To authorize measures to deter arms transfers by foreign countries to the People’s Republic of China.

A BILL

To authorize measures to deter arms transfers by foreign countries to the People’s Republic of China.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “East Asia Security Act of 2005”.

SEC. 2. STATEMENTS OF POLICY.

Congress—

(1) previously expressed its strong concerns in House Resolution 57 of February 2, 2005, and Senate Resolution 91 of March 17, 2005, with the transfer of armaments and related technology to the People’s Republic of China by member states of the European Union, which increased eightfold from 2001 to 2003, and with plans to terminate in the near future the arms embargo they imposed in 1989 following the Tiananmen Square massacre;

(2) welcomes deferral of a decision by the European Council to terminate its arms embargo following adoption of those Resolutions, the President’s visit to Europe, and growing concern among countries in the regions and the general public on both sides of the Atlantic;

(3) welcomes the decision by the European Parliament on April 14, 2005, by a vote of 421 to 85, to oppose the lifting of the European Union’s arms embargo on the People’s Republic of China, and resolutions issued by a number of elected parliamentary
bodies in Europe also opposing the lifting of the
arms embargo;

(4) also welcomes the onset of a strategic dia-
logue between the European Commission and the
Government of the United States on the security sit-
uation in East Asia, through which it is hoped a
greater understanding will emerge of the con-
sequences of European assistance to the military
buildup of the People’s Republic of China for peace
and stability in that region, to the security interests
of the United States and its friends and allies in the
region, and, in particular, to the safety of United
States Armed Forces whose presence in the region
has been a decisive factor in ensuring peace and
prosperity since the end of World War II;

(5) hopes that a more intensive dialogue with
Europe on this matter will clarify for United States
friends and allies in Europe how their “non-lethal”
arms transfers improve the force projection of the
People’s Republic of China, are far from benign, and
enhance the prospects for the threat or use of force
in resolving the status of Taiwan, a troubling pros-
pect made more ominous by recent adoption of a
new law by the Chinese National People’s Congress
expressly authorizing the use of force;
(6) also hopes that this dialogue will result in an important new consensus between the United States and its European partners on the need for coordinated policies which encourage the development of democracy in the People’s Republic of China and which discourage, not assist, China’s unjustified military buildup and pursuit of weapons that threaten its neighbors;

(7) however, deeply regrets that none of the European friends and allies of the United States who have been transferring arms to the People’s Republic of China has announced a cessation or even a temporary halt to those transfers while this new dialogue with the United States ensues, and notes with concern that such European friends and allies have provided little, if any, transparency to the United States Government into the full range and capabilities of all of the armaments and related technology that they have transferred to date and continue even now to do so;

(8) is further troubled by public reports describing well known European companies as suppliers to weapons programs of the People’s Republic of China, who are also participants in numerous sensitive United States Government weapons programs,
and the increased risks of diversion of United States
weapons technology to China inherent in such an
undesirable situation; and

(9) in view of the gravity of European arms
sales to the People’s Republic of China, which have
not abated, believes it is necessary to make provision
for greater scrutiny and oversight with respect to
those areas of international armament cooperation
that present increased levels of risk to the security
interests of the United States and to authorize ap-
propriate measures which the President may drawn
on in deterring foreign support for China’s military
buildup in order to safeguard the national security
interests of the United States and peace and secu-

SEC. 3. REPORT ON FOREIGN MILITARY EXPORTS TO
CHINA.

(a) REPORT.—The President shall, at the times spec-
ified in subsection (b), transmit to the appropriate con-
gressional committees a report that identifies every person
of a member country of the European Union, and any
other foreign person the President may consider appro-
priate, with respect to whom there is credible information
indicating that the person, on or after January 1, 2005,
exported to—
(1) the People’s Republic of China any item on the Wassenaar Munitions List of July 12, 1996, and subsequent revisions; or

(2) the military, intelligence, or other security forces of the People’s Republic of China—

(A) any item on the Wassenaar List of Dual Use Goods and Technologies of July 12, 1996, and subsequent revisions; or

(B) any other dual use item if the item is intended, entirely or in part, for use with an item described in paragraph (1).

(b) TIMING OF REPORT.—The report required under subsection (a) shall be transmitted not later than 180 days after the date of the enactment of this Act and not later than the end of each 12-month period thereafter.

