

**THE LIFTING OF THE EU ARMS EMBARGO
ON CHINA**

HEARING

BEFORE THE

**COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE**

ONE HUNDRED NINETH CONGRESS

FIRST SESSION

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THE LIFTING OF THE EU ARMS EMBARGO ON CHINA

WEDNESDAY, MARCH 16, 2005

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met at 2:45 p.m., in room SD-419, Dirksen Senate Office Building, Hon. Richard G. Lugar, chairman of the committee, presiding.

Present: Senators Lugar, Allen, and Biden.

OPENING STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR FROM INDIANA

The CHAIRMAN. This hearing of the Senate Foreign Relations Committee is called to order.

The Senate Foreign Relations Committee meets today to examine the European Union's arms embargo against the People's Republic of China. This embargo was imposed, along with a similar one by the United States, in 1989 in response to the brutal crackdown on peaceful demonstration in Beijing's Tiananmen Square. But now European officials have indicated that the EU plans to lift its embargo.

As I have noted before, this is a mistake. President Bush, on his recent European trip, has personally expressed his "deep concern" about these plans. Republicans and Democrats in Congress share this view. Rarely have Congress and the President, Republicans and Democrats, been so united against a proposal made by our European friends.

I have long championed strong ties with our European allies, and I also favor appropriate engagement with China. But the United States national security interests could be harmed if the European Union countries sell sophisticated weapons and technology at this time to China.

Our first concern must be stopping the proliferation of weapons technology. China has sold weapons and associated technology to rogue states in the past. China's military is aggressively seeking more advanced weaponry and electronics for its ongoing modernization. Europe will have little practical control over where that key technology may end up.

During the past year alone, the United States has imposed sanctions on 23 Chinese individuals and companies for violating American proliferation laws. These violations have included the transfer to Iran of technology related to missiles and chemical and biological weapons. China also has helped Pakistan's nuclear program and

passed on military technology to North Korea and the repressive junta in Burma.

President Bush highlighted another problem in his talks with Europeans. Namely, lifting the embargo would “change the balance of relations between China and Taiwan.” Tensions across the Taiwan Strait have just been made worse by Beijing’s ill-advised passage of the so-called “Anti-Secession Law.” This law lists a series of events that could trigger an attack on Taiwan by China. In light of such potentially destabilizing action, this is no time to be taking steps that might either help China achieve a decisive military advantage over Taiwan or send the wrong political signal.

I favor engaging China in ways that open China’s markets to agricultural and other goods, help China assume a responsible place in world affairs and in the region, aid the fight against terrorism, improve the lives of its people, and promote religious freedom and democracy. Lifting the arms embargo advances none of these goals. In fact, lifting the embargo would send the wrong signal in the area of human rights.

Despite strides in other areas, China still holds political and religious prisoners, avoids meaningful dialog with the Dalai Lama over Tibet, and has no engagement whatever with domestic pro-democracy forces. Lifting the arms curbs would be viewed as a reward for this intransigence.

Ending the arms ban would do little to improve European Union-China ties, which have been developing despite the embargo. The main beneficiaries would be European defense companies.

There are also reports that Europe expects to be rewarded for lifting the ban by getting more orders for Airbus airplanes. If so, the United States would be doubly harmed by losing sales of American-produced aircraft.

Europeans claim that lifting the embargo will not result in more or better weapons being sold to China. They say they have a Code of Conduct on Arms Exports that will limit the impact. However, the current embargo already has proven to be ineffective. In 2003, China received from Europeans export licenses for 550 million dollars’ worth of military or sensitive dual-use goods. The Code of Conduct is only voluntary. The Europeans promised President Bush to strengthen the code to meet his concerns. The President is skeptical, and so am I.

The Europeans’ decision is expected in June. I would urge the administration to keep working to dissuade the Europeans from this course.

In addition, we should make certain that Beijing cannot circumvent our arms embargo by buying American technology from Europe. The administration should press for binding agreements with each EU member explicitly banning the retransfer to China of any United States technology or weapons that are on the United States munitions list. If the countries fail to agree, or if the quantity or quality of arms flowing to China from Europe rises markedly, we should reassess sales to Europe of our most critical military technology.

To help us estimate the likelihood that the European Union will lift the embargo and to examine the implications if it does, we are joined by a panel of distinguished experts. Mr. Peter Brookes is a

Senior Fellow for National Security Affairs and Director of the Asian Studies Center at the Heritage Foundation. Dr. Bates Gill is holder of the Freeman Chair in China Studies at the Center for Strategic and International Studies. Dr. Richard Grimmett is a National Defense Specialist at the Congressional Research Service.

We thank our witnesses for joining us. We look forward to their insights.

First of all, I would like to recognize the distinguished ranking member of the committee, Senator Biden.

**STATEMENT OF HON. JOSEPH R. BIDEN, JR., U.S. SENATOR
FROM DELAWARE**

Senator BIDEN. Thank you very much, Mr. Chairman, and thank you for holding this hearing. We have three distinguished witnesses. I will try to be brief so we can get right to their testimony.

China's defense buildup has already sparked concern among its neighbors and lifting the EU arms embargo raises a specter of more advanced European arms and technology; or, for that matter, even United States technology that is sold to EU countries being transferred to a China that has just put into its law its willingness to use force in Taiwan, their own policy of preemption.

Now, a European Union delegation has been visiting congressional leaders to assure us that lifting the arms embargo will not harm United States security interests in Asia, partly because the EU will also toughen its nonbinding Code of Conduct in arms transfers and partly because the arms embargo already has plenty of loopholes. At least, they are the two rationales they offer.

But maintaining its arms embargo and strengthening the EU Code of Conduct are not, and should not be, mutually exclusive. Both, in my view, should be done. Senator Gordon Smith and I introduced a resolution, now before the Senate, calling on the EU to do just that, that is, to maintain the embargo and to strengthen the EU Code of Conduct.

Another reason not to lift the embargo, is that such an action will send an unwise signal to the human rights community in China and in all of Asia that they no longer matter to the great mercantile states of Europe.

And China, as we know, obviously lets politics dictate major commercial sales. So the European firms like Airbus, Allianz insurance, and Siemens may be rewarded if the EU lifts the embargo, at the expense of United States competitors like Boeing, AIG, and Motorola. German officials have actually publicly said that this nondefense trade is the real reason for lifting the embargo, and they said that just last week on National Public Radio.

Mr. Chairman, that is not a China policy. It is a China problem. Rather, it is more a symptom of the estrangement and the economic competitiveness that exists between the United States and Europe under this administration. We need to reach out, it seems to me, to the EU and articulate our concerns and consult with our allies on a full range of ancient policy issues. If we end up not being able to stop the lifting of the EU embargo, which I am beginning to be doubtful about, Europe, in turn, has to toughen its Code of Conduct on all arms sales and should agree to consult with us

on any sales to China. I think we could get agreement at a minimum to do that.

The EU, in my view, is acting—how can I say this tactfully? Well, I really probably cannot say it tactfully. But I think that this is a very, very dangerous decision, and particularly coming at a moment when this administration has reached out to try to begin to mend our frayed relationships with our European allies. I think, the administration—my judgment, not the administration’s—has come to realize that it is overwhelmingly in our interest to have a coherent policy agreement with Europe and our European allies on major foreign policy questions, and is trying to do that and reconcile our differences. Here, in the midst of this effort on a good trip by the President and a preceding trip by Dr. Rice, Europe’s lifting of its arms embargo could do significant damage.

To be very blunt with you, Mr. Chairman, I am a little concerned about what some of our colleagues here might do. I am very concerned about the kind of legislation that this would potentially generate and how it may very well begin to poison the well again in the transatlantic relationship. Words matter. And one of the things that has been done of late, is that both the European capitals and our capital have toned down the rhetoric in referencing one another. That is a very necessary and important thing. I am worried this may spark renewed rhetoric.

Mr. Chairman, rather than go through the rest of my statement, let me suggest that, at a minimum, the Europeans should fundamentally strengthen their Code of Conduct and make it an EU common position. I am not at all assured by the fact that each country individually will make separate judgments on that. I think the EU could dramatically improve internal transparency through better reporting of actual sales (not just licenses and common categories of exports), more information on details, and no-undercut policies. I think it could establish better end-use certification and monitoring. It could penalize any diversion of European dual-use exports by halting further sales by any EU members, and so on.

But rather than go through the rest of what I have to say here, I am anxious to hear what our witnesses have to say. I hope we can reach a common position with our European friends on this. I am not at all that hopeful, but I would suggest that it is very, very important that we try.

I yield the floor, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Biden.

I will ask the witnesses to testify in the order that I introduced you in my opening statement. That would be, first of all, Mr. Brookes, then Dr. Gill, and then Dr. Grimmett. All of your statements will be placed in the record in full, so you need not ask for permission to do that. To the extent that you can summarize the statements to fit within perhaps a pattern of about 10 minutes, the chair and the ranking member will be liberal in that interpretation. We have come to hear you, not to limit you.

But we have a distressing factor of four rollcall votes coming in a series, at some point during the coming hour. That is going to be disruptive, but I suspect that if we proceed in this way, you will all be heard, and that is important. Then we will have opportunities to ask as many questions as time may permit at that point.

Senator BIDEN. And if you saw how we are voting, you would really be distressed. [Laughter.]

The CHAIRMAN. Easy there. [Laughter.]

Mr. Brookes.

STATEMENT OF PETER BROOKES, SENIOR FELLOW FOR NATIONAL SECURITY AFFAIRS AND DIRECTOR, ASIAN STUDIES CENTER, THE HERITAGE FOUNDATION, WASHINGTON, DC

Mr. BROOKES. Thank you, Mr. Chairman, Senator Biden. It is an honor and a privilege to appear before you today to discuss the European Union's pending decision to lift its arms embargo against China.

I want to commend you for holding this very timely hearing as there are many questions being asked on both sides of the Atlantic, as well as in Asia, that this question should be addressed in a prestigious open forum such as this.

I am testifying here today as an individual and my views do not necessarily reflect the views of my employer, the Heritage Foundation. I have submitted my testimony for the record, which covers my perceptions of American concerns, as well as European and Chinese motivations regarding lifting the arms embargo. But, in addition, I would like to quickly emphasize several general points and conclusions in my testimony and then make a very few short, tailored remarks as well.

First, in my view lifting the EU arms embargo is a mistake. It will endanger United States interests and that of American allies in Asia. It will accelerate China's military buildup, undermine stability in the Pacific, especially across the Taiwan Strait, reduce leverage for guiding future Chinese behavior on human rights and security matters, send the wrong signals to repressive regimes everywhere about human rights, and not help close the existing transatlantic divide.

Next, let me say a few words about Chinese military modernization. Northeast Asia regional security dynamics are increasingly revolving around China. China's military potential continues to grow and is inexorably shifting the balance of power in the region. There are concerns across the region about China's strategic ambitions. China now has the largest defense budget in East Asia, the second largest in the world, behind the United States, but ahead of Japan. China has experienced double-digit defense budget growth for 14 years now, and the PLA is getting a 12-percent increase this year, including an additional 7-percent increase for procurement. Some see these growth figures as conservative.

Of most concern, the balance of power is shifting across the Taiwan Strait in Beijing's favor. Considering the American obligations under the 1979 Taiwan Relations Act, this is cause for concern. Within the next few years, China will have a qualitative and quantitative military advantage over Taiwan, and some would argue that this has already happened. Members of the committee are certainly aware of the missile buildup in China across from Taiwan. China's ballistic missile buildup not only threatens Taiwan but American forces and Japan as well.

The Japanese have also taken notice, adjusting their defense posture south during their most recent defense review and noting

their concern over stability in the Taiwan Strait for the first time in their most recent defense white paper.

China plans to develop a military which can deter, delay, or deny American intervention in the Pacific, especially over the issue of Taiwan. That day is not here yet, but one cannot underestimate the possibility of misperception or miscalculation by the Chinese over the issue of Taiwan.

To this end, Chinese military modernization priorities center around power projection capabilities: Submarines, surface combatants, tactical air power and air defense, ballistic and cruise missiles, overhead satellites and space programs, information warfare, psychological operations, as well as doctrinal improvements for fostering joint military operations based on their observation of such things as Operation Iraqi Freedom.

Let me say a few words about technology flows. In the short term, China will attempt to procure force multiplier technologies and capabilities to fill in gaps in their military performance. For example, C4ISR, command, control, communications, computers, intelligence, surveillance, and reconnaissance technology including sensor to shoot technology, cooperative target engagement technology for improving fighting efficiency effectiveness, and situational awareness.

Other technologies and capabilities of interest include air-to-air refueling, amphibious warfare, naval underwater replenishment, jet turbo fan engines, electronic countermeasures, airborne early warning, and composite materials of the stealth technology. China is interested in everything a modern military such as the United States has.

Additionally, Russia, which has concerns about China despite its arms sales relationship, might be driven to sell additional, more lethal, more sophisticated arms to China if Russia is placed in competition with Europe.

In the long term, China will attempt to reduce their dependence on foreign sources of quality equipment, technology, and expertise by strengthening its own military industrial complex through research, development, joint ventures, technology transfers, and even economic espionage.

Europe, if it lifts the arms embargo, will be an important market for procuring these capabilities and can hinder or accelerate China's progress in these areas based on their future policy decisions.

A few words on the Code of Conduct. I am worried about a new voluntary EU Code of Conduct that may not stem the flow of military useful technology or equipment to China. An improved Code of Conduct is a step in the right direction, and the toolbox directed at China specifically is also positive. But I am still concerned that some nations will still conduct military sales or dual-use technology transfers to China in order to enhance commercial relations. The Chinese are sure to apply as much political and commercial pressure as possible to get the military equipment and technology they need for their military industrial complex.

Lastly, we also have to be cognizant, as you mentioned, Mr. Chairman, of what flows into China from Europe may flow out as well to Iran, North Korea, and others with whom China has a security relationship.

In closing, the United States should welcome China's peaceful integration into the international community as an open and free society through commerce, tourism, academic exchanges, and official dialog. These activities maximize the free world's efforts to encourage positive political and social change for 1.3 billion Chinese.

In my view, lifting the EU arms embargo will not do that. In fact, the passage of the anti-secession law directed at Taiwan by the Chinese National People's Congress on Monday, seems to suggest just the opposite, that China sees the EU's proposed decision on arms sales as approval to further pressure Taiwan militarily if necessary.

I encourage the Senate to continue to look at this issue closely and express your concerns to your European counterparts, as I am sure you already are. I do not feel that this decision is a fait accompli yet, especially in light of the anti-secession law's passing earlier this week.

In addition, I recommend that Congress, in close concert with the administration, craft an appropriate response which seeks to protect American interests and that of our friends and allies from this misguided decision by the EU.

So, with that, Mr. Chairman, I will conclude. Thank you for the opportunity to testify before the committee today.

[The prepared statement of Mr. Brookes follows:]

PREPARED STATEMENT OF PETER T.R. BROOKES, SENIOR FELLOW FOR NATIONAL SECURITY AFFAIRS AND DIRECTOR, ASIAN STUDIES CENTER, THE HERITAGE FOUNDATION

Mr. Chairman, Members of the Committee, it is an honor and privilege to appear before you today to discuss the European Union's pending decision to lift its arms embargo against China.

I want to commend you for holding this very timely hearing as there are many questions being asked on both sides of the Atlantic—and in Asia—that should be addressed in a prestigious, open forum such as this.

I am testifying here today as an individual and my views do not necessarily reflect the views of my employer, The Heritage Foundation.

Later this year, the European Union (EU) will consider lifting the Tiananmen Square arms embargo against the People's Republic of China (PRC). The United States and the EU imposed the embargo following the June 1989 crackdown on democracy protectors in Beijing. Lifting the embargo would endanger U.S. interests, accelerate China's military buildup, undermine stability in the Pacific, and send the wrong signal to repressive regimes everywhere.

AMERICAN CONCERNS

The U.S. is rightfully troubled by the proposed EU policy change. First, there is concern about China's refusal to renounce the use of force against Taiwan. In light of China's ongoing military buildup, Beijing might decide to coerce or take military action against Taiwan to force unification. Its recent passage of an "Anti-Secession" law directed at Taiwan, which may have been encouraged by the pending EU decision, is not encouraging. But more to the point, the sale of EU arms to China would mean that European weapons might be used against American servicemen in a military confrontation over Taiwan.

Second, lifting the EU arms embargo would exacerbate the ongoing shift in the balance of power across the Taiwan Strait. In the next few years, the cross-Strait conventional military balance of power will move decidedly in Beijing's favor. This change might lead Beijing to perceive an ability to resolve Taiwan's political future through force. Considering the political, economic and military issues at stake in Northeast Asia, a Chinese miscalculation of this sort has the potential for catastrophic results.

Third, in some quarters there is significant concern that China wants to succeed the U.S. as the preeminent power in the Pacific. Increased Chinese military might derived from EU arms sales or technology transfers could at some point allow Chi-

nese forces to deter, delay, or deny American military intervention in the Pacific—or replace the United States as the premier military power in Asia.

Though many Asian countries welcome China's economic opportunities, they are wary of Beijing when it comes to security matters. Some strategists believe that beyond unification with Taiwan, China also has an eye towards subjugating Japan, controlling heavily-traveled Asian sea lanes, projecting power into the Indian Ocean and dominating Southeast Asia. Japan has already expressed their concern with the EU's proposed policy change.

Fourth, China's handling of advanced conventional arms, WMDs, and ballistic missiles is of great concern. The PRC's export control laws and practices leave a lot to be desired. Willful government-supported proliferation is even more troubling. China's relationship with North Korea, Iran, Burma, or even Syria could lead to sensitive European technology falling into the wrong hands.

Finally, China's human rights record remains deeply troubling and scarcely merits reward. Just in 2004, Chinese security services harassed and detained justice-seeking mothers of Tiananmen Square victims, as well as political activists and Internet users. In fact, some suggest that China's human rights record has regressed since 1989. Once the arms embargo is lifted, the EU will lose significant leverage with China over human rights. In addition, ending the arms embargo would send the wrong signal to other repressive regimes.

EUROPEAN MOTIVATIONS

So why is Europe considering this change? Many believe that the EU is trying to curry favor with China for preferential commercial treatment. China is one of the world's most dynamic economies, and lifting sanctions may lead to large commercial deals for EU firms. If the political climate is right, the PRC may also look to EU companies for high-speed rail, telecommunications, satellites, energy plants, and even high-end nuclear plants as China's insatiable appetite for energy grows.

A second and more sinister reason for the policy change is to open a new arms market for European weapons in China. The PRC is a veritable cash cow for arms sales. China's defense budget—now the world's second largest—runs \$50–\$70 billion a year, including plenty of money for arms purchases. With declining defense budgets across Europe, China provides a golden opportunity for Europe's beleaguered defense firms to sell arms in a growing market.

Third, from a political perspective, some EU members are looking for political cover. Should the new arms policy go awry (e.g., the use of EU weapons on political dissidents, Tibetans, or Uighurs), political responsibility for the policy change would be spread across the breadth of the EU's membership. By working under the EU's umbrella, some states will inoculate themselves from their constituents' disapproval for backing down on China's human rights record.

Lastly, and on the most cynical end of the scale, some believe that the EU, especially France, is attempting to balance American global power through the development of a "multipolar" world. In such a political construct, other power centers such as China, Russia, Japan, India, and the EU could counterbalance American power. Thus, making China more powerful would help Europe challenge the United States' global pre-eminence.

CHINESE MOTIVATIONS

No doubt China has motivations of its own. First, Beijing continues to seek political absolution for the Tiananmen Square massacre among the international community. The recent death of former Communist Party leader, Zhao Ziyang, is a nail in the coffin of the requirement that the Chinese government account for its actions at Tiananmen; the lifting of the EU embargo would be another.

Second, China is looking for competitive pricing and alternative sources for the arms it currently buys from Russia, its main advanced-technology arms supplier. With the U.S. and EU currently out of the Chinese arms market, it's a seller's market for the Russians.

EU arms can compete with the Russian arms producers in terms of quality and (possibly) price. This would create a buyer's market for Beijing, decreasing dependence on Russian arms and enhancing the likelihood of generous advanced-technology transfers to the Chinese arms industry as part of any arms deal. The Chinese may also be hoping that the EU's decision will lead to pressure in Washington from defense firms to lift the embargo.

Third, Beijing is hunting for military technology it can't find elsewhere, especially in the Russian market. The Chinese can find top-notch fighters, diesel submarines, destroyers, and surface-to-air missiles in Russia, but they may not be able to find the necessary command, control, communications, computers, intelligence, surveil-

lance, and reconnaissance (C4ISR) systems they need to make these systems more effective. The EU may be just the source for such systems.

Fourth, Beijing would also like to drive a wedge into the transatlantic alliance. China certainly would not object to having an ally in the EU, especially when jousting with the United States in the U.N. Security Council or other multilateral institutions over such issues as Iran's nuclear program (where China just signed a \$70 billion gas/oil deal) or Sudan (where China recently penned a \$3 billion oil deal).

