

EAST ASIA SECURITY ACT OF 2005

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JULY 12, 2005.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Mr. HYDE from the Committee on International Relations,  
submitted the following

R E P O R T

[To accompany H.R. 3100]

[Including Committee cost estimate]

The Committee on International Relations, to whom was referred the bill (H.R. 3100) to authorize measures to deter arms transfers by foreign countries to the People's Republic of China, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 3100 would accomplish several important objectives with respect to continuing United States concerns regarding arms-related sales to the People's Republic of China by member states of the European Union. The bill would ensure Congress has the information

it needs from the Executive Branch to perform its constitutional oversight duties in this area. There is little information available publicly about European arms-related sales to China after 2003 and that information which is available is at a high level of generality.

Under H.R. 3100, the President would henceforth submit an annual report to the Congress on European companies that sell arms-related technology to China and on European governments whose policies condone those sales. Moreover, for those European companies and governments that continue their dangerous arms relationships with China, the bill would establish additional United States Government oversight requirements of a procedural nature governing their access to sensitive U.S. weapons technology. In such a case, H.R. 3100 would require mandatory export licenses and Congressional notification procedures for certain types of licenses.

Further, the President would be given new authority to help deter future European arms-related sales. The bill would provide a menu of measures or restrictions the President could draw on in limiting or denying the access of culpable persons to United States weapons technology. The measures would be discretionary to begin with, but would become mandatory for "repeat offenders." Even then, however, H.R. 3100 would give the President substantial latitude to waive application of the measures if he determines it is important to the national security interests of the United States to do so.

Significantly, the bill would not have a retroactive character; it would not "reach back" to cover European arms-related transfers that occurred prior to January 1, 2005, however egregious they may have been. That is because the main purpose of the bill is not punitive in nature, but to deter dangerous future conduct and to facilitate improved policy coordination on the matter of China's military buildup between the United States and member states of the European Union. In this context, the optimal report Congress could receive under the provisions of H.R. 3100 would be one in which no European company or government is named. However, if EU member states do not make it possible for this to happen, the President would then be in a position under H.R. 3100 to take other necessary steps (e.g., application of the authorized measures), in consultation with the Congress, to safeguard United States security interests.

#### BACKGROUND AND NEED FOR THE LEGISLATION

The supply of European weapons technology to China has been increasing steadily in recent years, both in quantity and sophistication. In the 3-year period between 2001 and 2003 (the latest year for which data are publicly available from the European Union) European arms sales increased eightfold to \$540 million. Quantitatively, this level of arms sales (more than one-half billion dollars) exceeds the level which the United States Government licenses on an annual basis to more than 85 percent of the member countries of the North Atlantic Treaty Organization (e.g., of the other 25 NATO member countries, only U.S. arms sales licensed for the UK, Germany, Italy and Turkey exceeded \$500 million in fiscal year 2004). Qualitatively, European arms-related sales since the early 1990s that have been revealed in press reports have also in-

cluded a number of systems which increase the range, reliability and lethality of China's attack aircraft and other offensive weapons systems. The implications of these arms-related sales are uniformly negative for the security of United States Armed Forces in East Asia, for the defense of United States friends and allies in the region, and for regional stability more broadly. China, itself, faces no threat from any of its neighbors that could justify the acquisition of threatening military capabilities.

On February 2, 2005, the House agreed to House Resolution 57 by an overwhelming vote (411-3). That resolution called on the European Union to maintain its arms embargo on China and to eliminate gaps and other weaknesses in its embargo, as well as in the national policies of EU member states, which have permitted European arms-related sales to China to escalate to an alarming level.

The European Union has apparently decided for now not to terminate its formal arms embargo on China. But, the European Union and its member states have remained silent on actually stopping the supply of weapons related technology to China. This implies that European countries which have been aiding China's military buildup may continue to do so, even while a new strategic dialogue on security in East Asia has begun with the United States Government.

EXCHANGE OF LETTERS ON COMMITTEE JURISDICTION

HON. HENRY J. HYDE, *Chairman*,  
HOUSE COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC, July 6, 2005.*

Hon. Duncan Hunter, *Chairman*,  
*Committee on Armed Services*,  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to you concerning the bill, H.R. 3100, "The East Asia Security Act of 2005." The Committee on International Relations has marked up the bill and ordered it reported by a unanimous vote.

There are certain provisions within the version of the legislation ordered reported by the Committee which fall within the Rule X jurisdiction of your Committee. Specifically, I refer to the language in Section 4, entitled, "Reports on China Arms Transfer Policies of Countries Participating in the United States Defense Cooperation Projects; Certain License Requirements," and Section 7, entitled, "Application of Measures to Certain Foreign Persons."