(e) EXCEPTIONS.—A foreign person is not required to be identified in a report required under subsection (a) if the person—

(1) was identified in a previous report transmitted under subsection (a) on account of a particular export, except to the extent that the export may have continued, involved additional transfers, or was larger, more significant, or different in nature than described in the previous report;
(2) was engaged solely in an export on behalf of, or in concert with, the Government of the United States; or

(3) was engaged in an export which, as determined by the President, would be exempt from the restrictions of section 902(a) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101–246; 22 U.S.C. 2151 note), if the export were subject to the jurisdiction of the United States, by reason of the issuance of a report under section 902(b) of such Act.

(d) Form.—If the President considers it appropriate, reports transmitted under subsection (a), or appropriate parts thereof, may be transmitted in classified form.

SEC. 4. REPORT ON CHINA ARMS TRANSFER POLICIES OF COUNTRIES PARTICIPATING IN UNITED STATES DEFENSE COOPERATIVE PROJECTS; CERTAIN LICENSE REQUIREMENTS.

(a) Statement of Policy.—Congress is concerned with the significant additional risk of unlawful use and diversion of sensitive United States weapons system research, design, and development arising from cooperative research and development projects with foreign governments and foreign persons who may also transfer arms and related technology to the People’s Republic of China.
(b) REPORT.—The President shall, at the times specified in subsection (c), transmit to the appropriate congressional committees a report that—

(1) identifies every foreign government with respect to which the United States is carrying out a cooperative project described in subsection (d) and whose policies or practices, on or after the date of the enactment of this Act, permit the export of any item described in paragraph (1), or subparagraph (A) or (B) of paragraph (2), of section 3(a); and

(2) describes the cooperative projects and policies or practices referred to in paragraph (1) of every foreign government identified under such paragraph.

(c) TIMING OF REPORT.—The report required under subsection (b)—

(1) shall be transmitted not later than 180 days after the date of the enactment of this Act and not later than the end of each 12-month period thereafter; and

(2) may be included in the report required under section 3, as the President determines appropriate.

(d) COOPERATIVE PROJECTS.—The cooperative projects referred to in subsection (b) are projects carried
out under section 27 of the Arms Export Control Act (22
U.S.C. 2767) or section 2350a, 2358, or a memorandum
of understanding under section 2531 of title 10, United
States Code.

(e) LICENSE REQUIREMENTS.—

(1) REQUIREMENT.—Notwithstanding any
other provision of law, a license under section 38 of
the Arms Export Control Act (22 U.S.C. 2778) shall
be required for the export of defense articles or de-
fense services by any person who is not an officer or
employee of the Government of the United States in
furtherance of a cooperative project described in
subsection (d) with a country identified in a report
transmitted under subsection (b).

(2) CONGRESSIONAL NOTIFICATION.—The
issuance of a license pursuant to paragraph (1) shall
be subject to the same requirements as are applica-
tible to the export of items described in section 36(c)
of the Arms Export Control Act (22 U.S.C. 2776(c))
(without regard to the dollar amount requirements
relating to contracts contained in such section), in-
cluding the transmittal of information and the appli-
cation of congressional review procedures in accord-
ance with such section.
SEC. 5. CERTAIN FOREIGN OWNERSHIP AND CONTROL OF
DEFENSE ARTICLES IN THE UNITED STATES.

(a) Statement of Policy.—Congress determines that special care should be taken by the United States with respect to foreign persons who sell arms and related technology to the People’s Republic of China, while simultaneously seeking ownership of United States defense articles or defense services, including the results of United States Government funded defense research and development, through the acquisition or control of United States defense firms, directly or through their subsidiaries and affiliates based in the United States.

(b) License Requirements.—

(1) Requirement.—The President shall require a license pursuant to regulations issued under section 38(g)(6) of the Arms Export Control Act (22 U.S.C. 2778(g)(6)) for the transfer of ownership or control of United States defense articles or defense services arising from the acquisition or control of a person required to be registered under section 38(b)(1) of such Act (22 U.S.C. 2778(b)(1)), or any subsidiary, division, affiliate or other entity thereof, whenever the person gaining acquisition or control is—

(A) a foreign national of the People’s Republic of China or a foreign person otherwise
subject to the jurisdiction, ownership, or control
of the People’s Republic of China;

(B) a foreign person identified in a report
transmitted under section 3 or having its prin-
cipal place of business in a country described in
a report transmitted under section 4; or

(C) a United States person owned or con-
trolled by a foreign person, including a sub-
sidiary or affiliate of a foreign person described
in subparagraph (B).