Fifth, it should come as no surprise that a lifting of the arms embargo would be seen as a significant political defeat for the Taiwanese in Europe and would support China's desire to isolate Taiwan from the international community in hopes of forcing an early unification. Some would argue that if the Europeans sell arms to China, they should sell them to Taiwan as well.

CONCLUSION

There are sure to be consequences to the transatlantic relationship over a decision to lift the arms embargo against China. Even with President Bush's and Secretary of State Rice's highly successful trips, America's perception of Europe, already troubled, will not be improved. Americans, especially veterans, would gasp at the thought that European arms might be used against American servicemen and women in a Taiwan or Korean contingency. Americans will rightfully resent a decision on the part of the Europeans that will negatively alter the security situation in a region (i.e., the Pacific) where the Europeans have no responsibility for stability or security. Even with the advent of a new code of conduct for arms sales and other regulations, the Bush administration is right to be displeased.

The EU decision will also roil the waters of the Pacific. Japan is already alarmed by China's military buildup and has serious questions about China's strategic ambitions in Asia beyond Taiwan. Taiwan, already unsettled by the passage of the anti-secession law, is unlikely to sit idly by. An EU decision to lift the embargo will likely set back the recent progress across the Taiwan Strait.

The United States should welcome China's peaceful integration into the international community as an open and free society through commerce, tourism, academic exchanges, and official dialogue. These activities maximize the free world's efforts to encourage positive political and social change for 1.3 billion Chinese.

But in the end, the EU's decision to lift the arms embargo against China will not help close the transatlantic divide and may even widen it. The EU decision will also be perceived as an imprimatur for dismal human rights records everywhere. It may also have a destabilizing effect on Northeast Asia, especially across the Taiwan Strait. Finally, it could increase the likelihood of military conflict in the Pacific, which is no one's interest—not even the distant EU's.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you very much, Mr. Brookes, for that testimony.

The chair now calls on Dr. Bates Gill.

STATEMENT OF DR. BATES GILL, FREEMAN CHAIR IN CHINA STUDIES, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, WASHINGTON, DC

Dr. GILL. Thank you very much, Mr. Chairman. Thank you also, Senator Biden, for the opportunity to appear before the committee today. The ongoing consideration by the European Union of its 1989 arms embargo raises many, many important concerns, and I congratulate the committee on taking it up. We encourage you to continue to do so going forward.

You have asked me to cover several topics. I will do so by looking first at some context, the broader strategic relationship between the EU and China; second, to talk about the possible impact of lifting the embargo on Chinese military modernization; and then last, put forward some recommendations for United States policy and legislative action going forward.

I think it is important, first and foremost, to place the arms embargo question in the larger context of China-EU relations. It is in

that way that we can craft the best responses and elicit the best response from our European counterparts and avoid the worst potential outcomes.

I heard a think-tank specialist on Asia, who had recently left the Pentagon—and it is not present company—say that we were caught “flat-footed” by the EU’s apparent intention to lift the embargo. I found that unsettling.

In fact, the possibility of lifting the arms embargo was part of a far greater and ongoing dynamic that is plain to see in EU-China relations, and it dates back at least 10 years to the mid-1990s. It is characterized by major summits on an annual basis and open expression of intent on both sides in major policy documents calling for a continued strongly positive strategic relationship going forward.

Specifically, on the military side, China’s defense-related ties with individual European countries have likewise increased and, so far at least, largely involve what we might call softer interactions such as military-to-military diplomacy, peacekeeping, training, port visits, joint military exercises, et cetera.

However, on the harder side of military relations, there are ongoing joint programs of some concern to us, including the development of space technologies, which may have military applications, the continued low-level licensed production in China of European defense equipment, and of course, direct transfers of European military technology to China. I think it is very important for the committee to recognize that, as the line between military and civilian technologies continues to blur, European exports of commercial technology and expertise with potential military applications will continue to expand and has already contributed to improvements in Chinese defense production capacity. And I would say the same can be said for commercial exports with military relevance from other suppliers as well, including the United States, Japan, even Taiwan.

Broadly speaking, then, it is important for us to recognize that the arms embargo question in the EU is part of an ongoing comprehensive and carefully constructed strategy on the part of the European Union to build a different kind of relationship with China, which in their view has two principal aims: One, to integrate China as a responsible member of a multipolar global community; and second, to help China address its domestic socio-political and socioeconomic transformation. As such, strategic views of China clearly are very different from those in the United States.

Let me turn secondly to the question of lifting the embargo and the impact it might have on Chinese military modernization.

First, Mr. Chairman, I think it is important to understand that it is highly likely, in my view, that the arms embargo will be lifted at some point within the next year, but increasingly the precise timing seems open to question. There is obviously the need for a unanimous decision on the part of all 25 EU member countries, and there remain a number of countries in the European Union who are not supportive of this move. Moreover, as has been mentioned, the recent passage of the anti-secession law and the failure on the part of the National People’s Congress to even consider the International Convention on Political and Civil Rights will defi-

nately have a negative impact in the view of many European governments about the wisdom of lifting the embargo at this time.

As an aside, I think the convergence of several developments, which have been raised here, including the anti-secession law, the lack of consideration on the International Convention on Political and Civil Rights, as well as a warming trend in United States-Europe relations at the moment, I think should weigh in the minds of Europeans very heavily to delay and postpone any decision on the arms embargo, at least until the end of this year.

Second, on the issue of the impact on Chinese military modernization, I think we should understand that lifting the embargo, in and of itself, is likely to have little impact on the flow of technology to China. I think our concerns really have to be on what is going to replace the embargo. As has already been said, first of all, under the terms of this now nearly 16-year-old embargo, European firms have already been able to provide Chinese counterparts with militarily relevant technologies. The nature of advanced technologies and the broadening applications to military purposes has clearly outstripped the ability of this embargo to be effective.

Second, the degree to which European firms have been restrained in the past from providing weapons and sensitive technologies to China has far more to do, in my view, with individual EU member state national export control laws than the policies of the EU embargo itself. So, it is very important for us to look at what is going to replace this embargo at some point, I assume, in the not-too-distant future. We need to place our emphasis on making sure; first, that the Code of Conduct is dramatically strengthened, and second, that we intensify our bilateral conversations with key European suppliers to make sure that they are appropriately strengthening their export control guidelines on a national basis as well.

I am encouraged to hear, during the meetings this week, from our EU counterparts that they are debating the strengthening of the code to make it more specific and that with the toolbox of additional measures, they intend to increase the level of scrutiny and transparency on European arms exports introducing, for example, a new system to examine on a quarterly basis and report publicly on the export license approvals coming out of Europe, to do a 5-year retroactive report on those license approvals that have been given from Europe to China, and even to require so-called brokered exports, that is, arms exports from non-EU states which are arranged by entities based in the EU, to be included in this reporting system.

Finally, I am also encouraged that EU officials are giving serious consideration to proposing a formal consultative mechanism between Europe and the United States to discuss weapons and militarily relevant technology exports to China. These are all positive steps. We need to encourage the Europeans all the more strongly to move in this direction. I think by instituting these mechanisms, we can have a far greater expectation than we have now, at least, of stemming the flow of certain weapons and militarily relevant technologies to China.

A third point on military technology. In the near term, I think it is very unlikely that the Europeans are going to supply complete

weapons systems. Rather, it is far more likely in the near to medium term that they will provide value-added subsystems and technologies which the Chinese military requires to boost its capabilities across a range of issues but especially concerning naval, aerospace, aviation, command, control, communications, computers, and intelligence, surveillance, and reconnaissance assets.

Let me close with several recommendations, Mr. Chairman.

I think the aim here needs to be; first, to stem the flow of sensitive and potentially destabilizing weaponry to China on the one hand, while also strengthening consultations on these important issues between the United States and Europe.

So, first, through congressional and administrative action, we should strongly urge an enhanced set of arms export restrictions to limit Chinese arms and sensitive technology exports to China. This needs to be done at two levels. In Brussels, yes, but let us not forget, again, the key to this is going to be national export laws among the EU member states. So we need to do it both in Brussels and in the key national capitals of concern. I do believe that the moment is increasingly right for an intensified and judicious set of discussions with our European counterparts and that we can be successful in this effort.

Second, I think we need to encourage our European counterparts to press for more vigorous policies and pronouncements regarding questions of Taiwan, human rights, and nonproliferation. If, and when, an embargo is lifted and new mechanisms are put in place, I should certainly think that the Europeans ought to accompany that with very strongly worded pronouncements and policies about the need for China to move ahead and raise the standard on human rights practices, on nonproliferation activities, and in strengthening China's commitment to a peaceful resolution of differences with Taiwan.

Third, I hope both the Congress and administration will see the wisdom of establishing a regular mechanism for strategic dialog and consultation between the United States and Europe on Asia and China. This should involve the key Asia-related experts at the White House, the Department of State, and the Department of Defense. It is my understanding that, that kind of dialog has been lacking in the past and, I think, partially explains the problems we are seeing today.

Finally, I would recommend that through congressional action, there be a tasking of authoritative research and reporting on the extent and nature of advanced technology exports to China and their impact on Chinese military modernization. China is increasing its access to foreign inputs of capital, technology, and expertise from Europe, as well as from the United States and Japan and Taiwan and other advanced economies. Far greater resources need to be devoted to monitoring these developments and their implications for U.S. interests.

Thank you, Mr. Chairman.

[The prepared statement of Dr. Gill follows:]

PREPARED STATEMENT OF DR. BATES GILL, FREEMAN CHAIR IN CHINA STUDIES,
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INTRODUCTION

Thank you, Chairman Lugar and Senator Biden, for the opportunity to appear before this distinguished committee.

The ongoing consideration by the European Union (EU) to lift the 1989 arms embargo against China raises concerns across a range of critical issues: the strategic dynamic of U.S.-EU-China relations, trans-Atlantic differences, the emergence of China as a more powerful global and regional player, Chinese military modernization, and the future security and stability in East Asia. I congratulate the Committee for focusing on this important topic, and look forward to discussing it further with you.

My remarks proceed in three principal parts. First, I would like to provide some essential context by discussing the broader strategic dynamic of EU-China relations as it has unfolded so dramatically over the past 5 to 10 years. Second, the testimony will examine the impact of lifting the embargo on Chinese military modernization. A concluding section presents some basic recommendations for U.S. policy in addressing developments in EU-China relations generally, and on the arms embargo question in particular.

Broader EU-China strategic dynamic underway since the mid-1990s

It is important first and foremost to place the arms embargo question in the larger context of China-EU relations. That is how we better understand the motivations for lifting the embargo and craft responses which will resonate and have effect with EU counterparts so as to mitigate and avoid the worst potential outcomes of a post-embargo future.

I heard a think-tank specialist on Asia who had recently left the Pentagon say that we were caught “flat-footed” by the EU’s apparent intention to lift the embargo. I found that an unsettling comment. It has been very clear to anyone who wished to look that China-EU relations have been moving steadily closer across the full range of their bilateral relationship, including in political-military areas, and that lifting the embargo has been on the table and a part of EU-China discussions for nearly two years.

In fact, the possibility of lifting the arms embargo is part of a far greater and ongoing dynamic of intensifying EU-China relations over the past decade. The beginning of far closer EU-China relations dates to the mid-1990s. Since then, China and the EU have held seven major summits, the most recent at the end of 2004. Both sides have issued major policy documents detailing their relationship and calling for continued strongly positive strategic relations going forward. In terms of economics and trade, the EU became China’s largest trading partner in 2004. China is now the EU’s second largest trading partner after the United States.

On the military side, China’s defense-related ties with individual European countries have likewise increased, and largely involve “softer” interactions, including military-to-military diplomacy and educational exchanges, peacekeeping training, port visits, some joint military exercises, and expanded military attaché offices to manage this growing aspect of diplomacy between China and Europe. Most of the EU member states have one military representative in Beijing; France has three, Germany, Italy, Poland, and the United Kingdom have two (by comparison, the United States has 12). China and individual member states such as France, Germany, and the United Kingdom have established regularized strategic consultations and security dialogues, including counterterrorism discussions.

Other military-to-military exchanges stand out. For example, a number of European navies have visited Chinese ports, with France leading the way with 12 naval port visits to China dating back to the early-1980s. Other European navies which have traveled to China include those from the United Kingdom, Italy, Ireland, and Germany. The Chinese navy has made only two sets of port visits to Europe, the first in September 2001, when Chinese ships paid calls in France, Germany, Italy, and the United Kingdom. The second set of visits was in 2002 during the Chinese navy’s first circumnavigation of the globe, including stops in Turkey, the Ukraine, Greece, and Portugal.

In August 2003, China for the first time allowed foreign military personnel—including from the United States, the United Kingdom, France, Russia, Germany, Canada, Tanzania, Thailand, and Turkey—to observe Chinese military exercises involving 5,000 Chinese troops at the country’s large tactical training base in Inner Mongolia. On September 2, 2004, military representatives invited from France, Germany, United Kingdom and Mexico, observed an amphibian landing exercise in Shanwei along the coast of Guangdong Province.

China has also held joint naval exercises with the French navy (in March 2004) and with the British navy (in June 2004), both off the coast of Qingdao in the East China Sea. These exercises involved four to five vessels and focused on tactical maneuvers for the ships and shipboard helicopters, replenishment-at-sea exercises, and search-and-rescue. China also fields peacekeepers to Europe under the United Nations flag, including civilian police to the United Nations Interim Administration Mission in Kosovo and, in the past, to the United Nations Mission in Bosnia-Herzegovina.

There are some important developments on the “harder” side as well, including some joint programs in the development of space technologies which could have military applications, ongoing low-level licensed production in China of European defense equipment, and direct transfers of European military technology to China. Importantly, given the blurring line between “military” and “civilian” technologies, European exports of commercial technology and expertise with potential military applications continue to expand and already contribute to improvements in Chinese defense production capabilities (the same can be said for commercial exports with military relevance from other suppliers, such as the United States, Japan, Taiwan, and others). This integration of European and Chinese high-technology R&D and production capability has particular military relevance as it unfolds in the aerospace, aviation, communications, and shipbuilding sectors. (China’s military-technical relations with European suppliers are discussed in more detail below.)

In short, it is very important to recognize that the arms embargo question in the EU is part of an ongoing, comprehensive, and carefully constructed strategy to build a fundamentally different kind of relationship with China. This effort has two principal aims: (1) to integrate China as a responsible member of a multipolar global community and multilateral international institutions and (2) help China address its domestic sociopolitical and socioeconomic challenges at home—so-called capacity building or “good governance.”

In many respects, China is seen by many EU and European member state leaders and officials as a kind of “test case” for how global players will need to cooperate to face the transnational challenges of the 21st century—terrorism, international crime, social justice, economic stability, resource scarcity and depletion, environmental degradation, intellectual property and the globalization of knowledge, and other critical challenges.

As such, strategic views of China in Europe are aimed at developing a deeper, more constructive, and more positive relationship, and tend to see far greater opportunities in ties to China than threats. To the degree European policymakers see threats emanating from China, they tend to be on either questions of “soft security,” such as economic competition, illegal immigration, transnational crime, smuggling of drugs and contraband, environmental issues, and human rights. Individual European countries as well as the EU have established regular dialogues with China to cooperate and find common ground on these and other security concerns.

In this sense, fundamental European strategic views of China differ in some respects from those in the United States. Unlike Europe, the United States maintains significant strategic and political interests around China’s periphery in the form of alliances and a host of other critical and complex political-military relationships with others around China. Europe’s relations with China are unfettered by the complicated and important political and military commitments the United States has made to Taiwan, the principal issue over which the United States and China could come into conflict.

Lifting the embargo: Impact on Chinese military modernization

There are three important points to make regarding the lifting of the embargo and its potential impact on Chinese military modernization.

It is possible the embargo will not be lifted in the immediate-term. While it is highly likely the arms embargo will be lifted within the next year, the precise timing is still open to some question. Lifting of the embargo requires the unanimous assent of all 25 EU member countries, and many member countries—such as Scandinavian countries and some in Eastern Europe—remain opposed to lifting the ban. For these countries and others within the EU, a number of conditions should be met. These would include China’s ratification of the International Covenant on Civil and Political Rights, allowing visits by the International Committee of the Red Cross, to Chinese prisons, releasing certain political dissidents in China, strengthening the EU Code of Conduct on arms exports, including stronger transparency mechanisms for those exports, avoiding further deterioration in Europe-United States relations, strengthening assurances that weapons exports would not aggravate tensions across the Taiwan Strait, and gaining stronger Chinese assurances about their intention to peacefully resolve differences across the Taiwan Strait. The recent passage of the

Anti-Secession Law by the Chinese National People's Congress, and the NPC's lack of consideration of the International Covenant on Political and Civil Rights, will have a negative effect in the view of many European governments about the wisdom of lifting the embargo at this time.

However, while these obstacles remain, most observers conclude that some of the leading members of the EU, including France, Germany, and the United Kingdom, will work to have an acceptable set of conditions in place on the EU side, especially with regard to the Code of Conduct and arms export transparency measures, in order to gain unanimous EU member consent to lift the embargo by June this year. As EU member states debate this issue, and China continues to apply pressure on Brussels and in individual capitals, it now appears it is not a question of "whether," but "when" and "how" the 1989 embargo statement would be lifted.

Lifting the embargo in and of itself will have little impact on technology flows of concern to China. Instead, our concern should focus on what will replace the embargo. This is true for two principal reasons. First, under the terms of the now-nearly-16-year-old embargo, European firms have already been able to provide Chinese counterparts with militarily-relevant technologies. This is no less true for U.S., Japan, and even Taiwan exports of advanced technologies to China. The fact is that the nature of advanced technologies today and their broadening applications to militarily-relevant purposes have far-outstripped the ability of a simple declaration of intent pronounced a decade and a half ago to truly stem the flow of sensitive technologies to China.

Unlike the American arms embargo on arms trade with China which is codified as law and prohibits specifically designated military end-use items the EU embargo is contained in a single phrase, issued as part of a broader political statement condemning the Tiananmen crackdown in June 1989. The statement reads that EU members will embargo "trade in arms" with China, without specifying how "arms" are defined and without requiring any penalty or strictures on those EU members which chose to "trade in arms" with China. The EU "embargo" is best understood as a political statement which is not legally binding.

Second, the degree to which European firms have been restrained from providing weapons and sensitive technologies to China has far more to do with the individual EU member states' national export control laws and policies than with the EU embargo itself. In this regard, it is important to note that a number of elected parliamentary bodies in Europe, including the British House of Commons, the German Bundestag, and the EU Parliament, have issued resolutions opposed to the lifting of the arms embargo.

So in this sense, it is not the lifting of the embargo but rather what comes to replace the embargo which will affect how European military-technical relations with China will or will not contribute to Chinese military modernization. This important point should lead us in the direction of determining more specifically (1) what the EU will put in place of the embargo, and (2) what certain individual EU member states intend to do in their military-technical relations with China. It is especially important to focus on what might replace the current embargo since the leaders of the EU member states are on record as agreeing in December 2004 that "the result of any decisions [about lifting the arms embargo] should not be an increase of arms exports to China, neither in quantitative nor qualitative terms."

Rather than focus on the "embargo," a potentially more restrictive set of guidelines deserve greater attention: the EU Code of Conduct and the so-called "toolbox" of arms export transparency measures. The 1998 Code of Conduct provides more specific guidance to EU members in making arms sales decisions (to all countries, not just China). This guidance consists of eight criteria which EU governments should weigh before exporting weapons:

- "Respect for the international commitments of EU member states," including U.N. sanctions, EU sanctions, and other international nonproliferation treaties and commitments;
- The respect of human rights in the country of final destination, including consideration of whether an arms export will be used for "internal repression";
- The "internal situation in the country of final destination" so as to avoid provocation or prolongation of tensions and conflicts;
- "Preservation of regional peace, security and stability" to avoid aggressive use of the weapons by the recipient against another country, and to avoid use of the exported weapon to "assert by force a territorial claim";
- The national security of the member states, their territories, and the national security of friendly and allied countries;
- The behavior of the recipient country, especially with regard to terrorism and its respect for international law;

- The possibility that the recipient country would divert the export within the country or reexport it to a third party in an unauthorized or “undesirable” way, to include a consideration of the recipients export control system, among other items;
- The ability of the recipient to import weapons for legitimate defense and security needs while still meeting human and economic needs.

The Europeans are debating the strengthening of this Code to make it more specific. In addition, EU officials state they are crafting a so-called “toolbox” of additional measures which would increase the level of scrutiny and transparency on European arms exports. These measures would likely include a number of new and positive steps, including:

- A system to review EU member state arms exports on a quarterly basis, including reporting on both export license approvals and export license denials;
- A 5-year retroactive report on export license approvals in order to establish a recent baseline on arms exports from which to gauge future and assess potential future sales;
- A requirement that “brokered exports” (arms exports from non-EU states which are arranged by entities within the EU member states) be included in the reporting system.

EU officials are also giving serious consideration to proposing a formal consultative mechanism between the United States and Europe to discuss weapons and militarily-relevant technology exports to China. By replacing the embargo with a better framework, including increasing the specificity, scrutiny, and binding nature of the Code of Conduct and the toolbox, and by instituting a more formal consultative mechanism on this issue between the United States and Europe, we can have far higher expectations of stemming the flow of certain weapons and militarily-relevant technologies to China.

