

Lifting the EU Arms Embargo on China:  
An American Perspective

By

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Discussion paper prepared for the CSIS/SWP conference “China’s Rise: Diverging U.S.-EU Approaches and Perceptions,” Berlin, April 28-29, 2005.

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The transatlantic rift over the proposed lifting of the EU’s arms “embargo” on China has the real potential to seriously undermine the relationship between the United States and the European Union (particularly certain member states) as well as the NATO alliance. Make no mistake, this is not just another issue that can be finessed and “managed,” *if* and when the embargo is lifted it will have a seriously negative impact on U.S.-EU relations. The EU should have no illusions about the seriousness with which the United States views this issue, as lifting the embargo will very likely cause political, legal, and commercial retaliation by the Congress and executive branch. Perhaps more damaging than the tangible retaliation, that can be anticipated, will be the further corrosive effect on the shared trust and strategic vision that has given common cause to the “West” for more than half a century. Indeed, damage has *already been done* simply as a result of the *consideration* by Europe to lift its “embargo,” insofar as it has further eroded the trust and perceptions of European allies in the eyes of the U.S. Government, Congress, and nongovernmental experts in Washington.

There is no doubt that this is a very corrosive and highly explosive political issue—that, if not properly handled, will only further contribute to a transatlantic relationship that has hemorrhaged in recent years over the war in Iraq, International Criminal Court, Kyoto Treaty, U.S. unilateralism, various trade frictions, and other issues. The timing of the issue also unfortunately coincides with a proclaimed and demonstrated desire by both the U.S. and EU to arrest the atrophy, and to stabilize and rebuild the transatlantic alliance.

It now appears that a combination of American displeasure and pressure has combined with China’s passing of its Anti-Succession Law and the failure of China’s National People’s Congress to ratify the U.N. Covenant on Civil and Political Rights at its annual March convocation, to forestall the EU’s lifting of the embargo before the end of Luxembourg’s presidency in May 2005.<sup>1</sup> It is apparent that these events have divided

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\*This is a revised and expanded version of my “Don’t Lift the Arms Embargo on China,” *International Herald Tribune*, February 23, 2005.

<sup>1</sup> See Richard Bernstein, “Europe Backpeddling on China Arms Ban,” *International Herald Tribune*, April 16-17, 2005.

what seemed, six or eight weeks ago, an emerging consensus within the EU to lift the embargo. Britain has seemingly pulled back from its earlier support, while the Netherlands, Norway, Denmark, and Poland all apparently continue to hold deep reservations about the wisdom of lifting the embargo. Further complicating matters is that now, in several countries (such as Germany, Britain, and the Netherlands), a “two-level game” has developed – called democracy. That is, the parliaments in these countries (as well as the European Parliament itself) have expressed their reservations and/or opposition to lifting the embargo. Since these are democratic countries and parliaments do express the will of citizens, this opposition must be taken seriously by national leaders who are prepared to lift the embargo. Chancellor Schroeder, in particular, risks the splintering of his ruling coalition if he bucks the Bundestag.

Even if the move to lift the embargo has been slowed, it has not been entirely derailed. A number of nations – led by France – apparently continue to believe in the efficacy of lifting it, and they will likely continue push for doing so in 2006 (after the UK’s rotating presidency). Those who favor lifting the embargo have put forward six essential arguments that, they say, justify lifting it. Let us examine, from one American’s perspective, each of these principal arguments, merits and demerits, of each in turn.

*Argument No. 1: The Hollow and Leaky Embargo*

First, it is frequently noted by European interlocutors that the “embargo” is nothing more than a single sentence in a 1989 communiqué, drafted in the wake of the Tiananmen massacre and agreed at the Madrid Summit that year, and is nothing more than a voluntary proclamation by the EU member states at the time. As such, it is not legally binding and does not have strict enforcement mechanisms, is becoming increasingly “leaky” in any event, and should be scrapped. The EU also argues that all of its other 1989 sanctions have long been lifted, and thus maintaining this one is anachronistic.

It is true that the embargo is voluntary, simply a political statement, and lacks legal basis and strict EU-wide enforcement mechanisms (the export control regulations and Code of Conduct are voluntary). These are all deficiencies that should be rectified *and strengthened* rather than lifted. More to the point, however, is the *symbolism* of the embargo. For the United States, the embargo (like the similar U.S. sanctions) symbolizes continued discontent with China’s human rights record and concern over its military modernization program.

It is also true that the embargo has not been a complete prohibition on defense technology or component transfers to China, but it has still *largely* prevented the flow of lethal weapons and weapon platforms to China. It has also been increasingly porous in recent years (such transfers doubled from 2002 to 2003 reaching a total of 416 million Euro in 2003). The answer, though, is not to lift the embargo in order to facilitate the flow of such systems to China—the answer is to *strengthen the embargo* precisely to prevent the flow of defense technologies and weapons to China.

*Argument No. 2: A Strengthened Code of Conduct and Export Controls Will be Effective*

The second European argument is that controls on exports of lethal weapons and defense technologies to China are guided by strict national export control regulations of each member state, at the EU level, the 1998 EU Code of Conduct, and that after lifting the embargo a strengthened Code will provide a more restrictive regime to control sales.

