

To Lift or not to Lift? A Few Notes on the Lifting of the European Arms Embargo on China

On June 1989 the Chinese Government decided to suppress the pro-democracy demonstrations in Tiananmen Square in Beijing. The suppression soon evolved in a massacre and hundreds (thousands?) of protestors were killed. On 26 June 1989 in Madrid, the European Council¹ of Ministers agreed on a common political declaration and action. They agreed to ban exports of arms to China.

In the last years, although no significant improvement had been reported for Chinese human rights record, several European leaders declared that the European embargo could be lifted.

In December 2003, during a visit in China German Chancellor Gerhard Schröder expounded the German favour for a lift. During a visit to France by Chinese President Hu Jintao in January 2004, President of France Jacques Chirac said that the embargo '*no longer corresponds with the political reality of the contemporary world*' (quoted in Anthony 2005) and called for it to be ended. Instead, the Italian Prime Minister Silvio Berlusconi, often accused of speaking too much, in such a business preferred to go into action increasing massively

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¹ Declaration on China, European Council, Madrid, 26-27 June 1989, available at <http://projects.sipri.se/expcon/euframe/euchidec.htm> (accessed august 2005).

the number of sales licenses to China in 2004.

On the other hand, other member states, Finland, Netherlands and UK among others have outlined that China did not demonstrate an adequate improvement in the area of human rights to allow for a lifting of the embargo. However, the European Union will postpone the planned lifting of the arms embargo until at least next year (*The Guardian, April 15, 2005*).

Then, the embargo now clearly constitutes an issue for the EU. But some questions can be posed. Since the figures will show a sharp increase in arms sales to China, the question arises on whether this embargo is really effective. Moreover, will such a lifting be a part of a broader and comprehensive policy towards China? What could be the reactions of the U.S.?

EMBARGO OR TRICKY BUSINESS?

First, it would be necessary to understand better whether such embargo does really exist. It is not a joke. What newspapers, politicians, and observers alike define 'European embargo' appears to be something different.

A deep and brilliant analysis of the legal form of the arms embargo is in Anthony's (2005), who sheds light upon some essential features. It does appear clear that the European embargo on China constitutes an unique case among the other embargoes. It can be interpreted as the sum of different national embargoes. The roots of such uniqueness are to be found back in the past, when the embargo was first established. In fact, even if we are now the embargo on China has been established by the European Community (EC). That is, it has the status of a political declaration by the EC Council of Foreign

Ministers expressing the consensus of the then EC member states.

Note that since it has been established, several years before the creation of the European Union, the embargo has no connection with Common and Foreign Security Policy (CFSP), nor European Security and Defence Policy (ESDP) provisions. The CFSP/ESDP is perhaps the most debated feature of the EU. However, once created, the CSFP has been provided with different legal instruments. Some of them are usually applied to embargoes and have been applied to other common decisions already in place. But, with respect to the embargo on China none of the available measures has been applied. Then, unlike later EU embargoes, which are grounded in the European Political Cooperation and are part of the CFSP, the declaration was not legally binding.

Using Anthony's words: "[...]it can be argued that from a legal perspective there is not one arms embargo against China but a series of national arms embargoes established under national laws and regulations". Therefore, member states are allowed to adopt their own interpretation of embargo. Moreover, since the ten states that joined the EU in May 2004 accepted as binding all EU decisions but not the political declarations made by the EC the 'so called' embargo on China thus applies only for fifteen EU member states.

Then, it should be easier to understand why the existence of the embargo has not prevented several EU member states from selling military equipment or components to China. Table 1 reports the 2002 and 2003 value of licenses issued. Data are extracted from the annual report on the implementation of the EU Code of Conduct issued by the Council of the European Union. Czech Republic, France, Germany, Italy and the UK reported licences for exports of

goods on the EU Military List with a combined value of €461 million.

In practice, figures show that the 'so called' embargo appears to be ineffective. A warning signal also does arise, since figures clearly show a sharp increase between 2002 and 2003. In fact, the value of EU licences to sell arms to

Table 1. Value of Licences Issued (Millions of Euros)

	2002	2003
Czech Republic	n/a	3.61
France	105.43	216.89
Italy	22.8	127.13
Germany	n/a	1.1
United Kingdom	79.5	112.46
Total	209.8	461.2

Source: Council of the European Union, 2003, 2004. Fifth and Sixth Annual Report according to operative provision 8 of the European Union Code of Conduct on Arms Export

China increased from €210m in 2002 to €461m in 2003, France increased its share from €105m to €216m, while UK increased its share from €79m to €112m. As noted above, In 2003, the Italian government released licenses with a value of €127m compared with €23m in 2002. It would be simple to verify that France clearly retains the lion's share.