The flow of militarily-relevant exports to China from Europe in the near-term is not likely to be in the form of new weapons platforms, but in the form of subsystems and key technologies. It appears unlikely that China would move ahead with major purchases of complete weapon platforms, at least in the near- to medium-term. Not only is it likely most European governments would restrict their manufacturers from large, high-profile, and provocative weapons sales to China, but China has a number of reasons of its own to eschew this approach. First and foremost is cost, since they have been successful in gaining access to relatively cheaper Russian weapons and technologies and because their own defense industries are beginning to make significant breakthroughs. In addition, China already faces significant problems in the diversity and interoperability of its weapons systems, particularly in the case of new jet aircraft programs. Third, because of China’s traditional self-reliant posture regarding its defense-industrial base and its need to keep large, state-owned, defense enterprises open and avoid massive unemployment, Beijing will be reluctant to simply buy large quantities of European weapons off-the-shelf.

Instead, if complete weapons platforms are sold, they will likely be a relatively small number with the probable expectation on China’s part that it could move toward some form of indigenous assembly or licensed production of the system over time. More likely in the near- to medium term would be the sale not of complete platforms, but certain value-added subsystems and technologies which the Chinese military requires to boost its capabilities, such as projecting and coordinating military force in a maritime environment, involving naval, aerospace, aviation, and command, control, communications, computers, intelligence, surveillance and reconnaissance (C4ISR) assets.

Given these considerations, China is most likely to seek European military-technical inputs and assistance in such areas as:

- Jet aircraft propulsion, avionics, and fire control systems;
- Naval weapons systems, including air defense, weapons guidance and fire control, and radars, as well as submarine technologies;
- Naval propulsion systems and stealth technologies;
- Information technology and communications infrastructure improvements, especially those applicable to more sophisticated, hardened, and secure command and control infrastructure for military purposes;
- Aerospace technologies to include satellite imagery, reconnaissance, remote sensing, and communications.

In addition, certain past and ongoing transfers and Chinese indigenous production of militarily-relevant systems and technologies from Europe are likely to continue and may expand. These include the licensed-production of various helicopters, turbo-shaft helicopter engines, fire-control and surveillance radars, and air defense systems from France, fighter jet avionics upgrades from the United Kingdom and Italy,

the British “Searchwater” airborne early warning radar system, Italian naval fire control radar systems, and the British Rolls Royce Spey Mk 202 engine, first transferred to China in the late-1970s, and now produced in China as the WS-9, which powers the made-for-export Chinese fighter-bomber known as the FBC-1, and its domestic version, the JH-7.

Recommendations

Given these developments, the aim of U.S. policy should be to stem the flow of sensitive and potentially destabilizing weaponry to China while strengthening consultations on these important issues between the United States and European counterparts. Four key measures should form the basis of the U.S. policy approach.

Through Congressional and Administration action, public statements, and consultations, strongly press for an enhanced set of arms export restrictions to limit European arms and sensitive technology exports to China. This needs to be done at two levels. First, such actions should target the debate within the EU at Brussels. The next two to three months are going to be a critical period as EU officials, in consultation with member states, craft a more acceptable set of post-embargo mechanisms to guide EU arms exports, including a revised Code of Conduct and the introduction of greater arms export transparency and reporting measures. These discussions with Brussels should specify those particular weapons and technologies which the Washington would find especially problematic for export to China.

Second, U.S. policy should also target governments and key constituencies in important EU member states. In the end, it will be the domestic export control restrictions as well as the political climate in individual countries which will have the greatest impact on stemming the flow of sensitive weapons and technologies to China. This demands a more intensive understanding of individual member states’ perspectives toward China, particularly within key constituencies such as parliaments, opinion leaders, China experts and activists, and the business community, to identify individuals and institutions which share U.S. concerns about weapons and militarily-relevant technology sales to China. These discussions with specific EU member states should include those particular weapons and technologies which the U.S. side would find especially problematic for export to China.

The moment is right for intensified, judicious, and well-informed discussions with European counterparts on this issue to assure the most favorable outcome regarding potential military exports to China on the one hand, and improved U.S.-Europe relations on the other.

Through Congressional and Administration action, public statements, and consultations, strongly press for more vigorous policies and pronouncements from the EU and European governments on Taiwan, human rights, and nonproliferation. Given the importance the current Code of Conduct gives to such questions as “the national security of friendly and allied countries,” the “respect of human rights in the country of final destination,” avoiding use of the exported weapon to “assert by force a territorial claim,” and the “recipient’s export control system,” the United States should insist that the EU stand by and even strengthen these assurances with regard to China. U.S. action should aim to shape the current EU debate on the issuance of a statement which specifically speaks to these concerns that might accompany the lifting of the embargo and the implementation of a new set of arms export guidelines and transparency mechanisms.

U.S. policy action should insist that lifting the EU embargo be linked to concrete Chinese steps to raise the standard of their human rights practices, such as ratifying the International Covenant on Political and Civil Rights and allowing for International Committee of the Red Cross inspections of Chinese prisons, strengthening Chinese commitment to a peaceful resolution of differences with Taiwan, and strengthening China’s export control system and commitment to international non-proliferation norms.

Through Congressional and Administration action, establish a regular mechanism for strategic dialogue and consultation between the United States and Europe on Asia and China. Regularized dialogue on Asian affairs and on China with European counterparts—both at the EU Brussels level and among key European countries such as France, Germany, and the United Kingdom—should form a normal and institutionalized aspect of trans-Atlantic consultations by the White House, the Department of State, and Department of Defense, as well as by members of Congress and their staff. The appropriate officials with responsibility for Asian and Chinese affairs from the White House, the Department of State, and the Department of Defense should regularly take active part in these discussions. Appropriate Congressional committees should seek regular briefings on these discussions from relevant officials from the Department of State and Department of Defense.

Members of Congress, Congressional staff, and Administration officials should also take part in and/or receive briefings from the ongoing nongovernmental dialogue and research programs involving U.S. think-tanks and academic institutions and their European counterparts. These programs draw together American and European specialists and officials to address Asian and Chinese affairs, serve as “early warning mechanisms” on potential policy disputes, and generate policy recommendations to facilitate trans-Atlantic partnership and common goals regarding developments in Asia and China.

Through Congressional action, task authoritative research and reporting on the extent and nature of advanced technology exports to China and their impact on Chinese military modernization. China’s increasing access to foreign inputs of capital, technology and expertise, including such inputs from Europe, the United States, Taiwan, and other advanced economies, pose important concerns about Chinese military modernization. The areas where advanced foreign suppliers would most likely be able to make a contribution to Chinese military modernization, even if an indirect contribution, would be in those defense industrial sectors most relevant to a Taiwan scenario: aerospace, aviation, naval warships and submarines, and in communications technology. China remains at an early stage in fully realizing its military potential and the advantages of increased access to militarily-relevant foreign technology, R&D, and manufacturing expertise. However, it has made important military advances in recent years, especially with regard to the balance of power across the Taiwan Strait, and appears likely to continue to do so. Far greater resources should be devoted to monitoring these developments and their implications for U.S. interests.

The CHAIRMAN. Thank you very much, Dr. Gill.
The chair now calls on Dr. Richard Grimmert.

STATEMENT OF DR. RICHARD F. GRIMMETT, SPECIALIST IN NATIONAL DEFENSE, CONGRESSIONAL RESEARCH SERVICE, WASHINGTON, DC

Dr. GRIMMETT. Thank you, Mr. Chairman, Senator Biden. I welcome this opportunity to be of assistance to you in your review of the matters related to the prospective lifting of the European Union’s arms embargo on China.

My focus will be to set a context in which the institutional aspects of this issue have developed, particularly the arms control mechanisms, which probably are at the heart of resolving it.

To that end, Mr. Chairman, I ask that two recent CRS reports on matters pertinent to this hearing also be made part of the record.

The CHAIRMAN. Without objection.

Dr. GRIMMETT. In my prepared remarks, I note that the existing EU arms embargo on China, dating from June 27, 1989, is a rather brief political declaration that simply calls for “interruption by the Member States of the then-European Community of military cooperation and an embargo on trade in arms with China.” This declaration does not clarify the meaning of the term “military cooperation” nor does it contain a list of arms that come within the scope of the phrase “trade in arms.”

By contrast, with the introduction of the Common Foreign and Security Policy (CFSP), effective in November 1993 when the Treaty on European Union, the Maastricht Treaty, was in force, the procedural basis for EU embargoes was altered. Decisions to impose an embargo still require unanimity among EU member states, but such decisions are now based on legally binding documents, such as Common Positions, rather than declarations. Often, implementing regulations are also adopted. Regulations or Common Positions on embargoes now contain detailed descriptions of the type

of material covered, as well as the terms and conditions of implementation, by member states. Arms embargoes are also subject to EU standards on arms exports, such as the 1998 Code of Conduct on Arms Exports. Ultimately what a given embargo entails may be viewed differently by different member states. As a political statement by the European Union the EU Code of Conduct on Arms Exports is not legally binding on EU member states.

The existing arms embargo against China has not been interpreted uniformly by EU members since it was imposed. This can be attributed to factors such as: One, the lack of specificity in the political declaration in 1989; two, the absence of a legally binding document, such as a Common Position, which has been the case with later embargoes imposed on other nations; and, three, the existing loopholes in the EU arms control system generally.

The United States, by contrast and for its part, has a long-established legal framework for reviewing and determining which nations will be permitted to obtain defense articles, defense services, and related military technology from it. The principal U.S. statute governing the sale and transfer of defense articles is the Arms Export Control Act. My formal statement goes into detail on how the U.S. Arms Export Control Act framework operates. I also explain in detail how the EU arms export control system operates, and I critique the EU Code of Conduct on Arms Exports.

But let me comment, at this point, on the EU Code of Conduct, which was adopted on June 8, 1998, during the EU presidency of the United Kingdom. The EU Code sets up eight criteria for the export of conventional arms and a denial notification procedure obligating EU member states to consult on possible undercutting arms sales one EU state might make, even though another EU state has chosen not to make a comparable arms export.

The EU Code's eight criteria to be utilized by EU members when reviewing license requests and making decisions whether or not to make an arms export include, for example, the following: Consistency of the export with an exporter's international commitments arising from U.N., EU, or OSCE arms embargoes; risk that the export would be used for internal repression or where the recipient country has engaged in serious violations of human rights; risk that the export would provoke or prolong armed conflicts; risk that the recipient using the export could undermine regional peace and security; effect of the export on the defense and national security interests of friends and allies; risk of diversion to third parties or to a terrorist organization.

It is important to emphasize that these eight criteria, and the EU Code of Conduct in its entirety, are political statements by the EU and they are not legally binding on the member states of the EU; although the Code is supposed to represent a moral imperative that EU member states are expected to uphold and enforce.

The EU Code requires an annual report on arms exports made by member states. These reports show that despite the embargo on China, some arms sales licenses have been approved for the PRC. During 2002, for example, all EU nations collectively approved export licenses for China valued at 209.8 million Euros, about \$279 million. The EU nations that approved export licenses during that period were France, 105.4 million Euros; the United Kingdom, 79.5

million Euros; and Italy, 22.8 million Euros. In 2003, the most recent year for which we have a report from the European Union, all EU nations collectively authorized licenses for China valued at 415.8 million Euros, which is about \$550 million at the current exchange rate. During 2003, the leaders in arms export licenses for China were France, 171.5 million Euros; Italy, 127.1 million Euros; and the United Kingdom, 112.5 million Euros.

Now, the U.S. Arms Export Control Act, which I discuss in detail in my formal statement, establishes strict, binding obligations on any nation purchasing defense articles and defense services from the United States to agree, in advance of any purchase, that the buying nation will not retransfer the military items obtained to a third nation or party without receiving prior approval to do so from the President. The Arms Export Control Act has severe penalties that can be applied to any nation found to violate its legal obligation not to retransfer military items obtained from the United States without prior U.S. consent. These obligations and penalties would apply to any EU nation that transferred any United States origin defense article, service, or military technology to China without prior United States approval.

The Arms Export Control Act framework, however, does not apply to arms sales to China of indigenously developed and produced military equipment of EU member states. Controls of sales or transfers of that military equipment must be achieved through application of the national arms export control statutes of the individual EU nations, the EU Code of Conduct on Arms Exports, or EU regulations regarding arms exports.

What remains to be seen in the current situation is what will be the nature and scope of the revised EU Code of Conduct on Arms Exports in the future, and any new instrument establishing measures to address EU arms exports to post-embargo countries, referred to by the EU as “the toolbox.” Private consultations among EU members on these matters are continuing but are likely to be completed before final EU action on lifting the arms embargo on China takes place.

Should the European Union strengthen the EU Code of Conduct on Arms Exports and utilize effective instruments to prevent worrisome arms exports to China in a post-embargo period, prospects for reaching a successful accommodation in United States-European Union relations over this issue could be notably enhanced.

Mr. Chairman, that concludes my summary.

[The prepared statement of Dr. Grimmert and the reports of the Congressional Research Service follow:]

PREPARED STATEMENT OF DR. RICHARD F. GRIMMETT, SPECIALIST IN NATIONAL DEFENSE, CONGRESSIONAL RESEARCH SERVICE, WASHINGTON, DC

General background on European Union embargoes

Arms embargoes fall within the sanctions or restrictive measures imposed by the European Union against third countries. In general, EU embargoes are either adopted to implement U.N. Security Council resolutions acting under Chapter VII, or are “autonomous.” In the latter case, embargoes are legally founded in a specific provision of the treaties establishing the European Union. EU members have full jurisdiction to decide on imposing arms trade restrictions.¹ Prior to 1992, decisions on

¹Article 296 of the Treaty Establishing the European Community. Available at [<http://europa.eu.int/eurlex/lex/en/treaties/index.htm>].

embargoes were made by the member states through an informal political process, the so-called European Political Cooperation.² In several instances, member states convened as a body, the European Council, adopted declarations to impose embargoes.³ Within such a context, the embargo on China was imposed in 1989, by the then twelve members of the European Community, the EU's precursor. The objective was to introduce arms trade restrictions against the regime in China in reaction to the killing of demonstrators in Tiananmen Square.

The introduction of the Common Foreign and Security Policy (CFSP) by the Treaty on European Union (Maastricht Treaty), effective in November 1993, altered the procedural basis for EU embargoes. Decisions to impose an embargo still require unanimity among EU member states, but such decisions are now based on Common Positions, rather than declarations.⁴ Often, implementing regulations are also adopted. Members are required to conform with the provisions or regulations and Common Positions. Both instruments contain a detailed description of the type of material covered as well as the terms and conditions of implementation by the member states. Arms embargoes are also subject to EU standards on arms exports, such as the 1998 Code of Conduct on Arms Exports (hereafter the EU Code). Consequently, in the implementation of the arms embargo on China, EU members are expected not only to abide by the restrictions on arms trade on China but also with the EU requirements on arms exports. Ultimately, what a given embargo entails may be viewed differently by different member states. And, as a political statement by the European Union, the EU Code on Arms Exports is not legally binding on the EU member states.

European Union's arms embargo on China

On June 27, 1989 the European Council, convened in Madrid, agreed to impose an arms embargo on China. The entire text of the embargo, which is in the form of a political declaration, is rather brief. In the first two paragraphs, it condemns the repression in China and requests that the Chinese authorities cease executions and respect human rights. The fourth paragraph contains the measures agreed by the members states. These include the suspension of military cooperation and high-level contacts, reduction of cultural, scientific and technical cooperation programs and prolongation of visas to Chinese students. The specific wording of the arms restrictions on China calls for: ". . . interruption by the Member States of the Community of military cooperation and an embargo on trade in arms with China."⁵

The declaration does not clarify the meaning of the term "military cooperation" nor does it contain a list of arms that come within the scope of the phrase "trade in arms." Neither does it contain exceptions or review clauses. By contrast, other EU embargoes imposed later in the CFSP context are more elaborate and specific in their scope and coverage. For instance, the Burma/Myanmar embargo, which was first adopted in 1991, has been updated and revised a number of times due to the lack of progress in democratization and continuous violation of human rights, and appears as a Common Position, which is binding. It contains, inter alia, a ban on technical assistance related to military activities and the provision, maintenance and use of weapons and ammunition, paramilitary equipment and spare parts.⁶

The arms embargo against China has not been interpreted uniformly by the EU members since it was imposed. This has been attributed to several factors, including lack of specificity in the political declaration, absence of a legally binding document, such as a Common Position, as is the case with subsequent embargoes imposed on other countries and, more importantly, the existing loopholes and weak points in the EU arms control system. For instance, the UK interpreted the embargo in a narrow manner, to include the following items: lethal weapons such as machine guns, large-caliber weapons, bombs, torpedoes and missiles; specially designed components of the above, and ammunition; military aircraft and helicopters, vessels of war, armored fighting vehicles and other weapons platforms; and equipment which might

²It refers to the informal network of communication and cooperation on foreign policy issues among the governments of the EC Member states, between the period of 1970–1992.

³External Relations, Common Foreign & Security Policy (CFSP), Sanctions. Available at: [http://europa.eu.int/comm/external_relations/sfcp/sanctions].

⁴Decisions are made based on articles 12 and 15 of the Treaty on European Union. Available at [<http://europa.eu.int/eurllex/lex/en/treaties/index.html>].

⁵Conclusions of the European Council, adopted in Madrid on June 27, 1989, available at [<http://www.eurunion.org/legislat/Sanctions.htm#China>]. See text in Appendix 3.

⁶Common Position 2004/423/CFSP and Council Regulation (EC) No. 798/2004 Renewing the Restrictive Measures in Respect of Burma/Myanmar and repealing Regulation No. 1081/2000.

be used for internal repression.⁷ The French have interpreted the embargo similarly.⁸

U.S. Arms Export Control System

The United States, for its part, has a long established legal framework for reviewing and determining which nations will be permitted to obtain defense articles, defense services, and related military technology from it. The principal U.S. statute that governs the sale and transfer of defense articles is the Arms Export Control Act (AECA), P.L. 90-629 (22 U.S.C. 2751 et. seq.).⁹ Under the structure of the AECA, the United States government reviews applications for possible arms sales. These sales can be made through the government-to-government Foreign Military Sales (FMS) program or through the direct commercial sales (DCS) process. The DCS process is administered by the Directorate of Defense Trade Controls (DDTC) in the State Department's Bureau of Politico-Military Affairs which reviews and grants or denies licences for arms exports to companies who seek to sell their defense products directly to the foreign clients. Once the President has determined that an arms sale or transfer should be made to a foreign recipient through either of the two processes noted above, he submits detailed information about a prospective sale in a formal report and notification to the Congress for its review, when the dollar values of the proposed sale exceed a specific reporting threshold. Should Congress disagree with such a Presidential arm sale proposal, it can nullify it by passing and obtaining enactment of a joint resolution of disapproval.¹⁰

EU Arms Export Control System

In the case of European Union (EU) member states, their arms exports licensing process is based on the pertinent laws of each member state. They are also regulated by the following instruments: (1) The 1998 European Code of Conduct on Arms Exports, a non-binding instrument, which lays down minimum standards to be applied on export licenses¹¹; (2) Regulation (EC) No. 1334/2000 setting up a Community Regime for the Control of Exports of dual-use items and technology¹²; and (3) Common Position 2003/468/CFSP on the Control of Arms Brokering.¹³ The EU Code of Conduct, analyzed in detail below, establishes eight criteria to be applied by EU members on the exports of conventional arms, including software and technology.¹⁴ A Common List of Military Equipment was agreed upon in 2000 and updated recently.¹⁵ In general, arms embargoes, unless specific guidance is otherwise provided, cover at least all the items included in the Common List.¹⁶ Regulation No. 1334/2000 as amended (whose scope extends to any items that could be used for civilian and military purposes) is directly applicable to the member states. Under its provisions, member states grant authorizations for exports, called Community general export authorization (CGE) of dual-use items.

Such authorizations are valid throughout the Community, subject to certain specific cases for which consultation is needed among EU members prior to granting

⁷ Robin Niblett, *The United States, the European Union, and Lifting the Arms Embargo on China*, 10 EURO-FOCUS No. 3 (Sept. 30, 2004). Center for Strategic and International Studies. See also: Amnesty International, *Undermining Global Security: The European Union Exports*, at [http://web.amnesty.org/library/index/engact300032004].

⁸ EU arms embargo on China. [http://projects.sipri.se/expcon/euframe/euchiemb.htm].

⁹ The key regulations promulgated pursuant to the authorities granted by the Arms Export Control Act which set out the totality of items covered by the (AECA) and all of the pertinent procedures regulating all aspects of U.S. arms export control and rules are the International Traffic in Arms Regulations (ITAR) found at 22 CFR Subchapter M 120-130. The United States Munitions List is found at 22 CFR.

¹⁰ Current reporting thresholds for FMS and DCS sales that carry the potential for Congressional rejection by joint resolution are: \$14 million for sales of major defense equipment; \$50 million for defense articles or services; and \$200 million for any design and construction services. Section 36 (b) and (c), AECA (22 U.S.C. 2776(b) and 22 U.S.C. 2776(c)). The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended. The International Traffic in Arms Regulations (ITAR) implements that authority. Title 22 CFR, section 120.1.