In the interest of permitting this Committee to proceed expeditiously to the floor consideration of this bill, I request your Committee waive its right to sequential referral on this matter. I understand that such a waiver only applies to this language in this bill, and not to the underlying subject matter. I will urge the Speaker of the House to include Members of your Committee in any conference committee which is named to consider this bill.

I appreciate your willingness to allow us to proceed. I will insert this exchange of letters into the Committee report on this bill.

Sincerely,

HENRY J. HYDE, *Chairman.*

HON. DUNCAN HUNTER, *Chairman*,  
HOUSE COMMITTEE ON ARMED SERVICES,  
*Washington, DC, July 6, 2005.*

Hon. HENRY J. HYDE, *Chairman*,  
*Committee on International Relations*,  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: On June 30, 2005, the Committee on International Relations ordered reported H.R. 3100, the "East Asia Security Act of 2005". As you know, this measure contains provisions that are within the jurisdiction of this Committee. These provisions include:

Section 4. Report on China Arms Transfer Policies of Countries Participating in United States Defense Cooperative Projects; Certain License Requirements, and

Section 7. Application of Measures to Certain Foreign Persons.

Knowing of your interest in expediting this legislation and, indeed, my support for the measure, I will waive consideration of H.R. 3100 by the Committee on Armed Services. I do so with the understanding that by waiving consideration of the bill, the Committee on Armed Services does not waive any future jurisdictional claim over these or similar measures. In addition, in the event of a conference with the Senate on this matter, the Committee on Armed Services reserves the right to seek appointment of conferees.

Sincerely,

DUNCAN HUNTER, *Chairman.*

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#### HEARINGS

On April 14, 2005, the Committee held a joint hearing with the Committee on Armed Services on arms exports to the People's Republic of China by member states of the European Union. Testimony was received from the Under Secretary for Political Affairs, Department of State, the Assistant Secretary for International Security Affairs, Department of Defense, and the acting Under Secretary for Industry and Security, Department of Commerce.

#### COMMITTEE CONSIDERATION

H.R. 3100 was introduced on June 29, 2005, by Chairman Hyde, cosponsored by Mr. Lantos, Mr. Hunter, Mr. Faleomavaega, Ms. Ros-Lehtinen, Mr. McCotter, Mrs. Jo Ann Davis of Virginia, Mr. Burton, Mr. Smith of New Jersey, Mr. McCaul, Ms. Harris, Mr. Weller, and Mr. Boozman and was referred to the Committee on International Relations. On June 30, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 3100, a quorum being present.

#### VOTES OF THE COMMITTEE

There were no recorded votes on H.R. 3100.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### COMMITTEE COST ESTIMATE

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee believes that the bill will have no cost for the current fiscal year 2005, and that the cost incurred in carrying out H.R. 3100 in future years would center principally on the complexity of report preparation, involving the work of 5 to 7 full-time personnel at a cost of \$650,000 to \$900,00 per year for each of the next 5 fiscal years.

#### PERFORMANCE GOALS AND OBJECTIVES

The goals and objectives of H.R. 3100 are to enhance the national security interests of the United States by deterring future transfers of weapons-related technology to the People's Republic of China and by improving the effectiveness of Executive Branch and Congressional oversight of certain foreign access to United States weapons-related technology.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 18 of the Constitution (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the Government of the United States).

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

##### *Section 1. Short Title.*

This section provides that the bill may be cited as the East Asia Security Act of 2005.

##### *Section 2. Statements of Policy.*

This section sets forth several statements of policy. In particular, this section welcomes deferral of a decision by the European Union ("EU") to terminate its arms embargo on the People's Republic of China but notes that, even while the embargo has been in effect, European arms sales increased eightfold to \$540 million in the 3-year period, 2001–2003 (2003 being the last year for which data are available). It also expresses concern that, notwithstanding a continuation of the arms embargo for the near future, none of the EU

member states which has been selling arms-related technology to Beijing through various loopholes in their national policies or in the embargo itself has indicated any intention of ceasing or even moderating its sales—even while a “strategic dialogue” on security in East Asia has begun between the United States and the EU. In this respect, the Committee has recalled that H. Res. 57, overwhelmingly passed by the House (411–3) on February 2, 2005, called on European leaders to “close any gaps in the European Union’s arms embargo on the People’s Republic of China, in the national export controls systems of EU member states, and in the EU’s Code of Conduct on Arms Exports in order to prevent any future sale of arms or related technology to China.” This section expresses a further concern that European firms identified publicly as aiding Beijing’s military buildup are also participants in leading edge U.S. weapons programs through various cooperative research and development (“R&D”) projects with the Department of Defense.