It is true that the existing Code needs strengthening, as it largely regulates lethal weapons and component parts, but makes no provision for defense or dual-use technologies – which is what the People’s Liberation Army (PLA) is mainly interested in buying from Europe. Moreover, the Code is not legally binding and allows considerable leeway for national interpretation of export licensing and reporting rules – contributing to the growing porousness.

We have yet to see the strengthened Code of Conduct (or even a draft), which has been in preparation in Brussels for over a year, or the so-called “toolbox” that will apply to countries emerging from such embargoes. The proof will be in the pudding of the new Code, but EU officials already admit that it will not be legally binding and will remain substantially up to each member state to interpret.<sup>2</sup> Moreover, there will be no provisions for dual-use technologies (civilian technologies with military application), which fall under the Wassenaar Arrangement. European export controls – particularly at the EU level – are in real need of strengthening, particularly in the wake of the 2004 inclusion of ten new East and Central European member states.<sup>3</sup> There may also be a need for replacing the defunct COCOM and dysfunctional Wassenaar Arrangement.<sup>4</sup> Even if such a broader mechanism is not put in place, there is still a need for regular and institutionalized cross-checking and monitoring of export license *applications* between the EU and U.S. *prior* to their issuance. For its part, the United States Government should provide very detailed (and regularly updated) lists of munitions, weapons, defense technologies, and dual-use technologies of greatest concern and which the U.S. would not like European governments to approve for sale or transfer to China.

In any event, the United States has serious doubts about both the professed European commitment *not* to sell weapons or transfer defense technologies to China, post-embargo, and this particularly is the case with respect to France (there is a general lack of trust in Washington concerning France’s commitment to adhere to *any* new post-embargo Code or export control mechanisms). France has a significant credibility problem in the eyes of the U.S. and record of transfers to date, *in lieu of the embargo*, is reason for such strong concern. Recent reports have circulated that France’s Dassault Aviation has already concluded a deal, in anticipation of lifting the embargo, worth 12 billion Euro to sell 210

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<sup>2</sup> Apparently, there is some consideration being given to making the revised Code legally binding. See Daniel Dombey, “EU Considers Binding Rules on Arms Sales,” *Financial Times*, April 18, 2005.

<sup>3</sup> See Scott Jones, “EU Enlargement: Implications for EU and Multilateral Export Controls,” *The Nonproliferation Review* (Summer 2003), pp. 1-10.

<sup>4</sup> See Seema Gahlaut, Michael Beck, Scott Jones, and Dan Joyner, *Roadmap for Reform: Creating a New Multilateral Export Control Regime* (Athens, GA: University of Georgia Center for International Trade and Security, 2004).

advanced Mirage fighters to China.<sup>5</sup> Such an action could be a mortal wound in an already badly frayed U.S.-France relationship.

Argument No. 3: The Embargo as Impediment to Building a “Strategic Partnership”

The third argument put forward by Europeans is that maintaining the embargo is inconsistent with the overall robust state of European-China relations, and prevents the full “renormalization” of ties post-1989. Europeans also argue that maintaining an embargo stigmatizes China unfairly – lumping China together with pariah states like Zimbabwe, Myanmar, and Sudan – and is an impediment to reaching further agreements and deepening EU-China relations.

This argument makes little sense, as Europe-China relations have never been better, and it is difficult to identify any impediments to further development of ties. China has certainly not withheld any agreements because of the embargo, although it will likely reward Europe commercially for lifting it. It is not at all clear what Europe will tangibly and positively gain by lifting the embargo, other than the commercial revenue from arms sales and technology transfers. Moreover, it is equally unclear what the European side is actually asking for in return for lifting the embargo – only recently has it been hinted that ratification of the second U.N. Covenant would be sufficient incentive.<sup>6</sup>

Argument No. 4: 2005 is Not 1989

Fourth, the EU argues that China’s human rights situation has improved sufficiently since 1989 and therefore the original rationale for the embargo no longer applies.

It is definitely true that human rights in China have steadily improved since 1989 – but that year sets a pretty low baseline for comparison. Moreover, China has still not ratified the U.N. Covenant on Civil and Political Rights, has not repealed legislation governing its draconian reform-through-labor (*laogai*) camps, continues various forms of religious restrictions and persecution, continues to incarcerate large numbers of prisoners of conscience, will not permit Red Cross access to its prisons, will not release high-profile political prisoners, continues to execute several thousand per year, and has stonewalled meaningful human rights dialogues with Western nations over the past two to three years. The EU has publicly expressed its frustration with the stagnation, or retrogression, in China’s human rights situation, by calling for “tangible improvements on the ground” – but Beijing has rebuffed such calls. Where, then, is the human rights rationale for lifting the embargo?