¹¹ Adopted by the Council of the European Union on June 8, 1998.

¹² 2000 O.J. (L159) 1.

¹³ 2003 O.J. (L156) 79.

¹⁴ Article XXI of GATT allows the imposition of trade restrictions on arms exports and imports and military equipment and those imposed by the U.N. Charter VII resolutions.

¹⁵ List included in the Council Declaration of June 13, 2000. It was issued on the occasion of the adoption of the common list of military equipment covered by the EU Code of Conduct on Arms Exports, 2000 O.J. (C191).

¹⁶ See Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy, at 17, available at EU Council Website, CFSP Section.

or denying an authorization. The items and technology listed in Annexes I, II and IV of the Regulation are based on the lists prepared by the international export control regimes. The Regulation includes a “catch-all” clause which allows controls on goods not included in the Annex of the Regulation. Under this clause, EU members have the discretion to impose or not to impose controls on exports and technology not listed in the Regulation. The objective of Common Position, 2003/468/CFSP, is to control arms brokering¹⁷ in order to prevent circumvention of U.N., EU, or Organization for Security and Co-Operation in Europe (OSCE) embargoes on arms exports and the criteria established in the EU Code. Under its provisions, Member states are urged to put in place legal norms for lawful brokering activities, including obtaining a written authorization prior to engaging in arms brokering and to keep records for at least 10 years.¹⁸

European Union Code of Conduct on arms exports

The European Union (EU) Code of Conduct on Arms Exports was adopted on June 8, 1998, during the Presidency of the United Kingdom.¹⁹ The EU Code sets up eight criteria for the export of conventional arms and a denial notification procedure obligating EU member states to consult on possible undercutting arms sales one EU state might make even though another EU state has chosen not to make a comparable arms export. Under this procedure, member states are required to transmit through diplomatic channels information on licenses refused and reasons for the denial. Thus, before a member state authorizes a license which has been refused by another member state for the same transaction, it is necessary to consult the state that rejected the license in the first place. If the member state decides to issue the license, it must inform the state that refused to grant authorization.²⁰

The EU Code’s eight criteria, which are to be utilized by EU members when reviewing license requests and making decisions whether or not to make an arms export, can be briefly summarized as follows:

- (1) Consistency of export with the exporter’s international commitments arising from U.N., EU, or OSCE arms embargoes;
- (2) Risk that export would be used for internal repression or where the recipient country has engaged in serious violations of human rights;
- (3) Risk that export would provoke or prolong armed conflicts;
- (4) Risk of recipient using export to undermine regional peace and security;
- (5) Effect of export on defense and national security interests of friends and allies;
- (6) Commitment of purchaser to fight terrorism and uphold international law;
- (7) Risk of diversion to third parties or to a terrorist organization;
- (8) Risk that export would undermine the sustainable development of the recipient country.

It is important to emphasize that these eight criteria, and the EU Code on Arms Exports in its entirety, are political statements by the European Union, and not legally binding on the member states of the EU, although the Code is supposed to represent a moral imperative that EU member states are expected to uphold and enforce. Nevertheless, no matter how strong the language of purpose and intent contained in the Code’s eight Criteria is, the 12 Operative Provisions of the EU Code—the sections of the Code which set out the manner in which the Code is to be carried out—contain significant loopholes which militate against it being a strong regime, in its current form, for the control of conventional arms exports from EU member states. This circumstance is illustrated by the following examples:

1. While each EU member state is to review export license applications made to it on a “case-by-case basis” against the eight specific criteria in the EU Code, Operative Provision 3 of the Code expressly states that “The decision to transfer or deny the transfer of any item of military equipment will remain at the national discretion of each Member State.” Thus, each EU member state is free to make an arms sale

¹⁷Regarding arms brokering, the Wassenaar Arrangement should be noted. In December 2003, a group of conventional arms exporting Member states agreed to establish national legislation to control the activities of those engaged in the brokering of conventional arms. [<http://www.wassenaar.org/docs/>]; See EU Common Position 2003/468/CFSP, adopted June 8, 1998 by the Council of the European Union.

¹⁸2003 O.J. (L156) 79.

¹⁹The full text of the European Union Code of Conduct on Arms Exports is in Appendix 1.

²⁰See Fourth Annual Report According to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, 2002 O.J. (C319) 1.

based on its own determination regarding whether it is appropriate or not under the Code.²¹

2. Operative Provision 10 provides additional guidance to member states in application of the EU Code. It states: "It is recognized that Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the above criteria." A literal reading of that sentence could mean that those who adopted the EU Code recognized that national economic or commercial interests would weigh importantly in the decision-making process regarding any given arms sale, and may even trump the larger stated EU-wide interest in restricting problematic arms exports. Yet in the same sentence the provision effectively states that while national economic self-interest may compel a member state to sell, that state is expected not to do so to remain true to the principles of the EU Code.

3. A major oversight mechanism within the EU Code is Operative Provision 8, which requires that a confidential annual report is to be circulated by each EU member state to the other EU states dealing with its defense exports and its own implementation of the Code. These reports are to be discussed at an annual meeting of the member states where the operation of the EU Code is reviewed, and any "improvements" to it can be recommended to the EU Council. Subsequently, a public report is produced based on the submissions of individual EU members. However, the complete details of actual arms exports made by EU states are not set out in this public document, although the published annual reports made pursuant to Operative Provision 8 of the Code do provide values of arms export licenses issued, and values of deliveries made, if available, by the exporting country. A supplier list is also provided, giving a total of sales denials made, but not what specific weapon sale was denied, nor to whom. Individual states are free to give as much or as little detail in their national reports as they choose. Most have taken a minimalist approach. Furthermore, individual states have different arms trade licensing, data collecting and reporting practices, thus calling into question the accuracy of some of the data provided in the annual public report. In the most recent EU annual report on the Code, the Sixth, covering calendar year 2003, categories of military systems are indicated in the data tables. Yet this standardized reporting is still not universal among member states, given the varied export licensing systems and practices individual countries currently employ.²²

Arms exports authorized for China by European Union members

The European Union has published official documents which provide general data regarding the total values of EU member states' arms exports licenses to China. Some countries provide the total values of actual exports. There is no uniformity in this reporting across the membership of the EU. As noted above, these annual reports are made pursuant to Operative Provision 8 of the EU Code. The most recent two reports provide data for calendar years 2002 and 2003 (the Fifth and Sixth reports respectively). What follows are the data from those reports for arms export licenses for China as approved by named EU countries in rank order of their license values, together with the total license values of the European Union as a whole. These data show that despite an embargo on arms trade with China since 1989, because each EU member state can, and has, interpreted the mandate of the embargo differently, some sales of military articles and services have, nonetheless, been made.²³

CY2002: Total value of export licenses approved for China (expressed in Euros):

France—105,431,246
 United Kingdom—79,500,000
 Italy—22,836,976
 Austria—2,025,925
 All European Union countries—209,794,157

CY2003: Total value of export licenses approved for China (expressed in Euros):

²¹ Operative provision 6 of the EU Code states that the criteria in the Code and the consultation procedure provided for in the Code shall apply to "dual-use goods as specified in Annex 1 of Council Decision 94/942/CFSP as amended, where there are grounds for believing that the end-user of such goods will be the armed forces or internal security forces or similar entities in the recipient country." As with sales of military equipment, the decision to grant or not grant a license for the sale of "dual-use" equipment is left to each EU nation to decide on its own.

²² For details of individual EU member state arms data reporting practices see generally: Sibylle Bauer and Mark Bromley. The European Union Code of Conduct on Arms Exports: Improving the Annual Report. SIPRI Policy Paper No. 8, November, 2004. Stockholm International Peace Research Institute, found at [http://www.sipri.org/contents/armstrad/PP8].

²³ 2003 O.J. December 31, 2003 (C320) 9, 14, 30, 42. The Sixth report is found at Official Journal C316, December 21, 2004, pp. 001-215.

France—171,530,641
 Italy—127,128,192
 United Kingdom—112,455,000
 Czech Republic—3,610,819
 Germany—1,096,261
 All European Union countries—415,820,913

In the Sixth annual report, made in accordance with Operative Provision 8, the EU for the first time breaks down the export data by EU Common Military List category.²⁴ So, for those states whose licensing systems categorize their arms export licenses in detail, it is possible to get a sense of what general types of military equipment are being licensed. These data do not provide information on EU members' transactions involving dual-use equipment and items—and there is no publicly available official source that provides details on such transactions. This EU report does cover the broad spectrum of military equipment licensed for export by the European Union of EU Common Military List categories. (See Appendix 2 for a detailed descriptive summary of these EU Military List categories.) This descriptive list uses an abbreviation scheme whereby a number is attached to a specific category of military equipment, and this number/category is given in the license data table to indicate the value of licenses granted for sales of that specific category. For example, ML10 is: "Aircraft, unmanned airborne vehicles, aero-engines and aircraft equipment, related equipment and components, specially designed or modified for military use."

The United Kingdom provides no detailed breakdown of its licenses in the Sixth report since the way its standard export licenses are valued in its licensing system currently preclude this. The same is true for Italy, and the Czech Republic. However, France and Germany are able to break down the categories of their licenses for purposes of the EU report. The data in the report indicate that the largest share of French license approvals for China in 2003 were in categories ML11—electronic military equipment (98.5 million Euros), ML10—aircraft and related equipment (45.4 million Euros), and ML15—imaging or countermeasure military equipment (24.1 million Euros). In the case of Germany, its largest share of license approvals for China in 2003 were in categories ML14—specialized military training equipment or simulators (528 thousand Euros), ML11—electronic military equipment (433.1 thousand Euros), and ML21—software for items controlled in the EU Common Military List (134.4 million Euros).

Thus, most of the arms exports authorized for China by EU members have been made by France, the United Kingdom and Italy. The Czech Republic, Austria, and Germany granted substantially smaller valued licence approvals.

U.S. Arms Export Control Act retransfer authorities and obligations

The Arms Export Control Act (AECA) sets out a number of conditions and obligations that foreign purchasers of U.S. defense articles, services, and military technology must agree to prior to being permitted to purchase such items from the United States. Among these obligations is the signing of an agreement that prohibits, among other things, the subsequent re-transfer of such items to another nation without first receiving the consent of the United States government to do so, by obtaining the express approval of the President of the United States. These re-transfer authorities and obligations are discussed in detail below.

Section 3(a) of the U.S. Arms Export Control Act (AECA) contains an express obligation that for any country to be eligible to purchase U.S. defense articles and services or to enter into a cooperative project as defined in the AECA, that country first: "shall have agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it, or produced in a cooperative project (as defined in section 27 of this Act), to anyone not an officer, employee, or agent of that country or international organization (or the North Atlantic Treaty Organization or the specified member countries (other than the United States) in the case of a cooperative project) and not to use or permit the use of such article or related training or other defense service for purposes other than those for which furnished unless the consent of the President has first been obtained." Section 3(a) further states that: "In considering a request for approval of any transfer of any weapon, weapons system, munitions, aircraft, military boat, military vessel, or other implement of war to another country, the President shall not give his consent under

²⁴ Ibid.

paragraph (2) to the transfer unless the United States itself would transfer the defense article under consideration to that country.”²⁵

Should any nation violate their agreement with the United States, signed at the time U.S. munitions list items are sold, by not obtaining the prior consent of the President before retransferring them, the penalties can be severe. If the country is receiving credits or loan guarantees from the United States in connection with financing a weapons purchase, those credits or loan guarantees can be terminated. Should a non-financed cash purchase be involved, the nation deemed to have violated its agreement with the United States can be made ineligible for future purchases from the U.S. Regardless of whether a sale has been financed or not, any deliveries to the foreign buyer pursuant to previous sales can be terminated.²⁶ Under this provision of the Arms Export Control Act, the President has the authority to determine that a violation has occurred and impose a penalty provided for by the AECA as he deems appropriate to the given situation. Any such determination of a violation by the President must be reported to the Congress to take effect. The President is also required to report to Congress “promptly upon the receipt of information” that a section 3 violation “may have occurred.” Congress, can, on its own initiative, determine that a section 3 violation has occurred and impose a penalty it deems appropriate by passing and obtaining enactment of a joint resolution to that end.

The authorities in the Arms Export Control Act noted above are especially pertinent to the question of ensuring that U.S. defense articles and services and the technical information associated with them are not re-transferred to China by EU member states who have purchased or may purchase such items from the United States in the future. Should any EU member state transfer any U.S.-supplied defense articles, services or the technical information associated with them to China, without first obtaining the consent to do so from the President, they would be subjecting themselves to the possible imposition of the penalties discussed above. In this context, the United States has strong, existing, authority to discourage re-transfer of U.S. defense articles, services and technology to China within the existing AECA framework.

The AECA framework, however, does not apply to arms sales to China of indigenously developed and produced military equipment of EU member states. Controls of sales or transfers of that military equipment must be achieved through application of the national arms export control statutes of the individual EU nations, the EU Code of Conduct on Arms Exports, or EU regulations regarding arms exports. As matters currently stand a formal EU decision is not expected until May or June 2005. Since the European Council has already stated its “political will to continue to work towards lifting the arms embargo,” the prospects of it doing so when the issue is formally addressed are high.²⁷ What remains to be set out in detail, should the EU lift the Chinese arms embargo, is what will be the nature and scope of the revised EU Code of Conduct on Arms Exports, and the new instrument establishing measures to address EU arms exports to post-embargo countries—what the EU refers to as the “Toolbox.” The details of any such changes to the Code of Conduct or the central elements of the “Toolbox” will not be known until the EU chooses to announce them. Private consultations among EU members on these matters are continuing, but are likely to be completed before final EU action on lifting the arms embargo on China takes place. Should the European Union strengthen the EU Code of Conduct on Arms Exports, and utilize effective instruments to prevent worrisome arms exports to China in a post-embargo period, prospects for reaching a successful accommodation in U.S.–EU relations over this issue could be notably enhanced.

CRS REPORT FOR CONGRESS—U.S. DEFENSE ARTICLES AND SERVICES SUPPLIED TO
FOREIGN RECIPIENTS: RESTRICTIONS ON THEIR USE

SUMMARY

In accordance with United States law, the U.S. Government places conditions on the use of defense articles and defense services transferred by it to foreign recipients. Violation of these conditions can lead to the suspension of deliveries or termination of the contracts for such defense items, among other things. On occasion, the President has indicated that such violations by foreign countries “may” have oc-

²⁵ 22 U.S.C. 2753(a)(2). This obligation is also contained in the International Traffic in Arms Regulations (ITAR), 22 CFR Section 123.10.

²⁶ 22 U.S.C. 2753(c)(1).

²⁷ Council of the European Union, 16/17 December 2004. Presidency Conclusions. 16238/1/04 REV 1, p. 19. Published February 1, 2005.

curred, raising the prospect that termination of deliveries to or imposition of other penalties on such nations might take place. Section 3(a) of the Arms Export Control Act (AECA) sets the general standards for countries or international organizations to be eligible to receive United States defense articles and defense services provided under this act. It also sets express conditions on the uses to which these defense items may be put. Section 4 of the Arms Export Control Act states that U.S. defense articles and defense services shall be sold to friendly countries “solely” for use in “internal security,” for use in “legitimate self-defense,” to enable the recipient to participate in “regional or collective arrangements or measures consistent with the Charter of the United Nations,” to enable the recipient to participate in “collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security,” and to enable the foreign military forces “in less developed countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries.”

Section 3(c)(2) of the Arms Export Control Act requires the President to report promptly to the Congress upon the receipt of information that a “substantial violation” described in section 3(c)(1) of the AECA “may have occurred.” This Presidential report need not reach any conclusion regarding the possible violation or provide any particular data other than that necessary to illustrate that the President has received information indicating a specific country may have engaged in a “substantial violation” of an applicable agreement with the United States that governs the sale of U.S. defense articles or services. Should the President determine and report in writing to Congress or if Congress determines through enactment of a joint resolution pursuant to section 3(c)(3)(A) of the Arms Export Control Act that a “substantial violation” by a foreign country of an applicable agreement governing an arms sale has occurred, then that country becomes ineligible for further U.S. military sales under the AECA. This action would terminate provision of credits, loan guarantees, cash sales, and deliveries pursuant to previous sales. Since the major revision of U.S. arms export law in 1976, neither the President nor the Congress have actually determined that a violation did occur thus necessitating the termination of deliveries or sales or other penalties set out in section 3 of the Arms Export Control Act. The United States Government has other options under the Arms Export Control Act to prevent transfer of defense articles and services for which valid contracts exist short of finding a foreign country in violation of an applicable agreement with the United States. These options include suspension of deliveries of defense items already ordered and refusal to allow new arms orders. The United States has utilized at least one such option against Argentina, Israel, Indonesia, and Turkey.

INTRODUCTION

In accordance with United States law, the U.S. Government places conditions on the use of defense articles and defense services transferred by it to foreign recipients. Violation of these conditions can lead to the suspension of deliveries or termination of the contracts for such defense items, among other things. On occasion, the President has indicated that such violations by foreign countries “may” have occurred, raising the prospect that termination of deliveries to or imposition of other penalties on such nations might take place. However, since the major revision of U.S. arms export law in 1976, neither the President nor the Congress have actually determined that a “substantial violation” did occur thus necessitating the termination of deliveries or sales or other penalties set out in section 3 of the Arms Export Control Act. This report reviews the pertinent sections of U.S. law governing permissible uses of U.S.-origin defense equipment and services by foreign nations, Presidential and congressional options for dealing with such violations, and illustrative actions previously taken by the United States in response to possible violations.

Arms Export Control Act (AECA): Basic Conditions on Use of U.S.-Supplied Defense Articles and Services

The Arms Export Control Act (AECA), as amended, authorizes the transfer by sale or lease of United States origin defense articles and services through the government-to-government foreign military sales (FMS) program or through the licensed commercial sales process.¹ Section 3(a) of the Arms Export Control Act sets the general standards for countries or international organizations to be eligible to

¹ The International Security Assistance and Arms Export Control Act of 1976 (P.L. 94-329), enacted on June 30, 1976, changed the title of the Foreign Military Sales Act (FMSA) of 1968 (P.L. 90-629), as amended, to its present one—the Arms Export Control Act. (22 U.S.C. 2751 et. seq.) All references to the predecessor statute, the FMSA, are legally deemed to be references to the AECA.

receive United States defense articles and defense services provided under this act. It also sets express conditions on the uses to which these defense items may be put. Section 3(a)(2) of the AECA specifically provides that to be eligible to purchase defense articles and services from the United States:

. . . [a] country or international organization shall have agreed not . . . to use or permit the use of [a defense] article or related training or other defense service for purposes other than those for which furnished, unless the consent of the President has first been obtained. . . .

Section 3(c) of the Arms Export Control Act further sets out the circumstances under which a nation may lose (a) its U.S. Foreign Military Financing, (b) its loan guarantees for purchases of U.S. defense articles and services, (c) its rights to have previously purchased U.S. defense articles or services delivered, (d) its rights to have previously made agreements for the sale of U.S. defense articles or services carried out. Section 3(c)(1)(A) of the Arms Export Control Act stipulates, in part, that:

No credits (including participations in credits) may be issued and no guarantees may be extended for any foreign country under this Act as hereinafter provided, if such country uses defense articles or defense services furnished under this Act, or any predecessor Act, in substantial violation (either in terms of the quantities or in terms of the gravity of the consequences regardless of the quantities involved) of *any agreement entered into pursuant to any such Act*² . . . by using such articles or services for a purpose not authorized under section 4 or, if such agreement provides that such articles and services may only be used for purposes more limited than those authorized under section 4 for a purpose not authorized under such agreement. . . .

Section 3(c)(1)(B) of the AECA adds that, under the above conditions: “[n]o cash sales or deliveries pursuant to previous sales may be made. . . .” Section 3(g) of the Arms Export Control Act, enacted in November 1999, further requires that:

Any agreement for the sale or lease of any article on the United States Munitions List entered into by the United States Government after the date of enactment of this subsection [November 29, 1999³] shall state that the United States Government retains the right to verify credible reports that such article has been used for a purpose not authorized under section 4 or, if such agreement provides that such article may only be used for purposes more limited than those authorized under section 4, for a purpose not authorized under such agreement.

Purposes for Which Military Sales by the United States Are Authorized (Section 4 of the Arms Export Control Act). The purposes for which sales of defense articles and services by the United States are authorized are detailed in section 4 of the Arms Export Control Act. This section of the act states that defense articles and defense services shall be sold to friendly countries “solely for”:

- “Internal security”;
- “Legitimate self-defense”;
- Enabling the recipient to participate in “regional or collective arrangements or measures consistent with the Charter of the United Nations”;
- Enabling the recipient to participate in “collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security”;
- Enabling the foreign military forces “in less developed countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries.”