(2) ADDITIONAL REQUIREMENT.—A license
under section 38(g)(6) of the Arms Export Control
Act for a person described in paragraph (1)(A) shall
not be issued until 30 days after the date on which
the President transmits a report that contains a de-
termination of the President that—

(A) the Government of the People’s Repub-
ic of China meets the requirements of section
902(b)(1) of the Foreign Relations Authoriza-
tion Act, Fiscal Years 1990 and 1991 (Public
Law 101–246; 22 U.S.C. 2151 note); or

(B) it is in the national interest of the
United States to issue the license.

(c) CONGRESSIONAL NOTIFICATION.—The issuance
of a license pursuant to subsection (b) shall be subject
to the same requirements as are applicable to the export of items described in section 36(c) of the Arms Export Control Act (22 U.S.C. 2776(c)) (without regard to the dollar amount requirements relating to contracts contained in such section), including the transmittal of information and the application of congressional review procedures in accordance with such section.

(d) Exception.—The issuance of a license pursuant to subsection (b) shall not be required in the case of an amendment to a munitions license or a change in registration arising from a sale or transfer of ownership or control of United States defense articles or defense services to a person described in subparagraph (A), (B), or (C) of subsection (b)(1) that was approved prior to the date of enactment of this Act unless the President determines that it is in the national security interests of the United States to require the issuance of a new license pursuant to subsection (b).

SEC. 6. CHINESE MILITARY END USE OF DUAL USE EXPORTS.

(a) Statement of Policy.—Congress welcomes the understanding reached at the Wassenaar Arrangement’s December 2003 plenary meeting to require governmental authorization for the transfer of non-listed dual use items intended for military end use in a destination subject to
any relevant regional arms embargo or to any United Nations Security Council resolution.

(b) LICENSE REQUIREMENT.—

(1) REQUIREMENT.—The President shall require a license under the Export Administration Regulations for the export of any item described in paragraph (1), or subparagraph (A) or (B) of paragraph (2), of section 3(a) that is not subject to a license under section 38 of the Arms Export Control Act (22 U.S.C. 2778) if the item is intended for military end use by the People’s Republic of China.

(2) SENSE OF CONGRESS.—It is the sense of Congress that the President should not approve a license pursuant to paragraph (1) unless the President determines that approval is important to counterterrorism, nonproliferation, or other national security interests of the United States.

(e) CONGRESSIONAL NOTIFICATION.—The issuance of a license pursuant to subsection (b) shall be subject to the same requirements as are applicable to the export of items described in section 36(c) of the Arms Export Control Act (22 U.S.C. 2776(c)) (without regard to the dollar amount requirements relating to contracts contained in such section), including the transmittal of infor-
mation and the application of congressional review pro-
dures in accordance with such section.

(d) DEFINITION.—In this section, the term “military
end use” means, with respect to an item, the item is or
may be intended, entirely or in part, for use in conjunction
with an item described on the Wassenaar Munitions List
of July 12, 1996, and subsequent revisions.

SEC. 7. APPLICATION OF MEASURES TO CERTAIN FOREIGN
PERSONS.

(a) APPLICATION OF MEASURES.—Subject to sec-
tions 8 and 9, the President may apply with respect to
any foreign person (including a foreign government) iden-
tified in a report transmitted under section 3, and shall
apply with respect to any foreign person (including a for-
egn government) identified in more than one report trans-
mitted under section 3, any or all of the following meas-
ures:

(1) RESEARCH AND DEVELOPMENT.—Denial of
participation in existing and new cooperative re-
search and development programs and projects
under section 27 of the Arms Export Control Act
(22 U.S.C. 2767) or sections 2350a, 2358, or a
memorandum of understanding under 2531 of title
10, United States Code.
(2) Control of United States Defense Firms.—Prohibition of ownership and control of any business organization required to be registered with the United States Government as a manufacturer or exporter of defense articles or defense services under section 38(b)(1) of the Arms Export Control Act (22 U.S.C. 2778(b)(1)).

