy all sides involved, but this might not be possible.

Some ideas have been brought up to solve the situation: One is that the U.S. draws up a list of items and equipment that they do not want the Europeans to export to China. Another proposal is to include Japan in such consultations between the EU and the U.S.<sup>16</sup>

Any such solution would, however, require that the U.S. acknowledges and respects the EU attempts at establishing an efficient common arms export regime guided by European foreign policy interests.

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14 China signed the Covenant in 1998, but has not ratified it yet.

15 Parliaments have, however, no part in the decision to lift the embargo.

16 See „EU and US seek to defuse China arms embargo tensions“, Financial Times, Feb. 1, 2005, p.6.