It should be stressed that the Arms Export Control Act as amended, the Foreign Assistance Act of 1961 as amended, and predecessor acts do not define such critical terms as “internal security” and “legitimate self-defense.” It remains for the President or the Congress, as the case may be, to define the meaning of such terms as they may apply to the question of a possible violation by a foreign country of an applicable agreement governing the sale of U.S. defense articles or defense services.

²Emphasis added. The statute makes clear that any sanctions that may be applied are for “substantial violation” of an agreement entered into with the United States pursuant to the AECA or any predecessor Act, and not for a violation of the AECA itself or its predecessors.

³Added by Section 1225 of the Security Assistance Act of 1999 (Title XII of H.R. 3427), enacted by reference in section 1000(a)(7) of P.L. 106–113; 113 Stat. 1526.

Presidential Report to Congress on Possible Violations. Section 3(c)(2) of the Arms Export Control Act requires the President to report promptly to the Congress upon the receipt of information that a “substantial violation” described in section 3(c)(1) of the AECA “may have occurred.” This Presidential report need not reach any conclusion regarding the possible violation or provide any particular data other than that necessary to illustrate that the President has received information indicating a specific country may have engaged in a “substantial violation” of an applicable agreement with the United States that governs the sale of U.S. defense articles or services.

Procedures for Making Foreign Countries Ineligible for Receipt of U.S. Defense Articles and Services. Should the President determine and report in writing to Congress or if Congress determines by joint resolution pursuant to section 3(c)(3)(A) of the Arms Export Control Act that a “substantial violation” by a foreign country of an applicable agreement governing an arms sale has occurred, then that country becomes ineligible for further U.S. military sales under the AECA. This action would terminate provision of credits, loan guarantees, cash sales, and deliveries pursuant to previous sales. The President could, under section 3(c)(3)(B) of the AECA, continue to permit “cash sales and deliveries pursuant to previous sales” by certifying in writing to Congress that termination of such sales and deliveries would have a “significant adverse impact on United States security.” Such a Presidential waiver could not be invoked, however, if Congress, under section 3(c)(3)(A), had adopted or were to adopt a joint resolution finding that country ineligible. The President retains the prerogative of vetoing any such joint resolution. Congress would then have to override the veto in order to impose its will. Congress also has the option of adopting regular legislation imposing varying degrees of penalties upon any country for violations of the conditions of an applicable agreement regarding use of U.S.-supplied defense equipment. Such legislation would also be subject to the veto process.⁴

Restoration of Eligibility. Once a country is made ineligible for sales or deliveries under the Arms Export Control Act provisions, it can regain its eligibility only when: (1) Under section 3(c)(4) of the act, *the President* “determines that the violation has ceased” (the violation which led to the status of ineligibility in the first place), and (2) the country involved “has given assurances satisfactory to the President that such violation will not recur.” Alternatively, Congress could pass regular legislation that would exempt the particular country from specific sanctions imposed through AECA procedures, although that legislation would be subject to a Presidential veto.

Suspension or Cancellation of Contracts and/or Deliveries by the United States. It should be noted that the United States has additional options to prevent transfer of defense articles and services for which valid contracts exist short of finding a foreign country in violation of an applicable agreement with the United States. Authority for suspension of deliveries or defense items or cancellation of military sales contracts is found in sections 2(b), 42(e)(1) and 42(e)(2) of the AECA. Section 2(b) of the Arms Export Control Act permits the Secretary of State, under the President’s direction, to, among other things, determine “whether there shall be delivery or other performance” regarding sales or exports under the AECA in order that “the foreign policy of the United States is best served thereby.”

Section 42(e)(1) of the Arms Export Control Act states that:

Each contract for sale entered into under sections 21, 22, 29 and 30 of this Act, and each contract entered into under section 27(d) of the Act, shall provide that such contract may be canceled in whole or in part, or its execution suspended, by the United States at any time under unusual or compelling circumstances if the national interest so requires.

Section 42(e)(2)(A) of the Arms Export Control Act further states that:

Each export license issued under section 38 of this Act shall provide that such license may be revoked, suspended, or amended by the Secretary of State, without prior notice, whenever the Secretary deems such action to be advisable.

⁴ It should be noted that the obligations, restrictions, and possible penalties set out in section 3 of the Arms Export Control Act also apply to the re-transfer by foreign recipients of U.S. supplied defense articles, defense services, and related technical data to another nation. Should such a re-transfer occur, in the absence of prior approval by the President of the United States to do so, then the nation making such a transfer could be determined to be in violation of its agreement with the United States not to take such an action without prior consent from the U.S., and therefore could be subject to the penalties provided for such a violation set out in section 3 of the AECA. See section 3(a)(2) of the AECA where the retransfer prior to consent obligation is set out (22 U.S.C. 2753(a)(2)).

Thus, all government-to-government agreements or licensed commercial contracts for the transfer of defense articles or defense services may be halted, modified, or terminated by the Executive branch should it determine it is appropriate to do so.

Use of this authority does not prejudice the larger question of whether a “substantial violation” of an applicable agreement governing use of U.S. arms did in fact occur. That question can still be answered affirmatively or negatively, or left unanswered, depending on how the President or the Congress chooses to deal with it. To date, the President has never taken the next step and actually determined that a violation did occur thus necessitating the termination of deliveries or sales or other penalties set out in section 3 of the Arms Export Control Act.

Illustrative Responses of the United States Government to Possible Violations of Agreements on Use of U.S.-Provided Defense Articles

Argentina. On April 30, 1982, Powell A. Moore, Assistant Secretary of State for Congressional Relations, reported to Congress that the President had determined that Argentina—through its use of U.S.-supplied military equipment in its occupation of the Falkland Islands (Islas Malvinas) on April 2, 1982—“may” have substantially violated the applicable agreements with the United States governing use of this equipment. In his April 30 report, Assistant Secretary Moore noted that in light of these circumstances the United States was “suspending until further notice all deliveries to Argentina of defense articles and services for which commitments were made prior to October 1, 1978.” Other restrictions on military aid to Argentina were already in place. The Reagan Administration removed the suspension on September 24, 1982.

Israel. Questions raised regarding the use of U.S.-supplied military equipment by Israel in Lebanon in June and July 1982, led the Reagan Administration to determine on July 15, 1982, that Israel “may” have violated its July 23, 1952, Mutual Defense Assistance Agreement with the United States (TIAS 2675). Concerns centered on whether or not Israel had used U.S.-supplied anti-personnel cluster bombs against civilian targets during its military operations in Lebanon and the siege of Beirut.⁵ The pertinent segment of that 1952 agreement between Israel and the United States reads as follows:

The Government of Israel assures the United States Government that such equipment, materials, or services as may be acquired from the United States . . . are required for and will be used solely to maintain its internal security, its legitimate self-defense, or to permit it to participate in the defense of the area of which it is a part, or in United Nations collective security arrangements and measures, and that it will not undertake any act of aggression against any other state.

It should be noted that none of the critical terms such as “internal security,” “legitimate self-defense,” or “act of aggression” are defined within this 1952 U.S.-Israeli agreement. The House Foreign Affairs Committee held hearings on this issue in July and August 1982. On July 19, 1982, the Reagan Administration announced that it would prohibit new exports of cluster bombs to Israel. This prohibition was lifted by the Reagan Administration in November 1988.⁶

In light of the Israeli attack on the Iraqi nuclear reactor on June 7, 1981, Secretary of State Alexander M. Haig, Jr., reported to Congress on June 10, 1981, that the Israeli use of American-supplied military equipment in this raid “may” have constituted a substantial violation of the applicable 1952 U.S.-Israeli agreement. As a consequence—and pending review of the facts of the case—the President chose to exercise the authority set forth in sections 2(b) and 42(e)(1) of the Arms Export Control Act to suspend “for the time being” the shipment of four F-16 aircraft that had been scheduled for delivery to Israel. As the result of this decision, the subsequent delivery of 10 F-16 and 2 F-15 aircraft to Israel was also suspended. However, on August 17, 1981, the Reagan Administration lifted its suspension on deliveries to Israel and all of the planes were transferred.

On two other occasions—April 5, 1978, and August 7, 1979—the Carter Administration chose to find that the Israelis “may” have violated their 1952 agreement with the United States through the use of American-origin military equipment in

⁵See U.S. Congress. House. Committee on Foreign Affairs, *The Use of United States Supplied Military Equipment in Lebanon*. Hearings before the Committee on Foreign Affairs and its Subcommittees on International Security and Scientific Affairs and on Europe and the Middle East. 97th Congress, 2nd sess. July 15 and August 4, 1982. 68p. These hearings were held in open and closed sessions.

⁶Facts on File. Annual Yearbook 1982, p. 518; Associated Press, July 19, 1982. Washington Post, December 7, 1988, p. A36; Associated Press, December 6, 1988.

operations conducted in Lebanon. However, the U.S. did not suspend or terminate any Israeli arms sales, credits, or deliveries in either of these cases.

In two notable instances, questions concerning the improper use by Israel of U.S. weapons were raised, but the President expressly concluded that a violation of the agreement regarding use of U.S. supplied equipment did not occur. On October 1, 1985, Israel used U.S.-supplied aircraft to bomb Palestine Liberation Organization (PLO) headquarters in Tunis, Tunisia. The Reagan Administration subsequently stated that the Israeli raid was “understandable as an expression of self-defense,” although the bombing itself “cannot be condoned.” On July 14, 1976, following the Israeli rescue mission at Entebbe, Uganda in early July 1976, the Department of State declared that Israel’s use of U.S.-supplied military equipment during that operation was in accordance with the 1952 U.S.-Israeli agreement.

Indonesia and East Timor. Following the military intervention of Indonesia in East Timor on December 7, 1975, the Ford Administration initiated a “policy review” in connection with the U.S. military assistance program with Indonesia. Because of the possible conflict between the Indonesian use of U.S.-origin equipment in East Timor and the provisions of U.S. law and U.S.-Indonesian bilateral agreements, the Ford Administration placed a “hold” on the issuance of new letters of offer (contracts) and Military Assistance Program (MAP) orders to Indonesia. However, military equipment already in the pipeline continued to be delivered to the Indonesians. The “policy review” was completed in late May 1976. Military assistance and sales resumed in July 1976. No formal finding of “substantial violation” of applicable U.S.-Indonesian agreements involving use of U.S.-origin military equipment, conditional or otherwise, was made by the administration or by the Congress.

Turkey and the Congressionally-Imposed Embargo. In July 1974, Turkey used U.S.-origin equipment during its intervention on Cyprus. The President and Congress disagreed on whether Turkey had “substantially violated” the applicable 1947 agreement with the United States governing the use of U.S.-supplied military equipment during its Cyprus operations. The President independently suspended the issuance of new Foreign Military Sales credits and guarantees and major new cash sales for Turkey from late July until October 17, 1974. The President did permit routine cash sales of spare parts and components for items already purchased by Turkey during this same period. The Congress imposed an embargo on military sales, credits, assistance, and deliveries to Turkey with the enactment of H.J. Res. 1167 (the Continuing Appropriations Resolution for FY75, P.L. 93-448). However, section 6 of H.J. Res. 1167 gave the President the option to waive the effect of the embargo until December 10, 1974. President Ford exercised this waiver authority on October 17, 1974. On December 10, 1974, the Turkish arms embargo went into effect.

Subsequently, the Foreign Assistance Act of 1974, enacted on December 30, 1974, continued the Turkish embargo and made it part of permanent law. Yet it also gave the President the option of temporarily waiving the embargo’s effect until February 5, 1975. President Ford used this waiver to suspend the embargo from December 30, 1974, until February 5, 1975, at which time the Turkish embargo was restored. On October 6, 1975, President Ford signed into law P.L. 94-104, which partially lifted the arms embargo on Turkey. Successive statutes modified military aid and sales levels for Turkey while a partial embargo remained in effect. Finally, on September 26, 1978, President Carter signed into law P.L. 95-384, which authorized him to end the arms embargo against Turkey. The President exercised this authority on September 26, 1978.

CRS REPORT FOR CONGRESS—EUROPEAN UNION’S ARMS CONTROL REGIME AND ARMS EXPORTS TO CHINA: BACKGROUND AND LEGAL ANALYSIS

SUMMARY

In recent months, discussions have been held within the European Union (EU) on the question of lifting the embargo on arms exports to the People’s Republic of China that was imposed on China on June 27, 1989. The prospect that the EU would lift its embargo on arms exports to China has led to a number of on-going discussions between EU member states and the United States government, which strongly opposes such an action at this time on human rights and security issues grounds. Key nations within the European Union, particularly France and Germany, strongly support lifting of the embargo. And, the United Kingdom has advised the Bush Administration that it will also support lifting the embargo when the subject is formally addressed by the EU, most likely during the spring of 2005.

The Council of the EU has stated that if the arms embargo on China were to be lifted, that action should not result in either a quantitative or qualitative increase in EU arms exports to China. The United Kingdom has argued that it believes that the European Union's Code of Conduct on Arms Exports, while not legally binding on EU members, with some enhancements, would provide a solid safeguard against worrisome arms exports by EU states to the Chinese in the future.

The President and senior members of the Bush Administration have lobbied the European Union to keep the arms embargo on China in place. Many Members of Congress share the Bush Administration's concerns about an end to the EU arms embargo. On February 2, 2005, the House of Representatives passed H. Res. 57, a resolution strongly urging the EU not to lift the embargo, by a vote of 411-3. Other Congressional actions on the issue may be taken.

This report provides detailed background and legal analysis of the nature of the current European Union embargo on arms exports to China. It also provides detailed background on the European Union's current Code of Conduct on Arms Exports. A strengthened version of the Code would be one of the control mechanisms that would remain should the EU lift the embargo on arms exports to China. This report also gives information on recent EU arms exports authorized for China. It further summarizes U.S. concerns regarding the lifting of the arms embargo, and notes the prospective timing of EU action on the embargo issue. This report may be updated should events warrant.

INTRODUCTION

In recent months, discussions have been held within the European Union (EU) on the question of lifting the embargo on arms exports to the People's Republic of China that was imposed on China on June 27, 1989. Following the lead of the United States, the European Union took this action in the wake of the June 4, 1989 crackdown on Chinese citizens by the Chinese military in Tiananmen Square in Beijing and the serious infringement of human rights in China that followed. The prospect that the EU would lift its embargo on arms exports to China has led to a number of on-going discussions between EU member states and the United States. The United States government continues to maintain its own arms embargo against China and the U.S. strongly opposes lifting the EU embargo at this time on human rights and security issues grounds. Key nations within the European Union, particularly France and Germany, strongly support lifting of the embargo. And, the United Kingdom has advised the Bush Administration that it will also support lifting the embargo when the subject is formally addressed by the EU, most likely during the early spring of 2005. All 25 members of the EU must agree before the arms embargo can be lifted.¹

The Chinese have been seeking a lifting of the arms embargo arguing that it is discriminatory. They note that other nations deemed pariahs, such as Sudan or North Korea, do not have such an embargo imposed on them. The Chinese also view lifting of the embargo as an important symbolic political act by the EU, as they see the embargo as a Cold War era relic, and thus an impediment to better relations with European Union members. France, Germany, and other EU members claim the embargo hinders stronger EU political and economic relations with China. After their December 16 and 17, 2004 meeting, EU leaders pledged to address lifting the embargo.² The Council of the EU noted that if the arms embargo on China were to be lifted, that action should not result in either a quantitative or qualitative in-

¹"Germany: Schroeder Calls for EU to End China Arms Embargo," Dow Jones International News, December 6, 2004; "France Reiterates Support for End to China Arms Embargo," Agence France Presse, December 6, 2004; "EU Arms Embargo on China Probably Lifted Within Six Months; Britain," Associated Press, January 19, 2005; Barry Schweid, "Britain's Straw, Rice Differ on China Arms," Associated Press, January 24, 2005. The French Defense Minister, Michele Alliot-Marie, has argued that lifting the EU arms embargo against China could be a beneficial step because "China is rapidly developing its industry, and today our experts say in five years China could make exactly the same arms that we have today. And they will do it if they cannot import. So maybe if we sell them arms, they will not make them. And in five year's time they will not have the technology to make them." Peter Spiegel and John Thornhill, "France Urges End to China Arms Embargo," Financial Times, February 15, 2005.

²Marcus Walker, Marc Champion and Scott Miller, "EU Maintains China Arms Embargo—Pressure to Lift Ban Grows as States Risk Defying U.S. to Cultivate Economic Ties," Wall Street Journal Europe, December 9, 2004, p. A1; Daniel Dombey and Peter Spiegel, "Why Europe Is Ready to Lift Its Weapons Ban on China," Financial Times, February 9, 2005; Mure Dickie, Guy Dinmore, Daniel Dombey, Kathrin Hille, Demetri Sevastopulo and Peter Spiegel, "The EU's Ban on Selling Military Equipment to Beijing Lacks Credibility But Washington Believes Any Change Would Be Irresponsible," Financial Times, February 10, 2005; Peter Sparaco and Robert Wall, "Chinese Checkers; Widening Business Opportunities Drive EU's Review of China Arms Embargo," Aviation Week & Space Technology, December 13, 2004, p. 37.

crease in EU arms exports to China.³ The United Kingdom has argued that it believes that the European Union's Code of Conduct on Arms Exports, while not legally binding, would, with some enhancements, provide a solid safeguard against worrisome arms exports by EU states to the Chinese in the future.⁴ Meanwhile, as the President and Bush Administration officials have lobbied the European Union to keep the arms embargo on China in place, many in Congress have also expressed strong concerns and support for that position. On February 2, 2005, the House of Representatives passed H. Res. 57, a resolution strongly urging the EU not to lift the embargo, by a vote of 411–3. Other Congressional actions on the issue may be taken.

This report provides detailed background on the nature and history of the current European Union embargo on arms exports to China. It also provides detailed background on the European Union's current Code of Conduct on Arms Exports. The EU plans on issuing a strengthened Code, which would be one of the control mechanisms that would remain should the EU lift the embargo on arms exports to China. This report also gives information on the level of recent EU arms exports authorized for China. It further summarizes U.S. concerns regarding the lifting of the arms embargo, and notes the prospective timing of EU action on the embargo issue.

General Background on European Union Embargoes

Arms embargoes fall within the sanctions or restrictive measures imposed by the European Union against third countries. In general, EU embargoes are either adopted to implement U.N. Security Council resolutions acting under Chapter VII, or are "autonomous." In the latter case, embargoes are legally founded in a specific provision of the treaties establishing the European Union. EU members have full jurisdiction to decide on imposing arms trade restrictions.⁵ Prior to 1992, decisions on embargoes were made by the member states through an informal political process, the so-called European Political Cooperation.⁶ In several instances, member states convened as a body, the European Council, adopted declarations to impose embargoes.⁷ Within such a context, the embargo on China was imposed in 1989, by the then twelve members of the European community, the EU's precursor. The objective was to introduce arms trade restrictions against the regime in China in reaction to the killing of demonstrators in Tiananmen Square.

The introduction of the Common Foreign and Security Policy (CFSP) by the Treaty on European Union (Maastricht Treaty), effective in November 1993, altered the procedural basis for EU embargoes. Decisions to impose an embargo still require unanimity among EU member states, but such decisions are now based on Common Positions, rather than declarations.⁸ Often, implementing regulations are also adopted. Members are required to conform with the provisions or regulations and Common Positions. Both instruments contain a detailed description of the type of material covered as well as the terms and conditions of implementation by the member states. Arms embargoes are also subject to EU standards on arms exports, such as the 1998 Code of Conduct on Arms Exports (hereafter the EU Code). Consequently, in the implementation of the arms embargo on China, EU members are expected not only to abide by the restrictions on arms trade on China but also with the EU requirements on arms exports. Ultimately, what a given embargo entails may be viewed differently by different member states. And, as a political statement by the European Union, the EU Code on Arms Exports is not legally binding on the EU member states.

European Union's Arms Embargo on China

On June 27, 1989 the European Council, convened in Madrid, agreed to impose an arms embargo on China. The entire text of the embargo, which is in the form of a political declaration, is rather brief. In the first two paragraphs, it condemns

³ Council of the European Union, 16/17 December 2004. Presidency Conclusions. 16238/1/04 REV 1, p. 19. Published February 1, 2005.

⁴ "Straw Defends Lifting of China Arms Ban," *Guardian Unlimited*, January 21, 2005; Daniel Dombey, "EU Finalizes Plan to Lift Arms Embargo on China," *Financial Times*, February 3, 2005, p. 4. Marc Champion, "EU Aims to Calm U.S. Arms Fears—Officials Say Likely End to Sales Embargo on China Won't Increase Imports," *Asian Wall Street Journal*, February 21, 2005, p. A1.

⁵ Article 296 of the Treaty Establishing the European Community. Available at [<http://europa.eu.int/eur-lex/lex/en/treaties/index.html>].

⁶ It refers to the informal network of communication and cooperation on foreign policy issues among the governments of the EC Member states, between the period of 1970–1992.

⁷ External Relations, Common Foreign & Security Policy (CFSP), Sanctions. Available at: [http://europa.eu.int/comm/external_relations/sfcp/sanctions].