(3) Security Assistance.—Prohibition on participation in any foreign military sales under chapter 2 of the Arms Export Control Act (22 U.S.C. 2761 et seq.) or any design and construction sales under chapter 2A of such Act (22 U.S.C. 2769).

(4) Munitions List Approvals.—Prohibition on licenses and other forms of approval under section 38 of the Arms Export Control Act (22 U.S.C. 2778) for the export of any item on the United States Munitions List as in effect on August 8, 1995.

(5) Dual Use Approvals.—Prohibition on licenses and other forms of approval for dual use goods or technology, the export of which is controlled under the Export Administration Act of 1979 (as continued in effect under the International
Emergency Economic Powers Act) or the Export Administration Regulations.

(b) Application of Additional Measures.—Subject to sections 8 and 9, and notwithstanding any other provision of law, the President may, with respect to any foreign person (including a foreign government) identified in a report transmitted under section 3, and shall, with respect to any foreign person (including a foreign government) identified in more than one report transmitted under section 3—

(1) suspend the use of any license exemption and expedited license procedure established in the International Traffic in Arms Regulations or other provisions of law for the export or temporary import of defense articles and defense services;

(2) require the execution of a non-transfer and end use certificate for the export of any defense articles and defense services; and

(3) require, as a condition of issuance of any license for the export of defense articles and defense services, United States access to and verification of the items after the export of the items or alternative measures to ensure compliance with restrictions on the transfer of the items to third-parties.
(c) Effective Date of Measures.—Measures applied pursuant to subsection (a) or (b) shall be effective with respect to a foreign person (including a foreign government) no later than—

(1) 30 days after the report identifying the foreign person is transmitted, if the report is transmitted on or before the date required by section 3(b); or

(2) on the date that the report identifying the foreign person is transmitted, if the report is transmitted more than 30 days after the date required by section 3(b).

(d) Duration of Measures.—Measures applied pursuant to subsection (a) shall be for a period of 2 years or longer, as the President determines appropriate. Measures applied pursuant to subsection (b) shall be, at a minimum, consistent with the duration of the license and the normal requirements for record keeping established in the International Traffic in Arms Regulations or longer, as the President determines appropriate.

(e) Publication in Federal Register.—The application of measures to a foreign person pursuant to subsection (a) or (b) shall be announced by notice published in the Federal Register, except if the President determines
that doing so would be inconsistent with the protection
of classified information.

SEC. 8. PROCEDURES IF DISCRETIONARY MEASURES ARE
NOT APPLIED.

(a) REQUIREMENT TO NOTIFY CONGRESS.—If the
President does not exercise the authority of subsection (a)
or (b) of section 7 to apply any or all of the discretionary
measures described in such subsection with respect to a
foreign person identified in a report transmitted under
section 3, the President shall so notify the appropriate
congressional committees not later than the effective date
under section 7(c) for measures with respect to that per-
son.

(b) WRITTEN JUSTIFICATION.—Any notification
transmitted by the President under subsection (a) shall
include a written justification describing in detail the facts
and circumstances relating specifically to the foreign per-
son identified in a report transmitted under section 3 that
support the President’s decision not to exercise the au-
thority of subsection (a) or (b) of section 7 with respect
to that person.

(c) FORM.—If the President considers it appropriate,
the notification of the President under subsection (a), and
the written justification under subsection (b), or appro-
priate parts thereof, may be transmitted in classified form.
SEC. 9. DETERMINATIONS EXEMPTING FOREIGN PERSONS
FROM MANDATORY MEASURES.

(a) WAIVER.—Any mandatory measure described in
section 7 shall not apply with respect to a foreign person
if the President transmits to the appropriate congressional
committees a report that contains a determination of the
President that—

(1) on the basis of information provided by that
person or the foreign government having primary ju-
risdiction over the person, the person did not, on or
after January 1, 2005, knowingly export to the Peo-
ple’s Republic of China the item the apparent export
of which caused the person to be identified in a re-
port transmitted under section 3; or

(2) the foreign government having primary ju-
risdiction over the person has entered into a written
agreement with the United States which—

(A) is binding under international law;

(B) prohibits further exports of any item
described in paragraph (1), or subparagraph
(A) or (B) of paragraph (2), of section 3(a) by
any person subject to its jurisdiction;

(C) is supported by the foreign govern-
ment’s adoption of policies and procedures pro-
viding for credible implementation of the re-
quirements in subparagraphs (A) and (B);
(D) does not constrain the President’s authority to impose measures under this act in the event of a future export of concern by the same or other persons subject to the jurisdiction of the foreign government party to the agreement; and

(E) is submitted to the appropriate congressional committees 30 days prior to its entry into force.