*Section 3. Report on Foreign Military Exports to China.*

This section requires the President to submit a report 6 months following enactment and annually thereafter identifying every foreign person of the EU for which the United States has credible information that such person has exported to China any arms or dual use technology for military end use since January 1, 2005. The arms and related technology covered by the report are those specified in the internationally-agreed Munitions List and Dual Use List of the Wassenaar Arrangement for Export Controls on Conventional Arms and Dual Use Goods and Technologies, headquartered in Vienna. Also covered are any other (e.g., “unlisted”) dual use goods and technologies intended entirely or in part for use with a munitions item. The United States and EU member states participate in this arrangement and have accepted these control lists as the basis for their national policies. Similarly, the additional category covered by the report concerning “unlisted” dual use goods and technologies intended for military end use in countries subject to arms embargoes corresponds to an understanding reached in the Wassenaar plenary meeting of 2003 which the United States and EU member states have also accepted. However, neither this section nor others in the bill covers an export of dual use goods and technology strictly for Chinese commercial or civil end use. Nor does this bill apply generally to exports to Hong Kong in view of sections 103(8) and 201(a) of the United States-Hong Kong Policy Act of 1992 (Public Law 102–383). Further, the President is also authorized, but not required, to report on the activities of any other non-EU foreign persons. The Committee has noted that both Russia and Israel have been arms suppliers to China in recent years, and that the Executive Branch is taking action to address issues associated with recent Israeli transfers. While the situations of Russia, Israel and other countries are qualitatively different than that of the member states of the European Union in terms of the scale and depth of their participation in United States weapons programs and defense industrial cooperation more broadly, the Committee expects that the President will ensure Congress is kept fully informed of all foreign support for China’s military programs, either through the use of the discretionary reporting authority provided in this section or through other means.

*Section 4. Report on China Arms Transfer Policies of Countries Participating in United States Defense Cooperative Projects; Certain License Requirements.*

This section requires the President to submit a report 6 months after enactment and at annual intervals thereafter identifying every foreign country engaged in U.S. cooperative weapons R&D projects whose policies on or after the date of enactment permit transfers to China covered by section 3 of the bill (i.e., arms and dual use items for military purposes). The President would be authorized to combine this report with the report under section 3.

This section also provides that a State Department munitions license would be required for the export of U.S. weapons technology in furtherance of a cooperative project to a country identified in a report under this section when undertaken by any person not an officer or employee of the U.S. Government (e.g., such as a private U.S. contractor). In recent years, the State Department has adopted a practice of deemphasizing the requirement for an export license in cases involving private exports related to cooperative weapons projects. During the 108th Congress, the Chairman of the Committee raised several questions with the Departments of State and Defense (which remain unanswered) concerning this practice under existing United States law, while noting that the use of export license exemptions for such purposes is generally suspect on legal and policy grounds. When used to transfer U.S. weapons technology to foreign firms which are also contractors for Chinese military programs, the use of license exemptions becomes even more problematic.

In this regard, the Committee is concerned by the heightened risk to the security of United States weapons technology presented in cooperative projects with countries which have policies permitting weapons-related transfers to China. The Committee understands there are several hundred such cooperative projects underway at various levels involving other countries and their private defense contractors, many of them European. The Committee has also noted that, historically, such projects further well-established patterns of transatlantic cooperation and the objectives of the Arms Export Control Act in reducing the costs of future weapons research and development through collaboration with North Atlantic Treaty allies, the underlying premise for which has been a sense of shared security interests. However, in a period of changing allied relationships in which traditional concepts of mutual security appear less certain, the Committee is troubled by the conflict of interest that arises through the participation of the same or affiliated foreign contractors in both United States and Chinese weapons programs and the implications of such conflicted interests for safeguarding sensitive United States weapons technology. The Committee concurs with the assessment of the Chairman of the Committee on Armed Services during the April 14, 2005, Joint Hearing of the Committee on Armed Services and the Committee on International Relations that the technology-control management problems presented by European corporations which are at once working with the United States and availing themselves of some of the most sensitive United States technology and at the same time working with the Chinese on important military systems may result in a "mission impossible."

