



EUROPEAN UNION

~FACTSHEET~

I. EU ARMS AND DUAL USE EXPORTS POLICY and EU EMBARGO ON CHINA:

1. The EU embargo on arms exports to China was adopted by the European Council on 27 June 1989, further to the events in Tienanmen Square (cf. Annex I).
2. The embargo takes the form of a European Council Declaration since at that time the Treaty did not provide the possibility for the adoption of a legal instrument in this field. Due to nature of the declaration, the scope of the embargo is not clearly defined. Thus different Member States interpret the embargo on sales of arms to China in different ways. In any case, in assessing applications for licences to export military items not covered by the embargo, national authorities have to consider whether the export in question would be appropriate on the basis of the criteria laid down in the EU Code of Conduct on Arms exports (cf. Annex II).
3. The arms embargo on China does not cover a large proportion of sensitive items which are, on the contrary, covered by the Dual Use Regulation. This is a legally binding instrument directly applicable in EU Member States. It sets out all the requirements which need to be met and the procedures to be followed for the granting of an export license.

II. EU CODE OF CONDUCT ON ARMS EXPORTS: functioning and scope

4. In the years following the adoption of the embargo, Member States' arms export control policies continued to converge as illustrated by the adoption of common criteria to be applied to arms exports in 1991 and 1992, and by the subsequent adoption in 1998 of the EU Code of Conduct on Arms Exports.
5. The Code of Conduct lays down eight criteria (cf Annex II) against which Member States assess applications to export **military** equipment. Among the criteria set out in the Code, several take into account concerns expressed by some partners of the EU, e.g.: Criterion Two (respect of human rights in the country of final destination), Criterion Four (Preservation of regional peace, security and stability), Criterion Five (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), Criterion Seven (existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions) and Criterion 8 (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). In addition, the operative provisions of the Code require, inter alia, that:

- as appropriate, Member States should assess, through the CFSP (Common Foreign and Security Policy) 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 (O.P. 9);
- Member States should circulate between themselves details of licences refused in accordance with the Code, with explanations of why the licences have been refused, and that any Member State considering granting a licence similar to one denied by another Member State, should consult the Member State(s) which issued the denial, and inform should it decide to grant the licence in question (O.P. 3);
- an annual EU report on arms exports by Member States, containing statistical annexes, should be published. The statistical annexes have become more and more detailed since the first EU annual report for 1999, so that the Sixth Annual report concerning arms exports in 2003 contains figures on the number and value of licences granted per destination with some Member States supplying details broken down per military list category (i.e. identifying the type of item exported). The statistical annexes also contain figures for the number of denials issued, and the criteria on which such denials are based.

These provisions help ensure mutual political control among Member States as well as transparency and accountability.

6. Furthermore, the wording of Code of Conduct is currently under review, and a revised and strengthened Code is expected to be agreed shortly. The revised Code would include several new elements: Member States' responsibilities with respect to brokering, transit/transshipment, licensed production overseas, intangible transfer of software and technology, end-user certification and national reporting will be clarified; the criteria will include additional references to anti-personnel mines, commitments under the multinational export control regimes, and international humanitarian law. Work is also being carried forward on a "tool box" or set of measures providing for increased sharing of information and transparency, to be applied by Member States for a specific period with respect to arms exports to a previously embargoed destination.

**EUROPEAN COUNCIL
(Madrid 27 June 1989)**

Declaration on China

The European Council, recalling the Declaration of the Twelve of June 6, strongly condemns the brutal repression taking place in China. It expresses its dismay at the pursuit of executions in spite of all the appeals of the international community. It solemnly requests the Chinese authorities to stop the executions and to put an end to the repressive actions against those who legitimately claim their democratic rights.

The European Council requests the Chinese authorities to respect human rights and to take into account the hopes for freedom and democracy deeply felt by the population. It underlines that this, is an essential element for the pursuit of the policy of reforms and openness that has been supported by the European Community and its Member States.

The Twelve are aware that the recent events have caused great anxiety in Hong Kong.

In the present circumstances, the European Council thinks it necessary to adopt the following measures:

raising of the issue of human rights in China in the appropriate international fora asking for the admittance of independent observers to attend the trials and to visit the prisons,

interruption by the Member States of the Community of military cooperation and an embargo on trade in arms with China,

suspension of bilateral ministerial and high level contacts,

postponement by the Community and its Member States of new cooperation projects,

reduction of programmes of cultural, scientific and technical cooperation to only those activities that might maintain a meaning in the present circumstances,

prolongation by the Member States of visas to the Chinese students who wish it.

Taking into account the climate of uncertainty created in the economic field by the present policy of the Chinese authorities, the European Council advocates the postponement of the examination of new requests for credit insurance and the postponement of the examination of new credits of the World Bank.

**Extract from the EU Code of Conduct on Arms Exports, adopted by the Council
on 8 June 1998**

"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:

- (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 neighbouring 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 behaviour 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 (anti-terrorist 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 UNDP, 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."