⁸ Decisions are made based on articles 12 and 15 of the Treaty on European Union. Available at [<http://europa.eu.int/eurlex/lex/en/treaties/index.html>].

the repression in China and requests that the Chinese authorities cease executions and respect human rights. The fourth paragraph contains the measures agreed by the members states. These include the suspension of military cooperation and high-level contacts, reduction of cultural, scientific and technical cooperation programs and prolongation of visas to Chinese students. The specific wording of the arms restrictions on China calls for: “. . . interruption by the Member States of the Community of military cooperation and an embargo on trade in arms with China.”⁹

The declaration does not clarify the meaning of the term “military cooperation” nor does it contain a list of arms that come within the scope of the phrase “trade in arms.” Neither does it contain exceptions or review clauses. By contrast, other EU embargoes imposed later in the CFSP context are more elaborate and specific in their scope and coverage. For instance, the Burma/Myanmar embargo, which was first adopted in 1991, has been updated and revised a number of times due to the lack of progress in democratization and continuous violation of human rights, and appears as a Common Position, which is binding. It contains, *inter alia*, a ban on technical assistance related to military activities and the provision, maintenance and use of weapons and ammunition, paramilitary equipment and spare parts.¹⁰

The arms embargo against China has not been interpreted uniformly by the EU members since it was imposed. This has been attributed to several factors, including lack of specificity in the political declaration, absence of a legally binding document, such as a Common Position, as is the case with subsequent embargoes imposed on other countries and, more importantly, the existing loopholes and weak points in the EU arms control system. For instance, the UK interpreted the embargo in a narrow manner, as to include the following items: lethal weapons such as machine guns, large-caliber weapons, bombs, torpedoes and missiles; specially designed components of the above, and ammunition; military aircraft and helicopters, vessels of war, armored fighting vehicles and other weapons platforms; and equipment which might be used for internal repression.¹¹ The French have interpreted the embargo similarly.¹²

Since 1989, European non-governmental organizations have reported that the embargo on China has been bypassed by several EU members and has been reduced to a mere “symbolic instrument.”¹³ One arms trade expert with the Stockholm International Peace Research Institute (SIPRI) of Sweden has stated that “many European licenses for the arms trade are actually issued for material which, on paper, can be used for civilian purposes; what is known as ‘dual usage’ . . . The embargo has actually been circumvented in this way for years.”¹⁴ Amnesty International in its 2004 report, *Undermining Global Security: the European Union Arms Exports*, contains several examples of EU members that have made exports to China within the framework of the existing arms embargo.¹⁵ For instance, the United Kingdom exported components for Chinese military aero engines as well as technology, software and related systems for weapons platforms; an Italian joint venture company was involved in the manufacture of vehicles reportedly used as mobile execution chambers in China. In addition, the German Deutz AG diesel engines were incorporated into armored personnel carriers that were transferred to China.¹⁶

European Union’s Arms Exports Regime

To place in context any potential actions European Union members may take with respect to the Chinese arms embargo, it is important to understand the general EU regime on arms export controls. The following EU instruments apply to arms embargoes and arms exports in general: (1) the 1998 European Code of Conduct on

⁹Conclusions of the European Council, adopted in Madrid on June 27, 1989, available at [<http://www.eurunion.org/legislat/Sanctions.htm#China>].

¹⁰Common Position 2004/423/CFSP and Council Regulation (EC) No. 798/2004 Renewing the Restrictive Measures in Respect of Burma/Myanmar and repealing Regulation No. 1081/2000.

¹¹Robin Niblett, *The United States, the European Union, and Lifting the Arms Embargo on China*, 10 EURO-FOCUS No. 3 (Sept. 30, 2004). Center for Strategic and International Studies. See also: Amnesty International, *Undermining Global Security: The European Union Exports*, at [<http://web.amnesty.org/library/index/engact300032004>].

¹²EU arms embargo on China. [<http://projects.sipri.se/expcon/euframe/euchiemb.htm>].

¹³Thijs Papot, “A Symbolic Instrument’ the EU’s Arms Embargo Against China,” *Current Affairs*, January 25, 2005.

¹⁴Ibid.

¹⁵Amnesty International, *Undermining Global Security: The European Union Exports*. Available at [<http://web.amnesty.org/library/index/engact300032004>].

¹⁶Press Release of Coalition of European NGOs including Saferworld, Oxfam, Pax Christi, and Amnesty International: “Flimsy Controls Fail to Prevent EU Countries Selling Arms to Human Rights Abusers.” September 30, 2004. The text of this document can be found at [<http://web.amnesty.org/library/index/ENGACT300152004>].

Arms Exports, a non-binding instrument, which lays down minimum standards to be applied on export licenses¹⁷; (2) Regulation (EC) No 1334/2000 setting up a Community Regime for the Control of Exports of dual-use items and technology¹⁸; and (3) Common Position 2003/468/CFSP on the Control of Arms Brokering.¹⁹ The EU Code of Conduct, analyzed in detail below, establishes eight criteria to be applied by EU members on the exports of conventional arms, including software and technology.²⁰ A Common List of Military Equipment was agreed upon in 2000 and updated recently.²¹ In general, arms embargoes, unless specific guidance is otherwise provided, cover at least all the items included in the Common List.²² Regulation No. 1334/2000 as amended (whose scope extends to any items that could be used for civilian and military purposes) is directly applicable to the member states. Under its provisions, member states grant authorizations for exports, called Community General Export Authorization (CGE) of dual-use items. Such authorizations are valid throughout the Community, subject to certain specific cases for which consultation is needed among EU members prior to granting or denying an authorization. The items and technology listed in Annexes I, H and IV of the Regulation are based on the lists prepared by the international export control regimes. The Regulation includes a “catch-all” clause which allows controls on goods not included in the Annex of the Regulation. Under this clause, EU members have the discretion to impose or not to impose controls on exports and technology not listed in the Regulation. The objective of Common Position, 2003/468/CFSP, is to control arms brokering²³ in order to prevent circumvention of U.N., EU, or Organization for Security and Co-Operation in Europe (OSCE) embargoes on arms exports and the criteria established in the EU Code. Under its provisions, Member states are urged to put in place legal norms for lawful brokering activities, including obtaining a written authorization prior to engaging in arms brokering and to keep records for at least 10 years.²⁴

European Union Code of Conduct on Arms Exports: Background and Assessment

The European Union (EU) Code of Conduct on Arms Exports was adopted on June 8, 1998, during the Presidency of the United Kingdom.²⁵ The EU Code sets up eight criteria for the export of conventional arms and a denial notification procedure obligating EU member states to consult on possible undercutting arms sales one EU state might make even though another EU state has chosen not to make a comparable arms export. Under this procedure, member states are required to transmit through diplomatic channels information on licenses refused and reasons for the denial. Thus, before a member state authorizes a license which has been refused by another member state for the same transaction, it is necessary to consult the state that rejected the license in the first place. If the member state decides to issue the license, it must inform the state that refused to grant authorization.²⁶

The EU Code’s eight criteria, which are to be utilized by EU members when reviewing license requests and making decisions whether or not to make an arms export, can be briefly summarized as follows:

- (1) Consistency of export with the exporter’s international commitments arising from U.N., EU, or OSCE arms embargoes;
- (2) Risk that export would be used for internal repression or where the recipient country has engaged in serious violations of human rights;
- (3) Risk that export would provoke or prolong armed conflicts;
- (4) Risk of recipient using export to undermine regional peace and security;

¹⁷ Adopted by the Council of the European Union on June 8, 1998.

¹⁸ 2000 O.J. (L159) 1.

¹⁹ 2003 O.J. (L156) 79.

²⁰ Article XXI of GATT allows the imposition of trade restrictions on arms exports and imports and military equipment and those imposed by the U.N. Charter VII resolutions.

²¹ List included in the Council Declaration of June 13, 2000. It was issued on the occasion of the adoption of the common list of military equipment covered by the EU Code of Conduct on Arms Exports, 2000 O.J. (C191).

²² See Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy, at 17, available at EU Council Website, CFSP Section.

²³ Regarding arms brokering, the Wassenaar Arrangement should be noted. In December 2003, a group of conventional arms exporting Member states agreed to establish national legislation to control the activities of those engaged in the brokering of conventional arms. [<http://www.wassenaar.org/docs/>]; See EU Common Position 2003/468/CFSP, adopted June 8, 1998 by the Council of the European Union.

²⁴ 2003 O.J. (L156) 79.

²⁵ The full text of the European Union Code of Conduct on Arms Exports is in Appendix 1.

²⁶ See Fourth Annual Report According to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, 2002 O.J. (C319) 1.

- (5) Effect of export on defense and national security interests of friends and allies;
- (6) Commitment of purchaser to fight terrorism and uphold international law;
- (7) Risk of diversion to third parties or to a terrorist organization;
- (8) Risk that export would undermine the sustainable development of the recipient country.

It is important to emphasize that these eight criteria, and the EU Code on Arms Exports in its entirety, are political statements by the European Union, and *not legally binding* on the member states of the EU, although the Code is supposed to represent a moral imperative that EU member states are expected to uphold and enforce. Nevertheless, no matter how strong the language of purpose and intent contained in the Code's eight Criteria is, the 12 Operative Provisions of the EU Code—the sections of the Code which set out the manner in which the Code is to be carried out—contain significant loopholes which militate against it being a strong regime, in its current form, for the control of conventional arms exports from EU member states. This circumstance is illustrated by the following examples:

1. While each EU member state is to review export license applications made to it on a “case-by-case basis” against the eight specific criteria in the EU Code, Operative Provision 3 of the Code expressly states that “The decision to transfer or deny the transfer of any item of military equipment will remain at the national discretion of each Member State.” Thus, each EU member state is free to make an arms sale based on its own determination regarding whether it is appropriate or not.²⁷

2. Operative Provision 10 provides additional guidance to member states in application of the EU Code. It states: “It is recognized that Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the above criteria.” A literal reading of that sentence could mean that those who adopted the EU Code recognized that national economic or commercial interests would weigh importantly in the decision-making process regarding any given arms sale, and may even trump the larger stated EU-wide interest in restricting problematic arms exports. Yet in the same sentence the provision effectively states that while national economic self-interest may compel a member state to sell, that state is expected not to do so to remain true to the principles of the EU Code.

3. A major oversight mechanism within the EU Code is Operative Provision 8, which requires that a *confidential* annual report is to be circulated by each EU member state to the other EU states dealing with its defense exports and its own implementation of the Code. These reports are to be discussed at an annual meeting of the member states where the operation of the EU Code is reviewed, and any “improvements” to it can be recommended to the EU Council. Subsequently, a public report is produced based on the submissions of individual EU members. However, the complete details of *actual arms exports* made by EU states are not set out in this public document, although the published annual reports made pursuant to Operative Provision 8 of the Code do provide *values of arms export licenses* issued, and values of deliveries made, if available, by the exporting country. A supplier list is also provided, giving a total of sales denials made, but not what *specific* weapon sale was denied, nor to whom. Individual states are free to give as much or as little detail in their national reports as they choose. Most have taken a minimalist approach. Furthermore, individual states have different arms trade licensing, data collecting and reporting practices, thus calling into question the accuracy of some of the data provided in the annual public report. In the most recent EU annual report on the Code, the Sixth, covering calendar year 2003, categories of military systems are indicated in the data tables. Yet this standardized reporting is still not universal among member states, given the varied export licensing systems and practices individual countries currently employ.²⁸

²⁷ Operative provision 6 of the EU Code states that the criteria in the Code and the consultation procedure provided for in the Code shall apply to “dual-use goods as specified in Annex 1 of Council Decision 94/942/CFSP as amended, where there are grounds for believing that the end-user of such goods will be the armed forces or internal security forces or similar entities in the recipient country.” As with sales of military equipment, the decision to grant or not grant a license for the sale of “dual-use” equipment is left to each EU nation to decide on its own.

²⁸ For details of individual EU member state arms data reporting practices see generally: Sibylle Bauer and Mark Bromley, The European Union Code of Conduct on Arms Exports: Improving the Annual Report. SIPRI Policy Paper No. 8. November, 2004. Stockholm International Peace Research Institute, found at [<http://www.sipri.org/contents/armstrad/PP8>].

ARMS EXPORTS AUTHORIZED FOR CHINA BY EUROPEAN UNION MEMBER STATES

The European Union has published official documents which provide general data regarding the total values of EU member states' arms exports licenses to China. Some countries provide the total values of actual exports. There is no uniformity in this reporting across the membership of the EU. As noted above, these annual reports are made pursuant to Operative Provision 8 of the EU Code. The most recent two reports provide data for calendar years 2002 and 2003 (the Fifth and Sixth reports respectively). What follows are the data from those reports for *arms export licenses* for China as approved by named EU countries in rank order of their license values, together with the total license values of the European Union as a whole.²⁹

CY2002: Total value of export licenses approved for China (expressed in Euros):

France—105,431,246
 United Kingdom—79,500,000
 Italy—22,836,976
 Austria—2,025,925
 All European Union countries—209,794,157

CY2003: Total value of export licenses approved for China (expressed in Euros):

France—171,530,641
 Italy—127,128,192
 United Kingdom—112,455,000
 Czech Republic—3,610,819
 Germany—1,096,261
 All European Union countries—415,820,913

In the Sixth annual report, made in accordance with Operative Provision 8, the EU for the first time breaks down the export data by EU Common Military List category.³⁰ So, for those states whose licensing systems categorize their arms export licenses in detail, it is possible to get a sense of what general types of military equipment are being licensed. These data do not provide information on EU members' transactions involving dual-use equipment and items—and there is no publicly available official source that provides details on such transactions. This EU report does cover the broad spectrum of military equipment licensed for export by the European Union of EU Common Military List categories. See Appendix 2 for a detailed descriptive summary of these EU Military List categories. This descriptive list uses an abbreviation scheme whereby a number is attached to a specific category of military equipment, and this number/category is given in the license data table to indicate the value of licenses granted for sales of that specific category. For example, ML10 is: "Aircraft, unmanned airborne vehicles, aero-engines and "aircraft" equipment, related equipment and components, specially designed or modified for military use.

The United Kingdom provides no detailed breakdown of its licenses in the Sixth report since the way its standard export licenses are valued in its licensing system currently preclude this. The same is true for Italy, and the Czech Republic. However, France and Germany are able to break down the categories of their licenses for purposes of the EU report. The data in the report indicate that the largest share of French license approvals for China in 2003 were in categories ML11—electronic military equipment (98.5 million Euros), ML10—aircraft and related equipment (45.4 million Euros), and ML15—imaging or countermeasure military equipment (24.1 million Euros). In the case of Germany, its largest share of license approvals for China in 2003 were in categories ML14—specialized military training equipment or simulators (528 thousand Euros), ML11—electronic military equipment (433.1 thousand Euros), and ML21—software for items controlled in the EU Common Military List (134.4 million Euros).

Thus, most of the arms exports authorized for China by EU members have been made by France, the United Kingdom and Italy. The Czech Republic, Austria, and Germany granted substantially smaller valued licence approvals.

United States Concerns

As the European Union has moved towards lifting the existing embargo on arms exports to China in recent months, significant emphasis has been placed by some EU members on the proposition that the European Union's Code of Conduct on Arms Exports, with additional modifications, would be a more effective control device than the existing embargo on arms exports to China. At the same time, some EU members have argued that ending the existing arms embargo on China would

²⁹2003 O.J. December 31, 2003 (C320) 9, 14, 30, 42. The Sixth report is found at Official Journal C316, December 21, 2004, pp. 001–215.

³⁰Ibid.

acknowledge that some progress has been made in China since the 1989 Tiananmen Square actions that originally led to the embargo. The U.S. Government, however, remains skeptical that a strengthened EU Code would provide an effective deterrent to increased arms sales to China.

The United States' objections to the lifting of the European Union's arms embargo on China center on three major concerns. First, the United States is concerned that China would use EU member state weapons or weapons technology to enhance the capability of China's military by providing them with items they could not obtain elsewhere, including from their principal arms supplier, Russia, or from other non-EU suppliers, such as Israel. Such items could include electronic warfare equipment, command and control systems and technology, advanced communications equipment, radar, sonar, avionics, and fire control systems. Advanced air-to-sea and air-to-ground missiles might also be obtained. A number of the above items could contain advanced, state-of-the-art technology which could be used to upgrade existing Chinese air and naval weapons systems. Should China obtain high technology items such as these from EU sources, the United States military operating in Asia could face a notably increased threat from the Chinese military as they conduct their operations in areas close to China and to Taiwan, a capability China has been pursuing in recent years. Second, the United States is concerned that through EU arms exports, China could secure sufficient enhancement of its military equipment and capabilities that it could be emboldened to seriously threaten Taiwan in its continuing dispute over Taiwan's political status. Such an event could increase Sino-U.S. tensions and increase the prospects of a military confrontation between the two countries. Third, the United States believes that China has not seriously addressed the human rights violations against its own people since the 1989 Tiananmen Square events, and therefore, the arms embargo should not be lifted until significant steps to improve human rights in China have taken place.³¹

The President and senior Bush Administration officials have made such arguments to the European Union membership. During Secretary of State Condoleezza Rice's European trip in February 2005, Secretary Rice stated, on February 9, that with respect to the arms embargo, that "human rights concerns need to be taken into consideration in any decision that was tied to Tiananmen," noting that the status of the 2,000 Tiananmen prisoners had not been resolved. She added that she had "made clear our concerns about the military balance, the fact that there are still American forces in that region, and about the need to be concerned about the transfer of technology that might endanger in some way that very delicate military balance."³² The U.S. House of Representatives had earlier raised such concerns through passage of H. Res. 57 on February 2, 2005, in which the House strongly urged the EU not to lift the arms embargo on China. During his European trip, on February 22, 2005, President Bush noted that "[T]here is deep concern that a transfer of weapons [to EU states] would be a transfer of technology to China, which would change the balance of relations between China and Taiwan. . . ." The President stated that European leaders had informed him that they could develop a "protocol" that could address U.S. concerns. He added . . . "whether they can or not, we'll see." The President also said that when the Europeans settled on the new code of conduct, they would have to "sell it to the United States Congress."³³ Senator

³¹Robert J. Saiget, "China Will Upgrade Technology if EU Lifts Arms Embargo," *Agence France Presse*, December 15, 2004; *Agence France Presse*, December 17, 2004, "EU Leaders Hint at June Date for Lifting China Arms Ban"; Joe McDonald, "End to European Ban Could Make Little Difference to China's Arms Ambitions," *Associated Press*, February 7, 2005; John Rossant and Dexter Roberts, "An Arms Cornucopia for China? Europe Will Probably Lift Its Embargo, But Companies Will Be Careful What They Sell," *Business Week*, February 21, 2005, p. 26; Eric Schmit, "Rumsfeld Warns of Concern About Expansion of China's Navy," *New York Times*, February 18, 2005, p. 9; Daniel Blumenthal and Thomas Donnelly, "Feeding the Dragon, Hurting the Alliance," *Washington Post*, February 20, 2005, p. B5.

³²Transcript of remarks by Secretary of State Condoleezza Rice at February 9, 2005 news conference with European Commission President Jose Manuel Barroso. Federal Document Clearing House. CIA Director Porter Goss and Vice-Admiral Lowell E. Jacoby, DIA Director, in testimony before the Senate Select Committee on Intelligence on February 16, 2005 both took note of Chinese military modernization efforts, which they concluded were affecting the military balance of power in the Taiwan Strait. This modernization effort, they said, was improving the capabilities of China's military to threaten U.S. forces in the region, as well as its capability to take military action against Taiwan, should China choose to do so. Statements at the committee's website: [<http://intelligence.senate.gov>].

³³[<http://www.whitehouse.gov/news/releases/2005/02/print/20050222-3.html>] gives text of President Bush's press conference of February 22, 2005 in Brussels at NATO headquarters; Elisabeth Bumiller, "Bush Voices Concern on Plan to Lift China Arms Embargo," *New York Times*, February 22, 2005, p. A1, A10; for House debate on H. Res. 57 see *Congressional Record*, February 2, 2005, pp. H299-H303 [daily edition]. The full text of H. Res. 57 is at page H299.

Richard Lugar, Chairman of the Senate Foreign Relations Committee, in a press interview noted the implications of not addressing Congressional concerns on the issue, reportedly stating: “The technology the U.S. shares with European allies could be in jeopardy if allies were sharing that through these commercial sales with the Chinese.” He further said that if the lifting of the EU arms embargo on China resulted in such a diversion, he would support restrictions on sales of American arms technologies to Europe.³⁴

Status of European Union Action

Based on the directive given to the Luxembourg Presidency of the EU during the European Council meetings on December 16 and 17, 2004, the EU expects to review a report on the issue of lifting the Chinese arms embargo during the first half of 2005, and could address the matter as early as March 2005 at the meeting of the European Council scheduled for that month. A formal EU decision is not expected until May or June 2005. Since the European Council has already stated its “political will to continue to work towards lifting the arms embargo,” the prospects of it doing so when the issue is formally addressed are high.³⁵ What is not clear, should the EU lift the Chinese arms embargo, is what will be the nature and scope of “the revised Code of Conduct, and the new instrument on measures pertaining to arms exports to post-embargo countries”—what is referred to by the EU as the “Toolbox.” The details of any such changes to the Code of Conduct will not be known until the EU announces them. Internal consultations among EU members on this question are continuing. What is reasonably clear is that the issue of lifting the EU embargo on Chinese arms has become a contentious issue in U.S.–EU relations and could have important implications for future cooperation between the U.S. and EU member states in the military sphere, if the U.S. becomes convinced that military technology shared with EU nations could end up being transferred to China in a post-embargo period.