In this respect, the Committee has noted a variety of public reports which implicate European contractors involved in United States cooperative weapons R&D projects as key suppliers to China's armed forces. For example, to cite one example, a variety of public reports indicate that the Chinese fighter/interceptor aircraft *Chengdu F-7* has been equipped with the *Grifo-7* air combat radar (e.g., CRS Report for Congress: "European Union's Arms Embargo on China: Implications and Options for U.S. Policy (Updated May 27, 2005). The *Grifo* radars are a family of advanced radars featuring high electronic counter measures immunity with "look up/look down" capabilities. They are manufactured by Galileo Avionica SpA, a Finmeccanica company based in Italy. Galileo Avionica specializes in mission electronics, avionics and electro-optics and is also working on several contracts in these areas for the U.S. Joint Strike Fighter (JSF) program, including elements of the JSF electro-optical targeting system. Such a dual supplier role by European defense firms (which is not unique to Galileo Avionica) would appear to imply elevated risks to the U.S. program of inappropriate technology transfer to China, which may not be easy to mitigate.

While this section would not bar the simultaneous participation of foreign military contractors for China in United States weapons research programs, other provisions of this bill would authorize the President to do so in appropriate circumstances (discussed below). However, this section would require that United States weapons technology transferred by private persons to any country in which such contractors are based be subject to an export license requirement under section 38 of the Arms Export Control Act, unless exported by an officer or employee of the United States Government, and that issuance of any such export license be preceded by notification to Congress through long-standing procedures under section 36 of the Arms Export Control Act. The first of these requirements is the essence of what is already required under sections 27 and 38 of the Arms Export Control Act. The Committee believes these measures are the minimum necessary to ensure that any subsequent unlawful use or diversion of the United States weapons technology may be susceptible to enforcement action by our Government and that an appropriate level of Congressional oversight is assured for such complex arrangements involving an elevated risk of inappropriate technology transfer, through which the Committee would intend to scrutinize very carefully any technology-control management issues presented in such matters. By the same measure, the Committee hopes that additional Congressional oversight will not become necessary by virtue of the fact that European companies will not engage in future arms-related transfers to China and European governments will adopt policies preventing future arms-related transfers, such that there would be no basis for them to be identified in any report from the President required by this bill.

*Section 5. Certain Foreign Ownership and Control of Defense Articles in the United States.*

This section requires that a license be issued under section 38(g)(6) of the Arms Export Control Act before ownership or control of U.S. weapons and other defense articles—and related munitions export licenses—may be transferred to certain foreign persons as a



result of their acquisition or control of a U.S. defense firm required to be registered under section 38 of that Act. The foreign persons affected by this requirement would be those who are nationals of China or otherwise subject to China's jurisdiction, persons identified in a report under section 3 of this bill or having their principal place of business in a country identified in a report under section 4, or business organizations set up in the United States but owned or controlled, in fact, by a foreign person or country identified in a report under sections 3 or 4 of this bill.

This section would also require that a Presidential finding under section 902 of the Foreign Relations Authorization Act, FY 90–91 (Public Law 101–246) precede issuance of a munitions license in the case of Chinese ownership or control of a United States defense firm (as already required more generally for munitions licenses for China). This section would further require that issuance of such a license and of any other license under this section be preceded by Congressional notification procedures established in section 36 of the Arms Export Control Act (as in sections 4 and 6). This section would not be retroactive to matters occurring prior to enactment.

The Committee has noted that section 122.4(b) of the International Traffic in Arms Regulations (22 CFR § 122.4(b))—the Department of State's regulations for implementing the Arms Export Control Act—has long stipulated that the Department may require a new (or fresh) license under section 38(g)(6) of the Arms Export Control Act in certain circumstances involving foreign ownership or control of U.S. weapons technology arising from acquisitions or mergers before reassigning valid munitions export licenses from one registered firm to another (in lieu of merely amending existing licenses through an essentially routine procedure to effect a change in the name of the licensee). Section 5 would henceforth require a new license (or licenses) in the circumstances specified and envisages that a regulation would be promulgated to establish any details associated with implementation. The Committee would expect in such circumstances, given the fundamentally changed character of the new licensee, that the reliability of the new licensee would not be presumed (as may sometimes have been the case in the past with respect to defense firms headquartered in European countries) but, instead, would need to be established *de novo* through inter-agency review involving the Department of Defense and other agencies, as appropriate, of the full range and sensitivity of the U.S. weapons technology covered by the munitions export licenses to be conveyed to the new licensee and whether new or revised license terms and conditions are needed to ensure compliance with U.S. law and policy. By the same measure, this section does not prohibit or restrict (other than with respect to Chinese control for which a Presidential finding is needed) the transfer of U.S. munitions licenses to foreign-owned or controlled persons, but mandates a more considered review by the Executive Branch through issuance of a license (currently a matter of discretion) and by Congress when the new licensee is a person named—or the subsidiary of a person named—in a report by the President under this bill.

