

'Twixt Profit and Principle: Arms for China

By Colonel Daniel Smith, USA (Ret.) | February 4, 2005

When Britain confirmed it would support repeal of the European Union's ban on arms sales to mainland China, one could almost hear the phrase "perfidious Albion" ring over Foggy Bottom.

While Washington's opposition is laudable, the reaction seemed contrived. After all, British Foreign Secretary Jack Straw had told a House of Commons committee on January 12 that the EU ban "more likely than not" would be lifted prior to the end of June 2005—a comment reported in London's *Guardian* newspaper and other British media. Moreover, at internal EU (March 2004) and EU-China (December 2004) summits, it was apparent that a critical mass of EU countries favoring repeal of the arms embargo was forming.

The U.S. and EU arms embargos were imposed after the 1989 Tiananmen Square massacres. The U.S. embargo, written into law in 1999 as PL 101-246, covered both lethal and non-lethal equipment, while the EU ban covered only lethal equipment. Public Law 101-246 allowed sales of non-lethal equipment if the president certified the sales were in the best interest of the United States. Both the U.S. and three EU countries—France, Britain, and Italy—delivered non-lethal equipment that had been purchased before Tiananmen occurred, and France also delivered pre-Tiananmen lethal equipment. (Between 1990 and 1998, Italy and Britain sold non-lethal items ordered after June 1989, and Presidents Bush and Clinton waived the embargo on \$350 million of otherwise prohibited exports, most of which were U.S. satellites to be launched by China.)¹

Perhaps the White House thought Tony Blair was in its pocket, not willing to risk Britain's "special relationship" with the U.S. In both 2004 meetings, London was the major holdout, thereby scuttling a change in EU policy. (Even though the largely symbolic EU ban is not legally enforceable, any change in the EU position requires a unanimous vote of all EU member states.)

Washington's blunt message was: many current and pending cooperative U.S.-EU military equipment programs might suffer repercussions—including outright cancellation—since many, if not all, U.S. contributions to joint endeavors are on the "Munitions List" of items whose sale is controlled or whose technology is considered "sensitive."

Britain's Straw struck a conciliatory note in response, urging Washington to listen to London's rationale. Others were less understanding, regarding the U.S. reaction as overblown if not hypocritical. EU arms sales to China in 2002 were under \$300 million and reached only \$540 million in 2003. Russia and Israel are China's top two arms suppliers. And while the U.S. blocked Israel's sale of Phalcon early warning radar systems to China, many U.S. observers contend Israel sold U.S. Patriot missile technology to China and that China's F-10 fighter incorporates many features of the ill-fated Israeli Lavi fighter that relied heavily on U.S. technology.²

Straw assured the U.S. that Britain would pursue a "more effective arms control regime" for EU countries, presumably by narrowing the scope of sales permitted under the 1998 EU Code of Conduct for Arms Exports. Although this too, is a political and not a legal arrangement, the Code's transparency provisions, especially those regarding notification of all EU members when (and why) a proposed sale to any country was disapproved, are thought to have inhibited arms sales to China more than the 1989 embargo.³

Looking at the three sections of the 1998 EU Code, where could Straw's pledge be implemented?

Not in the introduction, which describes the "state of play" in the world (the "whereas" section). In fact, after expressing a commitment to high common standards for restraining arms sales that could be used for



repression or aggression, the basic enterprise is undercut by noting that EU countries wish “to maintain a defense industry as part of their industrial base as well as their defense effort.”

Not in the eight criteria governing arms trades with non-EU countries, since the Code has no penalties and no enforcement mechanism—not even an internal, mandatory process to resolve differences should EU member states reach opposite conclusions about an arms sale’s conformity to the criteria:

- international non-proliferation agreements and other international obligations honored (e.g., UN or OSCE embargos, anti-personnel landmine ban);
- the recipient country’s human rights record;
- recipient’s condition regarding incipient or actual internal armed conflict;
- consequences for regional peace and stability;
- national security consequences for other EU countries and non-EU allies;
- recipient country’s record on terrorism and non-proliferation;
- risk of diversion of equipment or unauthorized re-export; and
- recipient country’s capability, technical and economic, to absorb equipment into its security structures.

Perhaps in the Code’s twelve “operative provisions” that a prospective EU arms supplying country is to apply when considering a sale. However, only four operative provisions hold any real potential to preclude a transaction:

- each application to export arms is to be considered separately (no “bundling”);
- circumstances and rationales for denying an arms export are to be sent to all other EU countries (precludes internal EU *prima facie* contradictory arms sale stance to a country);
- application of the Code to dual-use goods if it seems likely the end-user is the military or internal security forces; and

- the provision to other EU members of an annual summary of a country’s defense exports.

Of these four, two are after-the-fact of an agreement if not the actual transfer.

The Code does call for constructing a list of military equipment subject to the Code’s provision, with the “fall-back” use of national lists which may well be influenced by domestic defense industries. And although individual EU countries can impose more stringent guidelines for their own conventional arms sales and are invited to “identify any improvements” in the Code, the whole enterprise becomes suspect by an internally opaque “Operative Provision 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.”