APPENDIX 1—EUROPEAN UNION CODE OF CONDUCT ON ARMS EXPORTS

Adopted on 8 June 1998 by Council of the European Union.³⁶

BUILDING on the Common Criteria agreed at the Luxembourg and Lisbon European Councils in 1991 and 1992,

RECOGNIZING the special responsibility of arms exporting states,

DETERMINED to set high common standards which should be regarded as the minimum for the management of, and restraint in, conventional arms transfers by all Member States, and to strengthen the exchange of relevant information with a view to achieving greater transparency,

DETERMINED to prevent the export of equipment which might be used for internal repression or international aggression or contribute to regional instability,

WISHING within the framework of the Common Foreign and Security Policy (CFSP) to reinforce cooperation and to promote convergence in the field of conventional arms exports,

NOTING complementary measures taken against illicit transfers, in the form of the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms,

ACKNOWLEDGING the wish of Member States to maintain a defence industry as part of their industrial base as well as their defence effort,

RECOGNIZING that States have a right to transfer the means of self-defence, consistent with the right of self-defence recognized by the UN Charter,

HAS DRAWN UP the following Code of Conduct together with Operative Provisions:

CRITERION ONE

Respect for the international commitments of Member States, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations.

An export licence should be refused if approval would be inconsistent with, inter alia:

³⁴ Edward Alden and Demetri Sevastopulo, “Lugar Makes Threat on EU Arms Sales to China,” *Financial Times*, February 21, 2005.

³⁵ Council of the European Union, 16/17 December 2004. Presidency Conclusions. 16238/1/04 REV 1, p. 19. Published February 1, 2005.

³⁶ Source: Council of the European Union, European Union Code of Conduct on Arms Exports, document 8675/2/98 Rev 2, Brussels, 5 June 1998.

- (a) The international obligations of Member States and their commitments to enforce UN, OSCE and EU arms embargoes;
- (b) The international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- (c) The commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;
- (d) The commitment of Member States not to export any form of anti-personnel landmine.

CRITERION TWO

The respect of human rights in the country of final destination.
Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States will:

- (a) Not issue an export licence if there is a clear risk that the proposed export might be used for internal repression;
- (b) Exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU.

For these purposes, equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with paragraph 1 of the Operative Provisions of this Code, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

CRITERION THREE

The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.

Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

CRITERION FOUR

Preservation of regional peace, security and stability.

Member States will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim.

When considering these risks, Member States will take into account inter alia:

- (a) The existence or likelihood of armed conflict between the recipient and another country;
- (b) A claim against the territory of a neighboring country which the recipient has in the past tried or threatened to pursue by means of force;
- (c) Whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient;
- (d) The need not to affect adversely regional stability in any significant way.

CRITERION FIVE

The national security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.

Member States will take into account:

- (a) The potential effect of the proposed export on their defence and security interests and those of friends, allies and other Member States, while recognizing that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;

- (b) The risk of use of the goods concerned against their forces or those of friends, allies or other Member States;
- (c) The risk of reverse engineering or unintended technology transfer.

CRITERION SIX

The behavior of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law.

Member States will take into account inter alia the record of the buyer country with regard to:

- (a) Its support or encouragement of terrorism and international organized crime;
- (b) Its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts;
- (c) Its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One.

CRITERION SEVEN

The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions.

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:

- (a) The legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity;
- (b) The technical capability of the recipient country to use the equipment;
- (c) The capability of the recipient country to exert effective export controls;
- (d) The risk of the arms being re-exported or diverted to terrorist organizations (antiterrorist equipment would need particularly careful consideration in this context).

CRITERION EIGHT

The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.

Member States will take into account, in the light of information from relevant sources such as UDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They will consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

OPERATIVE PROVISIONS

1. Each Member State will assess export licence applications for military equipment made to it on a case-by-case basis against the provisions of the Code of Conduct.
2. The Code of Conduct will not infringe on the right of Member States to operate more restrictive national policies.
3. Member States will circulate through diplomatic channels details of licences refused in accordance with the Code of Conduct for military equipment together with an explanation of why the licence has been refused. The details to be notified are set out in the form of a draft pro-forma set out in the Annex hereto. Before any Member State grants a licence which has been denied by another Member State or States for an essentially identical transaction within the last three years, it will first consult the Member State or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant a licence, it will notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning. The decision to transfer or deny the transfer of any item of military equipment will remain at the national discretion of each Member State. A denial of a licence is understood to take place when the Member State has refused to authorize the actual sale or physical export of the item of military equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, a notifiable denial may, in accordance with na-

tional procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order.

4. Member States will keep such denials and consultations confidential and not use them for commercial advantage.

5. Member States will work for the early adoption of a common list of military equipment covered by the Code of Conduct, based on similar national and international lists. Until then, the Code of Conduct will operate on the basis of national control lists incorporating where appropriate elements from relevant international lists.

6. The criteria in the Code of Conduct and the consultation procedure provided for by paragraph 3 of these Operative Provisions will also apply to dual-use goods as specified in Annex 1 to Council Decision 94/942/CFSP,³⁷ where there are grounds for believing that the end-user of such goods will be the armed forces or internal security forces or similar entities in the recipient country.

7. In order to maximize the efficiency of the Code of Conduct, Member States will work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of conventional arms exports.

8. Each Member State will circulate to other Member States in confidence an annual report on its defence exports and on its implementation of the Code of Conduct. These reports will be discussed at an annual meeting held within the framework of the CFSP. The meeting will also review the operation of the Code of Conduct, identify any improvements which need to be made and submit to the Council a consolidated report, based on contributions from Member States.

9. Member States will, as appropriate, assess jointly through the CFSP framework the situation of potential or actual recipients of arms exports from Member States, in the light of the principles and criteria of the Code of Conduct.

10. It is recognized that Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the above criteria.

11. Member States will use their best endeavors to encourage other arms exporting states to subscribe to the principles of the Code of Conduct.

12. The Code of Conduct and Operative Provisions will replace any previous elaboration of the 1991 and 1992 Common Criteria.

ANNEX

Details to be notified

[name of Member State] has the honor to inform partners of the following denial under the EU Code of Conduct:

Destination country:

Short description of equipment, including quantity and where appropriate, technical specifications:

Proposed consignee:

Proposed end-user (if different):

Reason for refusal:

Date of denial:

APPENDIX 2—BRIEF DESCRIPTIONS OF EU COMMON MILITARY LIST CATEGORIES³⁸

ML1 Smooth-bore weapons with a caliber of less than 20 mm, other arms and automatic weapons with a caliber of 12,7 mm (caliber 0,50 inches) or less and accessories, and specially designed components therefor.

ML2 Smooth-bore weapons with a caliber of 20 mm or more, other weapons or armament with a caliber greater than 12,7 mm (caliber 0,50 inches), projectors and accessories, and specially designed components therefor.

ML3 Ammunition and fuze setting devices, and specially designed components therefor.

ML4 Bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, specially designed for military use, and specially designed components therefor.

³⁷ (1) OF L367, 31.12.1994, p. 8. Decision as last amended by Decision 98/232/CFSP (OJ L92, 25.3.1998, p. 1).

³⁸ See OJ C314 of December 23, 2003 for the full EU Common Military List. Sixth Annual report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports. Official Journal C316, December 21, 2004, pp. 1–215.

ML5 Fire control, and related alerting and warning equipment, and related systems, test and alignment and countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor.

ML6 Ground vehicles and components.

ML7 Chemical or biological toxic agents, "tear gases," radioactive materials, related equipment, components, materials and "technology."

ML8 "Energetic materials," and related substances.

ML9 Vessels of war, special naval equipment and accessories, and components therefor, specially designed for military use.

ML10 "Aircraft," unmanned airborne vehicles, aero-engines and "aircraft" equipment, related equipment and components, specially designed or modified for military use.

ML11 Electronic equipment, not controlled elsewhere on the EU Common Military List, specially designed for military use and specially designed components therefor.

ML12 High velocity kinetic energy weapon systems and related equipment, and specially designed components therefor.

ML13 Armored or protective equipment and constructions and components.

ML14 Specialized equipment for military training or for simulating military scenarios, simulators specially designed for training in the use of any firearm or weapon controlled by ML1 or ML2, and specially designed components and accessories therefor.

ML15 Imaging or countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor.

ML16 Forgings, castings and other unfinished products the use of which in a controlled product is identifiable by material composition, geometry or function, and which are specially designed for any products controlled by ML1 to ML4, ML6, ML9, ML10, ML12 or ML19.

ML17 Miscellaneous equipment, materials and libraries, and specially designed components therefor.

ML18 Equipment for the production of products referred to in the EU Common Military List.

ML19 Directed energy weapon systems (DEW), related or countermeasure equipment and test models, and specially designed components therefor.

ML20 Cryogenic and "superconductive" equipment, and specially designed components and accessories therefor.

ML21 "Software" specially designed or modified for the "development," "production," "use" of equipment or materials controlled by the EU Common Military List.

ML22 "Technology" for the "development," "production" or "use" of items controlled in the EU Common Military List, other than that "technology" controlled in ML7.

The CHAIRMAN. Well, thank you very much, Dr. Grimmatt.

I will ask a couple of questions and then I will ask my colleague, Senator Biden, to ask some questions. We will continue until duty calls on the floor for these rollcall votes regarding the budget that the Congress is discussing, the Senate more particularly.

Let me start by pointing out that we really would hope that the Europeans might consider Asian security, and our policies toward Taiwan and China. Nonproliferation is important for all the countries involved in the war against terrorism. You have suggested, Dr. Grimmatt, moral imperatives. Clearly that dictates the eight conditions that you listed in terms of our screening.

At a luncheon, today, sponsored by the Ripon Society as a part of their ambassadorial roundtable, I heard a talk, after I gave one, on this subject from Dr. Bruton, the former Prime Minister of Ireland who is now an Ambassador to the United States. He accompanied the delegation that Senator Biden mentioned. He visited him and visited me and visited with many people in this city this week. He is very articulate on these subjects.

He suggested that one method of proceeding is not inconsistent with what you have suggested; namely, that we have never thought together with Europe about Asian policy, that we have thought a

great deal about our relations with Europe, even Africa, and more recently the Middle East under some duress, but that we have not ever come together to really think through how we think about Asia. This is a good time to do that, and I think we would agree.

I hope that maybe, in the new spirit that has been initiated through our President visiting the EU and NATO and what have you, that the agenda might be broadened to discuss common policies on Asia, in addition to these moral imperatives and non-proliferation concerns.

Now, you have all made the point that essentially indigenous supplies of arms are not what we cover. We are talking about things in which we believe there is an American component, something that is highly classified or important. How large, as you have cited these arms sales by European countries, are the indigenous arms? What part does that play now? To what extent are we so integrated in most of our systems that there are American components, some American intellectual property? In other words, if we were to go into a strict separation of this, and we were to withdraw whatever we have, what does that mean to Europe in terms of its own defense, quite apart from whatever it may want to export to China or others? Does anyone have any thought about that?

Dr. GILL. Let me respond just very quickly to a couple of your remarks, Mr. Chairman.

First, I am very encouraged to hear that both European and American sides recognize the importance of regularized dialog and discussion about Asia and China. It is my understanding in the past, while some of these discussions have been carried out, it has not been done on a regularized basis, more on an ad hoc basis and often involving not really the right experts in the room. I think our East Asia experts need to go talk to the East Asia experts in Europe and vice versa rather than our European experts talking to one another about Asia, if you see my point.

There have been some academic and think-tank consultations of this type over the past 3 to 5 years and have involved, from time to time, mid-level serving officials traveling in their unofficial capacity, and that has been very useful. I think we should hope to expand that, but more importantly, to make sure that it is regularized and occurring often enough that these sorts of issues can be caught.

On the second point, I think this is precisely the kind of work that perhaps could be tasked out of this committee to look very, very carefully at precisely the questions you ask because it is my sense that the internationalization of the global arms industry is such that it will become, over time, increasingly difficult to make those fine distinctions between so-called indigenous and so-called joint weapons programs. It may be possible to undertake some kind of research and get answers to questions that you are looking for, but I think the longer we wait, the more difficult it is going to be to make those kind of distinctions.

Dr. GRIMMETT. I would just add, Mr. Chairman, that for the moment, a good deal of the export trade we have in weapons to Europe involves pretty sophisticated technology and items that we make that they cannot make, or items they buy and integrate into a number of defense systems. We have some advanced projects un-

derway right now. The Joint Strike Fighter is one that comes to mind. There are, obviously, a lot of smaller sales of a variety of things. But we retain some rights to the contents that we sell. That is why the buyers have to sign a no-retransfer provision when they sign any contract for a small item or a big item.

So in the meantime, until we get to the point that Dr. Gill referred to where everything in defense production has gotten to be so internationalized in terms of its total content, we still have some control of those things we sell. I think it is still a matter of concern as to how we might be able to affect foreign sales of advanced items, integrated or developed solely as indigenous products. I would be hard-pressed to give you, off the top of my head, a significant European defense product that has some American content in it at this time over which we can't claim control. Now, that may change, but I think currently that is not the case.

The CHAIRMAN. Now let me quickly ask the second question. At this luncheon that I cited and just enjoyed, there were ambassadors from countries that shall remain nameless in Europe who do not sell any arms to anybody. As a matter of fact, they do not have very large—

Senator BIDEN. You kind of narrowed the scope pretty quickly, almost to the point of identifying them. [Laughter.]

The CHAIRMAN. In any event, the point is that you have talked about unanimous votes of the EU. Let us say that the EU tries to get together and think through what sort of a policy we are going to have. Some countries might say, well, we do not really have a dog in the fight, as a matter of fact. We are not going to be selling anything to China, and we value our relationship with the United States.

So, where are we then? Now, you could say, well, we are back where you have cited, with hundreds of millions of dollars of sales under various categories that these countries are making. Or maybe they have never really considered, nor maybe have we, precisely what the doctrine is. So, we all signed up, and we understood our constitutional principles here. Rather, it may have been more of an ad hoc interpretation, country by country, as it stands.

But if we were to say to our friends in Europe, fair enough, if the EU, the EU all together, unanimously, has a policy, that is interesting, but are all of you really in the same situation? My guess is not. What is your interpretation of that?

Dr. GILL. I take your point that some countries do not have a dog in the fight. They are not interested. They do not even have arms producers to be concerned about lifting the embargo. I think that is the wrong way to look at this. Lifting the embargo is not about selling arms to China. It really is not ultimately. I think it is about much bigger things, about a better economic relationship, about trying to, in the Europeans' mind, treat China in a way that can draw them into the international community. So, for those countries that do not have an arms production capacity, a vote "yes" on lifting the embargo is not going to be about the possibility of selling weapons. It is going to be about a belief in this larger sense that by lifting it and replacing it with something stronger, it is going to improve the overall relationship they can have with China going forward.

The CHAIRMAN. Well, I agree with you, and I think Senator Biden has indicated that, too. This has been taken in some quarters as a rather cynical way of looking at it. Some say this is purely an arms control type of thing, national defense. What an undercutting thought that, in fact, we are talking about commercial sales, and just regular old trade and competitive elements, and utilizing something that we think is very serious, in terms of potential harm to our Armed Forces or to things in foreign policy that we value. That, I suspect, has to become a more important part of the dialog. It is not a cynical view. It may, in fact, come to reflect a sense of considerable realism about people who have no arms and, as you suggest, still might like a little trade with China and would be willing to come under the umbrella of this advantage.

Mr. BROOKES. This is also the third side, Mr. Chairman, of the triangle: What does China want out of this? Obviously, we are talking about the United States and Europe and the commercial aspects of it and advantages potentially to Europeans by lifting this, which has a symbolic side to it as well. But what China is going to try to pull out of this relationship through joint ventures, forced technology transfers, commercial dual-use technologies, are the things we really need to worry about.

They can get a lot of large weapons systems right now from the Russians, but China ultimately wants to be self-sufficient in its military industrial complex, and wants to be able to challenge the United States militarily in the out-years in Asia. That is something we need to be concerned about. So, we have to think about what is China going to try to get using its own methods from the Europeans to support its own military industrial complex. So, it is not just a matter of the United States and the Europeans, as you know, but there is the third side of the triangle that we have to, obviously, keep in mind at all times, and so do the Europeans.

The CHAIRMAN. Thank you.

Senator Biden.

Senator BIDEN. Thank you.

I would like to just touch on three seemingly disparate aspects of this issue.

The first one is the one that the chairman raised, which I think is the single most important one, and that is, that without ascribing blame or responsibility, the fact is, from my perspective, we lost a lot of time in the last 4 years of not doing what we should have been doing with Europe and because of misunderstandings, misstatements, individual European countries taking advantage of mistakes we made, us taking advantage of mistakes they made, and us all ending up worse off.

The President has initiated what appears to be a new spirit in terms of our relationship. I take him at his word. I have praised his efforts since his second inauguration. I think his large prescription for advancing freedom is what we should be talking about and should be doing. I noted that an article—I do not know what newspaper it was in Germany, but a Green newspaper—said after Bush's inaugural address, "Bush threatens freedom," which tells us a little bit about the messenger, rather than the message, I think.

But the bottom line of all this is, to paraphrase—my staff is tired of hearing me say this—Yates, writing about Ireland in 1916, said,

“the world has changed. It has changed utterly. A terrible beauty has been born.” The world has changed utterly in the last 10 years, and we have, unlike in the previous 50 years, had very little regularized, consistent, hard-nosed discussion dealing with consequential topics with our European allies. That we do not have regularized meetings at the subcabinet level on a monthly basis, working out everything from the notion of preemptive use of force to a China policy, is, I think, close to criminal. It is understandable how we got here, but close to criminal that we are not trying to do that because, maybe I am a little too optimistic, but I am convinced that the value set that propels our European friends and us is essentially the same. We may disagree, and we do. Every think tank from Brookings to Heritage, to Cato writes about our differences on choice, our differences on the death penalty, our differences on religion, et cetera, that is all true. But the core questions, the core value set that propels our democracies, I do not think are very much different. And we have not done any real hard thinking or discussion as the world has changed. We have not gone down and done the same kind of rigorous intellectual debate, discussion, seeking consensus that we did in the fifties after World War II and through the sixties, I think. That is just my view.

So, I think the chairman is correct about this idea, as I understood it, that this, maybe, should be another wake-up call that real hard-nosed discussion is needed. I do not mean even bargaining. I just mean an honest debate with our counterparts in the EU, which is not a defense establishment, and NATO, most of the members of which are members of the EU as well. This is something that we should be getting underway.

Intellectuals like yourselves and the think tanks, I respectfully suggest, have great influence on us. You have great influence on administrations, and I mean left, right, and center, although I do not know any left think tanks these days, but center and right. I wish there were.

But all kidding aside, I really think—this is a bit of proselytizing here—it would be a useful thing for us to be generating discussion about this notion of a regularization of discussions with our European allies of what we know are the main issues on the agenda. If you know anything about foreign policy and international economic policy, they are sitting right there, issues yet to be resolved and, I would argue, resolvable with honest intentions, which I presume with regard to our friends, and if serious intellectual horsepower is put to work on them.

I have been trying to figure out how, from a legislative perspective, you can promote that. I do not know how to do that. Institutionally we are not built for that purpose. We can try to do it, as the chairman has in trying to—and I have joined him, but it has been him trying to figure out post-conflict resolution issues. It is a genuine effort. He has gotten the administration involved. He has gotten people to participate who hold office now, et cetera. But it needs to be much larger than just here.

So I respectfully suggest that you all talk about that, because you influence us. Your organizations, not that you are all CRS, are organizations we rely on heavily.

But that leads me to my second point here. In the past, our relationships with our European friends in particular were so good, although we had bumps in the road all the time from neutron bombs to Pershing missiles—there have always been disagreements and sometimes serious. But there was a sense, in the first 28 years I was a Senator, that there was an inevitability to consensus. It did not mean that, but there was that notion that, we would end up on the same page because we talked a lot about it. And we were accustomed to dealing from capital to capital. If you got the German Chancellor to agree with the American President, there was no need to talk to the German people, which leads me to this point. I will start with you, Mr. Grimmett, if I may, because you just recently made a little tour. Right? You were on the road.

Dr. Haltzel of my staff translated for me from German, because I do not read or speak German, a letter that was addressed to Chancellor Schroeder from leading members of the FDP, the CDU, the SPD, and the Greens, signed by four specific members of the European Parliament. These are members of each of the parties within Germany.

They are opposed to this change in policy on the part of Germany and the EU generally. They talk about human rights. They talk about the impact on the strategic stability in Northeast Asia, and they talk about transatlantic relations.

I will ask unanimous consent this letter be placed in the record, Mr. Chairman.

The CHAIRMAN. The letter will be placed in the record.

