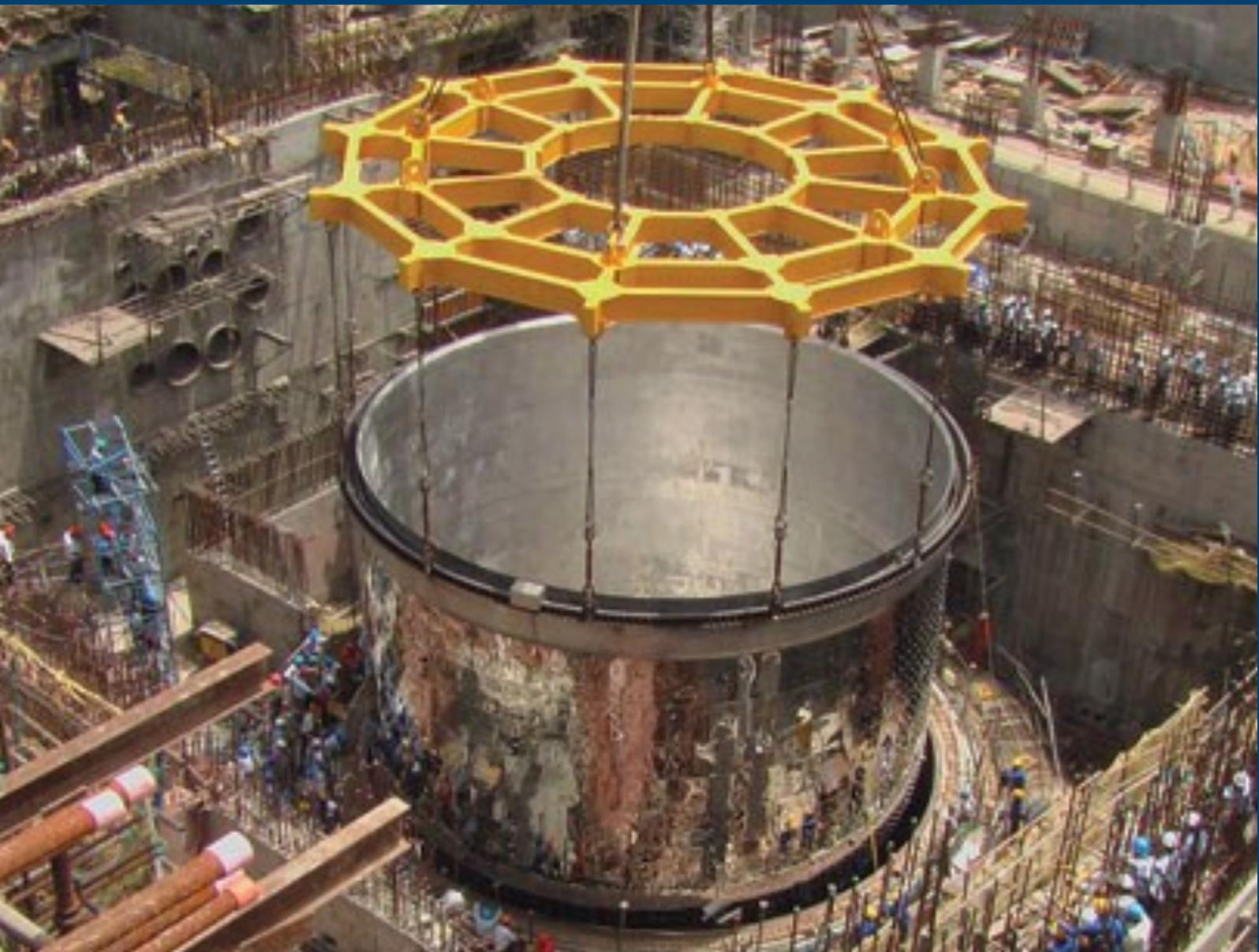


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Export Controls and India

Rajiv Nayan & Ian J. Stewart

With foreword by Wyn Bowen

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Cover Image

India's first commercial fast breeder reactor under construction at Kalpakkam.