To deepen the brief analysis presented here it must be quoted the most important independent source on arms trade, namely the SIPRI arms transfers project. It collects information about deliveries of major conventional weapons.

The SIPRI developed a *trend-indicator value* which is an indicator of the volume of the international arms transfers. According to data by SIPRI in the five-year period 2000–2004, it is worth noting that China (followed by India) was by far the largest recipient of major conventional weapons –

Table 2 Actual Deliveries of Major Conventional Weapons to China from EU Countries (1989-2004) (%)

France	73.2
Italy	23.2
United Kingdom	3.6

Source: SIPRI

accounting for 14 per cent of the global total. Russia was the most important supplier to China, supplying 95 per cent of China’s imports, and China is Russia’s most important market—accounting for 41 per cent of Russia’s exports. In general, in the period 2000-2004 Russia became the most important supplier in the world followed by the U.S. and France.

According to the trend-indicator provided by SIPRI in the period 1989-2004 France accounted for the 73.2% of total EU arms sales to China. Moreover, differently from Italy and UK, the annual data show that France never interrupted its sales to China despite the existence of the embargo.

Even if it might seem hilarious, the French behaviour undoubtedly exhibits a coherence. France, in fact, in the last years behaved continuously and coherently as a *sanctions-buster*. The detailed story is in the document *The G8*

global arms exporters jointly issued in June 2005 by Amnesty International, The international Action Network on Small Arms and Oxfam International. Since 1996, there has been an EU arms embargo on Myanmar (Burma). In April 2001 the EU extended the embargo, and confirmed the embargo on the export of arms and military equipment from EU member states. Despite such embargo, according to official data in the UN Commodity Trade Database, France made shipments of equipment within the category "*bombs, grenades, ammunition, mines, and others*" to Myanmar (Burma) in 1998, 1999 and 2000. In 1994, the EU had also imposed an embargo upon Sudan, but according to data provided to the UN by French customs officials, France registered transfers to Sudan for goods under the category «*bombs, grenades, torpedoes, mines, missiles, and similar munitions of war and parts thereof*». Note that among the French licences issued in 2003 for arms transfers to China there were also some under the category «*Chemical or biological toxic agents, "tear gases", radioactive materials, related equipment, components, materials and "technology"*» It is also noteworthy that this has not been reported on the main European newspapers. In an article, entitled *Europe doubles China arms sale licences*, published on the British newspaper *The Guardian* (*The Guardian*, January 20th 2005), the author accurately skipped the mention of such 'detail'. I must say 'accurately' because the figures reported in the article did not consider the value of those items.

Summing up, taking into consideration the figures shown above, it does appear clear why France is the key-proponent of the lifting of the embargo.

However, it must be also said that arms transfer constitutes a matter of EU competence. The EU adopted a Code of Conduct on arms exports in June

1998. It is not legally binding, but it contains political commitments intended to narrow and regulate the member countries behaviour in selling arms. In particular, eight criteria for export licensing and operative provisions are indicated. It is also currently under review.

SERIOUS CONCERNS

There is always something to admire in the brief statements released by politicians or governmental top officials. The words used are often brilliant exercises of rhetoric. One of my favourite statements is something kin to *'the government expresses serious concerns about.....'* A brief and pregnant statement, needless to say. I am not a top official or a politician but I would also ask the reader to allow me to express some serious concerns.

First, I really wonder whether European leaders made an assessment of strategic implications of the lift. In particular, any change in Chinese military power constitutes a sensitive issue for the U.S. government. The U.S. strongly opposes the lifting of the embargo in order to prevent a Chinese military build-up and has threatened the EU with sanctions if the embargo is lifted. In recent times, there is a growing debate about the transatlantic relationship and about the broader plea of unilateralism and multilateralism. After the fall of Berlin Wall new directions and horizons in Euro-American relations are strongly needed. Lifting (as well as violating) the embargo would signal to the U.S. the European willingness to disregard one of the main American concerns.