Another obstacle to implementing Straw’s promise should resonate in the U.S.—merchandise trade imbalance. For 2003, the trade balance favored China by 65 billion Euros (\$48.9 billion in 2004 dollars).⁴ EU countries could be tempted to play down continuing human rights concerns relative to Xinjiang province in China’s far west and in Tibet.

EU-U.S. tensions relative to Iraq and the overall trouble European defense companies encounter in trying to break into the U.S. defense market will also work against British success. With European defense spending essentially flat, should further consolidation of defense sector companies occur across national boundaries, EU governments will face more pressure to find new markets—just as U.S. companies traditionally will have to do, particularly if Secretary of Defense Donald Rumsfeld succeeds in transforming the U.S. military from a platform-intensive to a “labor” (human) intensive force.

As so often happens, the contest is between profit and principle.

Dan Smith <dan@fcl.org> is a military affairs analyst for Foreign Policy in Focus (online at www.fpif.org)

END NOTES

¹ Government Accountability Office Report, "China: U.S. and European Union Arms Sales Since the 1989 Embargoes," Statement of Harold J. Johnson, Associate Director, International Relations and Trade Issues, National Security and International Affairs Division, before the Joint Economic Committee, April 28, 1998 (GAO/T-NSAID-98-171).

² Meanwhile, the Pentagon managed to rile opposition members of Taiwan's legislature. Early in George Bush's first term, Congress approved an \$18 billion arms package for Taiwan, a package including four destroyers, eight diesel-electric submarines, and a number of anti-submarine aircraft. The offer, yet to be accepted by Taiwan, led to unkind words from Deputy Under Secretary of Defense Richard Lawless in October 2004 that produced an irate retort from an opposition Taiwan legislator: "On one side, we are being threatened by this thug, China. But on the other side, we are being extorted by this mafia leader, the United States, to pay protection money."

³ It should be noted that the effect of U.S. law is the reverse. In late November 1999, President Clinton signed the Omnibus Spending Bill which included the State Department Authorization legislation. This contained the "International Arms Sales Code of Conduct," modified from the original by the Senate-House conference committee. Unfortunately, the legislation that emerged was more symbolic than substantive. While listing six criteria a country had to meet to be eligible for U.S. arms, the legislation did not actually restrict arms sales. It only directed the president to begin multilateral negotiations for an International Code of Conduct based on the six criteria.

The eventual six eligibility criteria require that countries: promote democracy, respect human rights, not engage in acts of aggression contrary to international law, not support terrorism, 5) not contribute to proliferation of weapons of mass destruction, and 6) not be located in a politically unstable region.

⁴ This was with a 15-member EU, which expanded to 25 members on May 1, 2004. As a comparison, the U.S. 2003 merchandise deficit with China was \$124 billion. It went to \$148 billion in 2004.

FOR MORE ANALYSIS FROM FOREIGN POLICY IN FOCUS:

The 2005 Inaugural Speech: "Play it Again, George"
By Col. Daniel Smith (Ret.) (January 24, 2005)
<http://www.fpif.org/commentary/2005/0501inaug1.html>

Budget Legerdemain
By Col. Daniel Smith (Ret.) (January 6, 2005)
<http://www.presentdanger.org/commentary/2005/0501budget.html>

The Landmine Web
By Col. Daniel Smith, USA (Ret.) (December 2004)
<http://www.fpif.org/papers/0412landmine.html>

Media Manipulation
By Col. Daniel Smith, USA (Ret.) (December 8, 2004)
<http://www.fpif.org/commentary/2004/0412pr.html>

Iraq and the U.S. Legacy
By Col. Daniel Smith, USA (Ret.) (November 26, 2004)
<http://www.fpif.org/commentary/2004/0411competent.html>

Being "Over There:" Location, Location, Location
By Col. Daniel Smith, USA (Ret.) (November 11, 2004)
<http://www.fpif.org/papers/0411location.html>

Published by Foreign Policy In Focus (FPiF), a joint project of the International Relations Center (IRC, formerly Interhemispheric Resource Center, online at www.irc-online.org) and the Institute for Policy Studies (IPS, online at www.ips-dc.org). ©2005. All rights reserved.

Foreign Policy In Focus

“A Think Tank Without Walls”

Established in 1996, Foreign Policy In Focus is a network of policy analysts, advocates, and activists committed to “making the United States a more responsible global leader and global partner.” For more information, visit www.fpiif.org.

Recommended citation:

Colonel Daniel Smith, USA (Ret.), “Twixt Profit and Principle: Arms for China,” (Silver City, NM & Washington, DC: Foreign Policy In Focus, February 4, 2005).

Web location:

<http://www.fpiif.org/commentary/2005/0502china.html>

Production Information:

Writer: Colonel Daniel Smith, USA (Ret.)

Editor: John Gershman, IRC

Layout: Chellee Chase-Saiz, IRC

p. 4

www.fpiif.org

A Think Tank Without Walls