While the human rights situation in China has improved relative to 1989, there continue to be serious deficiencies and violations of global norms. *Maintaining* the embargo also sends a strong and unified political signal that the Chinese government itself has yet to come to terms with its actions of 16 years ago. There has been no official recantation of the lethal repression – far from it, as the government continues to claim it was a necessary action to prevent its overthrow. Nor has there ever been a full accounting, or

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<sup>5</sup> “China to Buy 210 Fighter Jets if EU Ends Arms Ban,” *Straits Times* (Singapore), April 12, 2005.

<sup>6</sup> Katrin Bennhold and Graham Bowley, “EU May Demand Gesture on Rights,” *International Herald Tribune*, April 14, 2005.

even acknowledgement, of the estimated 1500-2000 civilian deaths on June 4. The U.S. Government estimates that approximately 2000 individuals remain imprisoned from their participation in those events, with thousands more exiled abroad. Countless others had their lives and careers affected by their participation in the pro-democracy demonstrations.

*Argument No. 5: The Embargo Does Not Impede China's Military Modernization*

Fifth, in an interview with the *Financial Times* France's Minister of Defense Michele Alliot-Marie presented a new argument in favor of lifting the embargo: since "our [French] experts" tell her that China's domestic military industry will be capable of producing "exactly the same arms that we [France] have today within five years," maintaining the embargo is pointless and "...lifting it could be better protection for us than maintaining it."<sup>7</sup>

This is the most ludicrous rationale of all, and is premised on very faulty logic and intelligence. This judgment either reflects very poor intelligence and information or does not speak well of French weapons (the latter is not likely). With a few exceptions (ballistic missiles, inertial guidance systems, diesel propulsion, and a new generation of tanks), virtually all foreign experts on the Chinese military recognize that China's indigenous military-industrial complex remains 10-20 or more years behind the state-of-the-art. Ms. Alliot-Marie and France's Ministry of Defense should consult any number of respected studies on the Chinese military to better inform herself on this issue.<sup>8</sup>

It is indisputably clear that the *lack* of Chinese access to the Western arms market over the past 15 years (and longer) has demonstrably slowed China's domestic arms manufacturing capabilities. Whatever modern conventional weapons China's military possesses have been sold to it by Russia – but are not manufactured in China. Even Russia has been very careful not to sell China the latest generation of its weaponry, nor has Moscow transferred the means of production to China – thus ensuring a dependency on Russian spare parts and new systems. There is also a strong segment of the Russian military and strategic community that does not believe such sales are in Russia's own best national security interests – but they continue in order to prop up the country's financially-strapped defense industries (a similar rationale seems to be driving France's calculations).

*Argument No. 6: The Train Has Left the Station*

Finally, it is argued that the resolution adopted by the European Council on December 17, 2004, instructs Luxembourg to "finalize the well-advanced work" to lift the embargo during its presidency, but that when this occurs sales to China will not exceed current "quantitative or qualitative levels." By this bureaucratic reasoning, the EU is mandated to lift the embargo and that there is nothing to worry about when this occurs.

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<sup>7</sup> "French Defense Minister Pushes Case to Lift EU Arms Embargo on China," *Financial Times*, February 16, 2005.

<sup>8</sup> See, for example, David Shambaugh, *Modernizing China's Military: Progress, Problems, and Prospects* (Berkeley: University of California Press, 2003); Council on Foreign Relations, *China's Military Power* (New York: Council on Foreign Relations, 2004).

There is no good reason that European rethinking, prudence, and a desire not to aggravate transatlantic ties further cannot stop, or at least retard, the lifting of the embargo. It is not yet a done deal – indeed there is already evidence that such pragmatism and realism is prevailing. It will also be very difficult to enforce these ceilings in practice and to prevent individual member states from breaking the caps. The United States used precisely such language in the 1982 U.S.-China Joint Communiqué concerning arms sales to Taiwan – the ceilings were never quantifiably clear and were soon broken.

### *The Big Question*

Thus, virtually all of the main arguments put forward by European officials and experts are unconvincing to Americans. They also defy strategic logic. At the end of the day, Europe must have a very clear answer to a simple question: *why is it in Europe's strategic interest to help the Chinese military modernize*, and thus alter the military balance in Asia? There is no justification. There is no doubt that the PLA is modernizing, but *why is it in Europe's strategic interest to accelerate this process?* It is incumbent on the EU to provide clear and convincing answers to these key and core strategic questions.

More to the point, one does not hear China's Asian neighbors clamoring for a strong Chinese military and the lifting of the embargo. Far from it. A PLA possessing real power projection capabilities is one of their worst strategic nightmares, as it would radically change and destabilize the East Asian security environment. This is also of deep concern to the United States – which, after all, has been the guarantor of East Asian security and stability for half a century.

Yet, from the American perspective, *none* of these arguments touch the real issues: maintaining stability in the Taiwan Strait, the security of Taiwan, and preventing China from possessing European arms that might potentially be used in battle against American forces.

In sum, lifting the arms embargo on China is very ill-advised – if anything it needs to be substantially strengthened. Both Europe and America can continue to enjoy robust relations with Beijing, while maintaining their respective arms embargoes. China will just have to live with it until Beijing comes to terms with its actions of 1989 and eliminates military pressure against Taiwan.