Moreover, It would appear that thinking about China has been driven by political and commercial considerations rather than an evaluation of the

security environment in East Asia. Yet, saying that the lift of the embargo would improve the relationship with China is clearly a non-sense. Needless to say, a specious plea. In reality, in the latter months the EU imposed several protectionist measures and tighter regulations against Chinese exports. In particular, Chinese textile exports nowadays are under the threat of decreased quotas which could be imposed on them. Abstracting from internal considerations, this is not exactly a friendly signal to China. Then, the claims for an improvement in relationships appear quite outlandish. In fact, given the claim of protectionist measures for some industrial sectors, the lift of the embargo would not fall in any coherent or comprehensive policy towards China.

It is commonly recognised that commercial policies are usually implemented to favour some interest groups. In such a case it appears clear that a lift of the embargo would only be implemented to favour the military industry. That is, it would benefit just a few companies in Europe with no impressive impact on European economy.

Then, let's sum up again. It would seem that neither strategic nor commercial considerations have been deepened. By means of protectionist measures, on one hand the EU signals its willingness to protect some sectors. This could undermine a freer entry of European firms in a market of (at least) several millions people. In fact, Chinese government could retaliate and engage itself in a trade war with Europe.

On the other hand the EU takes the risk of worsening transatlantic relations only to favour few companies.

The warning signal is also that while European leaders were committed to declare and announce their intention to lift the embargo, military industry companies were already committed to sell arms. Quite shocking appears to be the fact that many European military companies are under control of national governments. I would stress just some examples: 31.3% of French Thales group (the seventh largest arms-producing company in the world) is owned by state sector; 30.2% of industrial conglomerate European Aeronautic Defence and Space Company (EADS) is controlled by SOGEADE (50% French government body) while 5.52 is held by SEPI (Spanish State holding Company); 32.45% of Finmeccanica is held by Italian Government.

In other words it means that governments are aware of violating an embargo. Bad news for European democracies. I would be more happy while reading that some private companies violate binding regulations. It is usually less discomforting when private companies violate binding regulations. It is much worse when state-owned (or controlled) companies behave disregarding systematically rules and prohibitions publicly announced by politicians. Anyway, the special behaviour of governments with respect to military industry is not a novelty. Given such intertwining, it is also simple to understand why governments have been always committed to guarantee a peculiar regulation for arms trade. The WTO has given an exemption to arms exports subsidies. In recent years, some works analysed the regulation of arms exports and its relationship with defence procurement (Levine and Smith, 2000; Levine, Mouzakis and Smith, 2000; Garcia-Alonso, 1999). The rationale behind a special regulation for arms trade is supposed to be in security

concerns of states, In many occasions, however, arms trade does not relate to internal security.

Albeit worrying, however, it should be noted that most member states are now moving massively on this path. But another serious concern is related to the role of France. Figures show that France has continuously sold arms to China (among others). It is frankly unbelievable that a prominent EU-member state systematically behaved as a *sanctions-buster* over the last fifteen years. A problem of EU credibility clearly arises. Would the European common policies adopted be considered credible in the near future? This appears to be a major problem now when there are recurring claims for the establishment of a Common Foreign Policy.

This brief story started recalling the hundreds (or thousands?) young victims of government brutal repression. About human rights I would just recall another story. European governments' behaviour recalls something happened in U.S. once Ronald Reagan came into office in 1980. The former Jimmy Carter administration had been committed to target some 'bad' regimes, military dictatorships, in South America by means of embargoes on arms transfers. In 1976, the Congress had passed an amendment to the Foreign Assistance Act which required the State Department to submit annual reports to the Congress describing the human rights performance of states receiving U. S. aid, and which prohibited the U.S. from assisting states which consistently violated the human rights of their citizens unless the president «*certifies in writing that extraordinary circumstances exist*» (quoted in Kirkpatrick 1981). On the basis of the annual reports required by the 1976 law, the Carter

administration withheld economic credits and military assistance to Chile, Argentina, Paraguay, Brazil, Nicaragua, Guatemala and El Salvador. In few months many 'bad boys', military dictators, targeted by Carter Administration became suddenly 'good boys' in the eyes of the Reagan administration.

Now Chinese 'bad boys' also appear as 'good boys' at the eyes of European leaders even if «*Tens of thousands of people continued to be detained or imprisoned in violation of their rights to freedom of expression and association, and were at serious risk of torture or ill-treatment. Thousands of people were sentenced to death or executed*». (Amnesty International, 2004).

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