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Foreword

Professor Wyn Bowen, King's College London

In this paper Rajiv Nayan and Ian Stewart provide important insights into the development and implementation of strategic export controls in India. It begins with Rajiv Nayan charting the history of India's export control system most notably since the 1998 nuclear tests. He clearly lays out the country's legal and regulatory requirements, as well as the institutional framework that has come to characterise the Indian approach in this field. In response to this analysis Ian Stewart highlights the key issues that define the requirements necessary for India to realise its aspiration of joining the international export control regimes. He focuses his comments around factors such as legislation, institutional capacity and private sector engagement. His analysis is generally positive in its portrayal of India's position vis-à-vis joining the regimes but usefully highlights the challenges the country will need to address in order to 'bring its system in line with international best practices', thereby promoting its chances of membership. This paper is a must read for policy makers and scholars interested in non-proliferation and more specifically in strategic export controls, their application in India and the prospects for the country joining the international supplier regimes.

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Abstract

India is emerging as an important country for the control of sensitive goods and technology. Currently, it approves a few hundred applications per year for the export of controlled goods, but the country's growing economy exists alongside an increase in the production and acquisition of goods and technology that have potential end uses in Weapons of Mass Destruction programmes. Thus, India is rapidly becoming a significant potential supplier of sensitive goods. To control these goods, India has developed an impressive framework of export controls. It has legal and regulatory mechanisms, licensing, enforcement, and private sector engagement policy. India appears prepared to join the four multilateral export controls regimes with some minor regulatory changes. Nonetheless, there is further work to be done.

Indian Export Controls

Dr Rajiv Nayan

History of India's Export Controls

The relationship between India and export controls is evolving and moving in a very different direction. The Indian government claims, and more importantly demonstrates, that it has a policy of responsibly controlling sensitive goods and has held that policy for a long time, almost since its independence. There were some provisions in Indian law that were ahead of time. However, by and large, the Indian export control arrangement, as it existed initially, was rudimentary in nature and structure. Although a sense of the importance of responsible controls existed, the Indian government largely viewed export controls within the context of the technology denial regime.

The Indian philosophy and approach towards export controls were, broadly speaking, in harmony with its outlook as a Non-Aligned Movement (NAM) country. It considered export controls as adversely affecting the peaceful development of legitimate programmes in developing countries, wherein the control of nuclear goods and technology was seen as hampering civil nuclear energy programmes. Controls on technologies usable in nuclear weapons delivery were also regarded as limiting the civil space programmes in these countries. India, along with other countries, especially in the NAM, protested against these perceived inequalities through different international fora.

Export controls have historically been a contentious issue between India and the United States in particular, and the Western world in general. As India embarked upon a path of liberalisation in 1991, its need for advanced technology increased. At that time, controls existed for some technologies. Yet, despite the end of the Cold War, India's growing proximity to the western world, and its reorientation towards a liberalised economy, it was not able to enjoy the benefits of procuring high-level technologies to meet its economic security requirements. One of the most challenging moments in this regard was the imposition of sanctions on the Indian Space Research Organisation for importing cryogenic engines from Russia for its space delivery programmes.

Beginning Anew

The 1998 nuclear tests signified, on the one hand, the lowest point in India's relationship with export controls, and, on the other, marked the beginning of a new phase in Indian engagement with its export control requirements. Nonetheless, the US, along with several other countries, imposed sanctions on India and, since the US was at the forefront of these measures, India began to negotiate with Washington. In this regard, the Jaswant Singh and Strobe Talbot rounds of talks were the most significant and export controls featured prominently on the agenda. The relationship cultivated by Singh and Talbot was further consolidat-

ed by the India-US Civil Nuclear Agreement, and the endorsement of India’s membership of the four multilateral export controls regimes. Nowadays, all countries are obliged to maintain export controls in accordance with United Nations Security Council Resolution 1540. This requirement converges with India’s security interests. UNSCR 1540 further aligned India with global best practices. Broadly speaking, a country’s implementation of export controls has four elements which must be introduced in a supportive political climate. These elements are: legal and regulatory mechanisms; licensing; enforcement; and private sector engagement. Despite being a small supplier of sensitive and dual-use items India has developed a significant infrastructure for export controls.

Legal and Regulatory mechanisms

A good legal framework is an essential basis for developing export controls. The Indian policy making community, which is relatively well-attuned to this requirement, makes use of its laws to provide statutory authority to its licensing and enforcement departments. At present, India has developed a very healthy relationship with global best practices in export controls. Its regulatory system has adopted elements from legislators all over the world. Some of these tools have been developed in the last decade. At the same time, it has discovered that its old laws are also useful for export controls. These laws, which have been in existence for some time, are seemingly being directed more towards export control purposes of late.