[The letter follows:]

STRASBOURG, MARCH 7, 2005.

Mr. GERHARD SCHRÖDER,
The Federal Chancellor of the Federal Republic of Germany,
Federal Chancellor's Office, 11011 Berlin.

DEAR MR. CHANCELLOR: It is with great concern that we—Members of the European Parliament of the CDU, SPD, FDP, and the Greens—observe the efforts of the [German] Federal Government in the European Council to lift the weapons embargo against the People's Republic of China.

1. We are worried about human rights in China. The embargo was instituted after the brutal suppression of the freedom movement on Tienanmen Square. Participants in this peaceful democracy movement are still being held in captivity, and there is no reason to believe that they are being treated better than the other prisoners in penal and reeducation camps who are, in part, being treated in a degrading manner.

2. We are worried about strategic stability in northeast Asia. The region is the site of two serious international crises: the one in North Korea, the other concerning Taiwan. Other territorial questions such as the Kuriles and the Spratley Islands also remain unresolved. In the region there are no security structures in which dialogues are being pursued and conflicts peacefully settled. All multilateral organizations are significantly weaker than comparable European structures.

3. We are worried about transatlantic relations. The just completed visit of President Bush offers the chance to overcome the tensions of the last few years between Europe and the U.S.A. The U.S. House of Representatives voted 411 to 3 against the lifting [of the China arms embargo] and in concrete terms threatened a worsening of relations. This is understandable since the U.S.A. guarantees the security of Japan, Taiwan, and South Korea according to the wishes of those countries' governments. Therefore, the United States has a legitimate interest in special consideration of its interests in this region.

The lifting of the arms embargo would be a contradiction to a consistent human rights policy, to a strategically farsighted foreign policy, and to transatlantic soli-

parity. For all these reasons we call on you publicly and in the Council to speak out against a lifting of the arms embargo.

Sincerely,

Count ALEXANDER LAMSDORFF,
ELMAR BROK, ERIKA MANN, CEM ÖZDEMİR.

Senator BIDEN. Now, here is the reason why I raise the issue. I do not know this to be the case, but through interlocutors and public officeholders in Germany, we are told—my staff has been told—that their estimate is—and they range across the party spectrum—that if this came up for a vote in the Bundestag—the assertion was made by a well-respected member of the Bundestag to us—the vote would be 80/20, 80 percent against lifting the embargo; 80 against, 20 for. Now, I do not know that to be true, which raises this question, a long way to get to a very basic question.

I realize this may be above your pay grade and mine in terms of expertise. But it seems to me one of the reasons why we need a much more aggressive public diplomacy program is to be able to make our case to the German population, to the French population, to the British population in order to connect with them about our motives and characterize our position in a way in which, I believe, having been in and out of Europe a lot the last 33 years, the majority of Europeans would agree with us.

Am I missing something here, Doctor? What is your sense? I know you are not a pollster. I know this is not your expertise. What is your sense? If each of you would chime in. What is your sense about whether or not we are really that far off from our European friends, meaning the populations in the EU, or is this driven by, in part, as happens here, special interest requirements that lead one to believe that it is more important to sell Airbus—I am overstating it in the interest of time; it is not fair, but I am trying to figure out how to summarize this notion—that you have got to do this to give a leg up on Airbus, say, versus Boeing. Because everybody has to be looking at this gigantically expanding Chinese economy as the ultimate enchilada, that this is the place, man. You have got to get there whether it is insurance you are selling or whether you are selling commercial aircraft or you are selling widgets. Would you be willing, any one of you, to be crazy enough to respond to those general propositions I have laid out?

Dr. GRIMMETT. I guess if we can define the frame of reference, the answer will not be too far off the mark. I could just say, based on my experience as a senior staffer over the years, traveling back and forth to Europe and talking with people in the political elites, you get one perception because these people are focused on the issues and they have got some kind of a context with which to work.

On the other hand, you hear these casual comments from them. Even though it sounds like an urban legend—they'll say, "well, I do not agree with your government's policy, but I like Americans." You hear that all the time. I can honestly say that I have actually had people say that to me personally, outside of an official context, and I think it is true.

With respect to the specific question that is before the committee today, I have been somewhat surprised at the level of misunderstanding in the EU of where we are coming from on this particular issue. I do not think it is necessarily a function of people not want-

ing to understand what the various positions are and the rationale. When you get down to the details, start talking to people, and get past the initial shock of why we seem to be going off in such divergent paths on something so fundamental as this, I think you grasp there is a difference in political culture in Europe compared to the United States. That is just a part of the explanation. They have parliamentary systems. They have a series of histories that are different from ours. We have had a government that has evolved in a certain way, and the way that people here interact politically is different. They are more consensus driven in the EU. It is very important for them to take a variety of peoples' views on board. And that is why, if you think about the unanimity principle in the EU, any one EU nation can, theoretically, block nearly anything.

Senator BIDEN. I am taking too much time, Mr. Chairman, I realize. But here is my worry. Maybe if I articulate the worry, you may be able to allay it or give me some sense of how we should respond.

I am worried about the instinct here, because of the different sort of political cultures here, for us to say, "hey, wait a minute. They have all American components in all these various systems. So if you go ahead and sell, we are going to go ahead and we are going to essentially embargo you." And that will be read, wrongly, I believe, in Europe among populations at large as the unilateral United States dictating policy, deciding to use its economic, political, and military strength to try to determine an outcome when, in fact, I think to overstate it, if our position were accurately articulated on every major talk show in Europe, the average European sitting there listening would go, "that makes sense." I know why they are concerned. I do not want my scenario to happen. I do not want the balance to change in Northeast Asia, either; I do not want that to happen. I am worried about it. That is what I am trying to drive at.

Dr. GILL. There have been resolutions passed in several parliaments in Europe, including the Bundestag, the European Parliament. Even the House of Commons has passed nonbinding resolutions opposed to the idea of lifting. So the general point that you are making is absolutely right.

It also, I think, underscores the point that even if we have a tougher code of conduct and greater scrutiny, et cetera, et cetera, at the EU level, it is still not going to be legally binding in the way that it is in our country. So our efforts definitely have to be focused on the individual countries and their export control guidelines. We have to bring to bear the kinds of pressures that we can in bilateral contexts on certain countries of concern in Europe that we are worried about what they might do. So both in terms of a public policy, sort of the carrot and the sort of intellectual richness of our explanation on the one hand, but, I think, also the stick of pressure bilaterally needs to be brought to bear.

Senator BIDEN. It would be nice to inform their societies of our position, it seems to me. I have spoken too long. The doctor may want to respond.

Mr. BROOKES. I think there is a big difference between the populations and the governments in Europe on this issue. I have not met many people who really support the lifting of the arms embargo. I think this is being driven by the French and big business, and

that is what is driving this right now. Remember, when you talk about Europe, there are all sorts of—I do not think it is very popular in the UK. But the French are the dominant power in Europe, along with the Germans, and they are driving it, along with business interests.

Senator BIDEN. Maybe we should compete with their own constituency.

The CHAIRMAN. Thank you, Senator Biden.

The chair would just recognize that the first vote has started. Therefore, we are in that zone.

We have been joined by the distinguished chairman of our European Subcommittee, Senator Allen, and I want to recognize him. I would say to the Senator that when we get into the second half of the votes, I may even yield the chair to the Senator so that he can preside and conclude. But for the moment, I recognize him for his comments.

Senator ALLEN. Thank you, Mr. Chairman. I thank you and Senator Biden for having this hearing on a very important issue, and I thank all our witnesses for being here.

This hearing this afternoon is on an issue of great concern to many members of this committee on a bipartisan basis, as well as I believe all members of the Senate when they are confronting it. It is important for us to analyze how the removal of this embargo affects our own interests, our own security, as well as the symbol, the symbol it sends to the rest of the world.

I heard Mr. Brookes saying, well, this is being driven by economic reasons, financial reasons, and that is probably the case. I have met with European leaders, including those from the country of France in the last several weeks, heard their arguments. They talk about their toolbox and their code of conduct and how they are going to somehow make the controls tighter and more consistent. I will be frank with you, gentlemen, I am less than convinced that this is really an approach. Reality is that the embargo was put on because of Tiananmen Square and that massacre. What has changed since then in the People's Republic of China's Government? Nothing. It is still a recalcitrant government.

The collaboration issue on our arms, things such as the joint strike fighter and others. I think we need to examine what are we going to do in the future in the event that we have this joint effort, which makes sense with our NATO allies so that we get the best, they get the best, the training on the equipment, whether it is French, whether it is United States, whether it is British, maybe Italian, maybe German, that there is that cooperation. But how can we have any confidence in the future and what safeguards could be put into place that then these technologies, these systems, this equipment would then be transferred, sold to China.

I want to commend whoever wrote, Mr. Chairman, the briefing for this committee. What an outstanding piece that everyone should read. It is not just about Europe. It is about the growth in the military equipment and capability of the People's Republic of China, and it is not just missiles. It is not just aircraft. It is helicopters. It is submarines. And while we are cutting back on our Navy and cutting back in certain areas, it is something all Americans need to be aware of in the larger context.

So, here they are selling advanced equipment, new technologies to the Chinese. Look at China's latest efforts that are trying to use threats of duress and military might against the free will of the people of Taiwan. Japan is concerned. You add from their threats to the region, China also is a proliferator. They sell arms to belligerents, countries that are not friends of ours or our allies, and plus, they sell it to terrorist groups. They also prop up the North Koreans who are also notorious proliferators as well.

So, before we start any more advancements and joint military capabilities and construction and manufacturing, I think the ending of this embargo is going to put a big damper on it.

Then, finally, it is a message. What message does this send, even if they put in their codes of conduct and toolboxes and so forth, which really is again unconvincing to me in their arguments? But the message is that China, a country that has not made any demonstrable improvement or progress in protection of human rights, nonetheless, the Europeans are going to lift the embargo at virtually the same time the Chinese are enacting policies that are belligerent toward Taiwan, and Europe is considering making it easier for them to get more weaponry. Japan is concerned. So, what does that say to our allies, whether they are Japan, whether they are South Korea, whether they are our friends in Taiwan?

So, I do not know what can be done. I hope the Europeans will reconsider it. But, maybe, since the motivation is clearly one of financial rather than human rights—and that is the bottom line message that is sent, is the Europeans are more about business relationships, making sales, and finances than they do about human rights. There is no other conclusion that one could draw. I think the people of Europe, speaking to Senator Biden's comments, would actually care about human rights. They are sovereign countries, but they share many of our values, of course.

So the question is: As Europe is looking to compromise the concept of human rights for a sale, how can we get them possibly to reconsider, or at least, understand that if finances is what motivates them the most, how would transatlantic defense cooperation be affected by the EU's decision to lift the 1989 arms embargo with China? If they saw that as a greater negative, maybe they would find it not in their interest to do it.

From any of you all, what rational objective statement could we say, for example, on trade controls on their defense programs that—you take joint strike fighter or some other advanced weapons systems. Would any of those in your judgment be compromised by the lifting of this arms embargo because of the fear of the transfer of these capabilities? And, if any of them are, is there a quantifiable way that we could explain to our European friends that cooperation in the future will be lessened, therefore, trade with the United States will be diminished?

The CHAIRMAN. Let me intervene just briefly to give credit to Dr. Grimmert for the fine memo that you mentioned.

Senator ALLEN. Where is this gentleman?

The CHAIRMAN. Right here.

Senator ALLEN. You wrote this memo?

The CHAIRMAN. Well, he contributed very substantially to that, and we appreciate that.

Senator ALLEN. It is outstanding. I have been using it for a lot of other things other than this hearing.

Dr. GILL. Mr. Chairman, if I could respond to the Senator's question.

The CHAIRMAN. Let me just also yield the gavel to Senator Allen. Then please conclude the meeting, if you will.

I appreciate your testimony.

Dr. GILL. On the issue of the embargo, it is a little bit confusing to me in a logical sense. On the one hand, we are already unhappy with the Europeans that under the current so-called embargo they are providing the Chinese already with military technology. And yet, we are asking them not to lift the embargo. I do not understand that.

Clearly what we should be saying is your current embargo does not work and you need to do something to improve it, which is exactly what they claim that they will do. I would just slightly disagree and say that I do think that the current embargo, as it stands, is not effective, and they do need to take measures to strengthen it. We can only hope that they will. I guess I am more convinced than many that they will. They understand very clearly what is at stake in terms of relations with the United States, in terms of relations with their own populations, and in terms of their relations with important friends in the region such as Taiwan and Japan.

The current embargo is not going to work anymore. It never did very well, and asking them to keep it is really against our own interests to do that. We should be saying do something better than what you have got, and we can only hope that they will.

Mr. BROOKES. Senator Allen, I am not sure—you know, we have to disaggregate Europe, too, because we are dealing with different countries. The UK is often considered part of Europe. You are dealing with the French and Germans and Italians. Some of them have been supportive of us on security issues, obviously, in Iraq and other places. But in some senses, you have to look at it that if we are able to limit defense cooperation, it would have an effect on our joint strike fighter program, for example.

But I am not so sure that every European country considering the small amount many are spending on defense today, would really care. I know we are all casting about for ways to find some sort of way to, perhaps, punish the Europeans if they do not come along with us. I think one of the drivers for the Europeans is that they do not have any security responsibilities in Asia. The United States is the security structure in Asia right now based on our five bilateral alliances. So they are being driven by commercial issues and then probably human rights, but not security. You do not see the French Navy—there are some French Navy ships actually out in the South Pacific, but you do not see the French Navy like the United States 7th Fleet patrolling the waters of the Pacific. So they do not feel that the same way, emotionally, we do when we think about the Pacific Command, the 7th Fleet, our soldiers and marines in Japan and Korea. The Europeans do not have that same sort of feeling.

I am not sure that there is much we can do in that respect, but I think we should look at options to get them to come around by

limiting defense cooperation. But because a lot of them, if you see how little they are really spending on defense, I do not know if it would really make a big difference to them. Remember, the European defense industry is very beleaguered right now. They certainly might look for another market in China, but I am not sure how much effect that will really have on them ultimately.

Dr. GRIMMETT. Senator, as far as your basic question of how you might influence the EU on this, I can tell you the following. I just came back from an official trip to London. I was there for a week discussing this matter with a lot of people. And I can tell you, they got the message that people in the United States Government are upset about this. It is not that they are not seized of the fact that there are a variety of concerns such as those that have been laid out and articulated by yourself and the chairman and others about this whole larger strategic question.

Now, there was some level of confusion—maybe that is not the right word. I am not sure I know what the exact word would be, so I will go with confusion for now—as to why this issue was something that we let get to the place we are now; how this whole controversy evolved to the point that we seem to be going in significantly different directions. I find that a little worrisome because I think that there are enough people on both sides of the Atlantic that have talked about this issue and have talked about defense trade controls and export control systems. We have had talks on other issues, such as the ITAR waiver and things like that that have been going on for a couple of years. So, it was a bit surprising to me that there was a lack of appreciation of why this was going to be a very significant matter for the United States. But they certainly know it is now. Notwithstanding how we got to where we are today, they know now that the United States is very much concerned about this.

I think by that fact alone, you have got the predicate laid for a follow-on series of discussions and consultations to maybe resolve the issue in a way that would satisfy U.S. concerns. But those are matters above my pay grade. That is for policymakers—people in government with influence to address.

Mr. BROOKES. And I think, Senator, the Chinese passage of the anti-secession law on Monday may help our cause because it looks like—since the lifting of the arms embargo has been talked about for a long time—in fact, they actually thought they were going to lift the arms embargo last December during their China-EU summit. It got put off and now we are talking about June and who knows when now. But the Chinese may have seen it as a green light to move forward with the anti-secession law, and I think people are very concerned about that since they have kind of codified their policy—a less than peaceful policy toward Taiwan. So, it could have an affect on public opinion, as well as the opinion of legislators and officials in Europe since it passed on Monday.

Senator ALLEN [presiding]. That is a good point. That is a follow-on question. There have been loopholes in the existing embargo, but clearly the motivation here is not to make the embargo stronger. They may say, gosh, these codes of conduct and toolboxes will make it better. But, if you just look at what has been going on, you must admit that there has been an increase in sales.

Things have happened since last fall/last winter, such as with Japan being more concerned about Taiwan, their passage of this anti-secession act. Actually things were getting better with us transatlantically with our European friends, and actually the air flights back and forth from the People's Republic of China to Taiwan and so forth. And then they have come up with this anti-secession law which really is an irritant in the peaceful stand-off that has existed across the Taiwan Strait for many decades.

The question I have for you gentlemen, because I am going to have to wrap this up and vote, is that regardless of the embargo and its efficacy and protocols and standards of conduct, toolboxes, and all the rest and how this might affect our relationships with the Europeans in joint military ventures and so forth is: How will the human rights situation in China be affected by this? How will the Chinese portray this? My gut reaction is the Chinese will say, look, that was Tiananmen Square.

They do not allow people to celebrate Tiananmen Square or recognize it. I just came from the 40th anniversary of Selma, marching across the bridge in the civil rights pilgrimage. Could you imagine if in Selma and Alabama they did not allow people to recognize Bloody Sunday, which was like, for the civil rights movement, what the Alamo was for Texas independence? Could you imagine if that were not the case, that we could not reflect on what happened there and how we have progressed as a country? But in China's case, we cannot have any talk about Tiananmen Square.

How will they portray this? What will be the human rights impact on the people of China?

Mr. BROOKES. I think they will portray it as a victory. I think as much for China wants getting access to appropriate technology for their military industrial complex, they will see this as a major symbolic victory. They just had the passing of one of the major reformers, Zhao Ziyang, with very little fanfare about that. He was there at Tiananmen Square, and I think this will be another nail in the coffin on this issue of addressing the Tiananmen Square crackdown.

Now, that is not to say that human rights may not progress in China for other reasons, but I think that the Chinese certainly will see it as a symbolic victory. If you look at the State Department's most recent human rights report, it says that human rights is poor in China. I think that is the exact term, "poor," and serious human rights abuses continue. So I do not think that this will help the situation at all.

Dr. GILL. In terms of our discussions and dialogue with European friends on this, the human rights question is absolutely the weakest link in the European argument on this question. No doubt. I think it is one we ought to try to leverage even harder because I think we can agree that, by and large, European populations, as well as leaders, are attuned and sensitive to the need for the spread of democracy and human rights. They are. And we can point very clearly to the fact that on a number of specific requests made to the Chinese as a part of this whole arms embargo lifting business, the Chinese have not come forward and complied with what the Europeans are asking them to do.

In particular, Senator, I think Europeans had expectations that during the most recent National People's Congress a couple of weeks ago, the National People's Congress would consider and ratify the International Convention on Political and Civil Rights, which they did not. This is making some people in the European capitals rather unhappy. I think, again, by pressing on this human rights issue with our European friends, I think we can make a very strong case that the Chinese are not doing what the Europeans have asked them to do. And so, therefore, the notion of lifting the embargo or moving ahead into some different direction is not ripe. It is not ready.

I think it also would send a very strong signal to our Chinese friends that they are going to have to take some actions, some better concrete action, allowing access, for example, to the prisons by the International Committee on the Red Cross and other important steps before they can expect the Europeans to offer up this trophy of lifting the embargo.

Mr. BROOKES. I think the Chinese think that it is a done deal and that is why they did what Bates talked about: Not passing the convention and also moving ahead with the anti-secession law. They feel that there is so much momentum in Europe over this that the train has already left the station and they can go ahead on these other issues even though they are counter to European interests.

Senator ALLEN. Dr. Grimmett, do you have anything to add?

Dr. GRIMMETT. I think they have covered it, Senator.

Senator ALLEN. Thank you. I want to thank Peter Brookes, Dr. Gill, and Dr. Grimmett for your testimony. Thank you, Dr. Grimmett, for truly an outstanding brief for our committee, to the extent you contributed to it.

What I get from this is what will touch the heart strings, maybe not the purse strings, of the Europeans will be, do you really want to reward a regime that represses its people, has not made any demonstrable improvement in human rights opportunities for the people of China since Tiananmen Square, and indeed, most recently have become even more embolden, and in fact, in the years since, in the last several years, has really been on quite a trend of a strong military buildup. And rather than passing that civil rights protocol or law, that same congress rubber-stamped the anti-secession law, threatening the free will and peacefulness of the people of Taiwan to determine their own destiny as to which government they care to pledge allegiance to in a peaceful manner and not under duress.

So, while Mr. Gill makes a good point that there were loopholes, big loopholes I suppose you might say, in the embargo, you have given me, at least this Senator, some insight as to how best to make our point to our European friends. And they are friends. They are sovereign countries and people. I do not want to characterize their views on things, but I do think that that issue of human rights, do you really want to be on the side of repressors as opposed to the side of freedom, and I think that they will aspire to be on the side of freedom and liberty as opposed to the side of repression and strong military buildup and threatening of neighbors.

So, gentlemen, thank you all so much. I am sorry that this hearing is the way it is with the way votes are right now. Thank you for being great patriots. I appreciate your forbearance.

This hearing is adjourned.

[Whereupon, at 4:12 p.m., the committee was adjourned.]