*Section 6. Chinese Military End Use of Dual Use Exports.*

This section would require a license for any item proposed for export to China described in section 3 (i.e., arms and dual use items

for military end use) that does not already require a license under section 38 of the Arms Export Control Act. This statement also welcomes the December 2003 statement of understanding reached by the United States, EU member states, and other members of the Wassenaar arrangement concerning the need to ensure appropriate governmental authorization for non-listed dual use items when intended for military end use in an embargoed country.

This section would require additionally that such a license be notified to Congress under section 36 procedures of the Arms Export Control Act before issuance (as in sections 4 and 5, discussed above).

The Committee has recalled the testimony of the acting Under Secretary for Industry and Security of the Department on Commerce on April 14, 2005, before a joint hearing of the Committee on Armed Services and the Committee on International Relations concerning the policy of the Administration not to approve exports of dual use goods and technology to the Chinese military. The Committee has also recalled from that same testimony that the Department of Commerce is preparing a new regulation to eliminate ambiguity in the Export Administration Regulations concerning this question.

The Committee has also noted that the Department of Commerce has furnished the Chairman of the Committee with documents describing approximately fifty thousand (50,000) dual use goods and technologies that have been classified by the Department of Commerce since fiscal year 1996 in such a way that their export to the Chinese military is permissible under Commerce Department rules and procedures without the need to apply for an export license. The Committee has similarly noted the Chairman's receipt of additional information from the Commerce Department stating that it has confirmed that more than \$2 million worth of such goods and technologies were, in fact, transferred to the Chinese military from the United States in recent years, but that the Commerce Department was not able to analyze each of the 50,000 items to determine if they were actually exported to the Chinese military. This is because, according to the Department of Commerce, it would be extremely difficult and resource-intensive to attempt to confirm for these 50,000 commodity classifications whether items were actually shipped, to which destinations the items may have been shipped, and the specific end-users for the items actually shipped. Because the Department of Commerce does not have complete and reliable records in this respect, the Committee cannot know whether the \$2 million in goods exported represents the totality of all U.S. dual use goods and technology shipped to the Chinese military without a license or merely some fraction thereof.

The Committee believes that if, as has been suggested by the Department of Commerce, unlicensed U.S. trade in dual-use goods and technology with the Chinese military is at a low level, the application of a licensing requirement to these technologies when sent to the Chinese military will not result in any burden on the Commerce Department or U.S. business. On the other hand, if unlicensed trade with the Chinese military in these 50,000 areas (which by the Commerce Department's definition involve goods and technologies that may be deployed in a military or proliferation mode) has become substantial notwithstanding the U.S. arms em-

bargo on China, it is important for the U.S. Government to know this and to apply the necessary oversight, including review by the Defense Department. Further, although not mandated by this bill, the Department of Commerce would be free to promulgate a broad prohibition on all dual use goods and technology to the Chinese military, which it has recently testified is the essence of its policy in any case.

*Section 7. Application of Measures to Certain Foreign Persons.*

This section provides the President with discretionary authority to impose for 2 years or longer any or all of certain enumerated measures (e.g., denial of U.S. security assistance, participation in U.S. weapons research, etc.) with respect to a foreign person identified in a report under section 3. In the case of a foreign person identified in more than one report (e.g., “repeat offenders”), the President would be required to impose measures, but in section 9 (discussed below) is also given the power to waive their imposition, subject to certain conditions.

*Section 8. Procedures if Discretionary Measures Are Not Applied.*

This section requires a report by the President to Congress in instances where he may decide not to impose discretionary measures.

*Section 9. Determinations Exempting Foreign Persons from Mandatory Measures.*

This section provides in cases where the imposition of measures is mandatory (e.g., “repeat offenders”) for their waiver upon submission of a report to Congress by the President reflecting his determination that: (1) the involved foreign person did not knowingly export the item at issue; or (2) the foreign government having primary jurisdiction has concluded an agreement with the United States to resolve the matter consistent with criteria specified in this section of the bill.

This section also provides the President with additional authority to waive any mandatory measure upon a determination and report to Congress that it is important to the counterterrorism, non-proliferation or other national security interests of the United States to do so.

*Section 10. Definitions.*

This section provides the definitions of terms commonly used throughout the bill, which are generally terms well-established in the Arms Export Control Act, the Export Administration Act, or the regulations promulgated by the Departments of State and Commerce, respectively, to implement those Acts (known as the International Traffic in Arms Regulations and the Export Administration Regulations).

NEW ADVISORY COMMITTEES

H.R. 3100 does not establish or authorize any new advisory committee.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 3100 does not apply to the legislative branch.

FEDERAL MANDATES

H.R. 3100 imposes no Federal mandates.