(b) ADDITIONAL WAIVER.—Any mandatory measure described in section 7 shall not apply to a foreign person if the President determines that it is important to the counterterrorism, nonproliferation, or other national security interests of the United States and transmits to the appropriate congressional committees a report in writing that contains such determination.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the President should—

(1) strengthen international coordination and execution of arms export policy through the development of bilateral and multilateral agreements under subsection (a)(2), particularly with member states of the North Atlantic Treaty Organization (NATO), Japan, Australia and New Zealand, and exercise the
waivers provided under this section in all appropriate instances that further this objective; and

(2) whenever the President determines that the measures described in section 7 should be applied, that the measures be applied comprehensively with respect to the affected foreign person’s affiliates and subsidiaries, wherever located, in order to deter to the fullest extent possible a recurrence or continuation of the export giving rise to the President’s determination.

(d) FORM.—If the President considers it appropriate, the determination and report of the President under subsection (a), or appropriate parts thereof, may be transmitted in classified form.

SEC. 10. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on International Relations and the Committee on Armed Services of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Armed Services of the Senate.
(2) **Defense articles and defense services.**—The term “defense articles and defense services” has the meaning given the term in section 47(7) of the Arms Export Control Act (22 U.S.C. 2794 note).

(3) **Dual use.**—The term “dual use” means, with respect to goods or technology, those goods or technology that are specifically designed or developed for civil purposes but which also may be used or deployed in a military or proliferation mode. Such term does not include purely commercial items.

(4) **Export.**—The term “export” has the meaning given that term in section 120.17 of the International Traffic in Arms Regulations, and includes re-exports, transfers, and retransfers by any means.

(5) **Export Administration Regulations.**—The term “Export Administration Regulations” means those regulations contained in sections 730 through 774 of title 15, Code of Federal Regulations (or successor regulations).

(6) **Foreign government.**—The term “foreign government” has the meaning given the term in section 38(g)(9)(B) of the Arms Export Control Act (22 U.S.C. 2778(g)(9)(B)).
(7) FOREIGN PERSON.—The term “foreign person” has the meaning given the term in section 38(g)(9)(C) of the Arms Export Control Act (22 U.S.C. 2778(g)(9)(C)).

(8) GOOD.—The term “good” has the meaning given the term in section 16(3) of the Export Administration Act of 1979 (50 U.S.C. App. 2415(3)).

(9) INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.—The term “International Traffic in Arms Regulations” means those regulations contained in sections 120 through 130 of title 22, Code of Federal Regulations (or successor regulations).

(10) ITEM.—The term “item” means any good or technology, defense article or defense service subject to the export jurisdiction of the United States under law or regulation.

(11) LICENSE.—The term “license” means an official written document of the United States Government issued pursuant to the Export Administration Regulations or the International Traffic in Arms Regulations, as the case may be, authorizing a specific export.

(12) OTHER FORMS OF APPROVAL.—The term “other forms of approval” includes any authoriza-
tion, rule or exemption contained in any statute or regulation that permits an export without a license.

(13) OWNERSHIP OR CONTROL.—The term “ownership or control” has the meaning given the term in section 122.2(c) of the International Traffic in Arms Regulations.

(14) PERSON.—The term “person” has the meaning given the term in section 38(g)(9)(E) of the Arms Export Control Act (22 U.S.C. 2778(g)(9)(E)).

(15) TECHNOLOGY.—The term “technology” has the meaning given the term in section 16(4) of the Export Administration Act of 1979 (50 U.S.C. App. 2415(4)).

(16) UNITED STATES MUNITIONS LIST.—The term “United States Munitions List” means the list referred to in section 38(a)(1) of the Arms Export Control Act (22 U.S.C. 2778(a)(1)).
A BILL

[Report No. 109-165]

H.R. 3100

Union Calendar No. 102

To authorize measures to deter arms transfers by foreign countries to the People's Republic of China.