Three relevant legislations or amendments which were passed after 2004 are the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act of 2005, popularly known as the Weapons of Mass Destruction (WMD) Act; the amended Foreign Trade (Development & Regulation) Act 2010; and the Chemical Weapons Convention (Amendment) Act of 2012. Although India is steadily developing its technology base and industrial infrastructure, chemicals still dominate the India export profile as high technologies or controlled, sensitive technologies. India signed the Chemical Weapons Convention (CWC) in 1993 and was one of the first 65 countries to ratify it. To implement it domestically, India passed the Chemical Weapons Convention Act in 2000. In 2010, a bill to amend the CWC act was introduced in Parliament. The objective of the amendment was to widen the scope of the act and to harmonise Indian national legislation with the CWC. This bill was passed in both houses of the Indian Parliament and, after achieving assent, became part of the Indian legal framework in September 2012.

Treaty etc	Non-Proliferation	CWC	BTWC	Hague Code of
Status	X	√	√	X

Table 1: Indian adherence to international non-proliferation treaties and conventions.

The original CWC Act and its amendment together provide details about the control of chemicals exports. Chemical companies engaged in certain activities, including the export of chemical prescribed in Schedules 1 to 3 of the CWC, will have to register themselves with the Indian government. These companies will also be subject to inspections and other actions carried out by enforcement agencies. If a chemical company does not comply, or even obstructs the activities of enforcement activities, it can be punished with sentences ranging from fines to life imprisonment, in some cases. In addition, several sections of the act have provisions for one year’s imprisonment for different acts of non-compliance. With the 2012 amendment, no Indian company can trade in chemicals and precursors placed under the Schedule 2 of the CWC with any country or related companies that are not members of the CWC.

Before the CWC Act, another Indian law, which was relevant for export control, and which was also amended, was the Foreign Trade (Development & Regulation) (FT (D&R) Act. The FT (D&R) Act, which came into existence in 1992, was somewhat general in nature. Its basic objective was to facilitate import and export, with the aim of restricting licensing in foreign trade to a very small list of items. The 2010 amendment of the FT (D&R) Act added new provisions for the control of dual-use items. The idea behind amending the FT (D&R) Act was to make the existing law stricter and punishment more stringent. The amendment included the ‘enabling provisions’ of the WMD Act of 2005, in order to harmonise the old law with the WMD Act. The licensing of services and technology with military or dual-use implications is now included in the old act, which also includes financial services.

So, the question remains: what is the WMD Act? The WMD Act is one of three new entries in the Indian legal framework and was designed to implement India’s commitment to the United Nations Security Council Resolution (UNSCR) 1540. One of the principal objectives of the Act was to prevent non-state actors from acquiring sensitive technologies which may be used for weapons of mass destruction. At the time of its passing, the 9/11 incidents had already alerted the world to the potentially devastating consequences that may follow from WMD terrorism in general and nuclear terrorism in particular.

Element	Transshipment	Brokering control	Catchall control	Deemed Export
Status	√	√ (military)	√	√

Table 2: Elements included in Indian export control legislation

The WMD Act introduced almost all of the global export control practices to the Indian export controls system. The catchall control, which had entered into the Western system after the 1990 Gulf War, found its way in the Indian export control regime through this Act. However, the phrase catchall control has not been used. Section 11 of the Act instead states that:

“No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or in their missile delivery systems.” Under the catchall control, the licensing authority of the supplier country may control or deny an item to a recipient if it is presumed or established that the particular item is going to be used for development of WMD and their delivery vehicles.

The same 2005 Act incorporated deemed export and intangible controls. ‘Deemed export’ refers to transfer of knowledge to a foreigner residing in the supplier country. This rule, in principle, is relevant to all commercial, research, and educational institutions to prevent transfer of knowledge useful for building WMD. ‘Intangible control’ basically refers to the control of specific information and knowhow which is required for the development, production, or use of any goods. Training and technical services are generally included under intangible controls. On the other hand, listings such as blueprints and prototypes are normally covered under tangibles forms technology. For an IT oriented country like India, the control of intangible items is highly relevant.

The 2005 WMD Act also authorised controls relating to brokerage, transit, transshipment and retransfer. Apart from indigenously producing many of the items on the control list, India, over the years, has been procuring these items from outside. Furthermore, under a growing Indian economy, the country is going to acquire more of these technologies in the future. All of these require that India has a system to deal with diverse production centres and a supply chain of sensitive goods, technology and services. The latter indeed became significant after the emergence of the details regarding the A. Q. Khan Network, which encouraged countries to think more laterally about the requirements of brokerage controls and concerns about end users. The new Act in India further strengthened the end-user requirements in order to enhance Indian potential for mitigating the threat posed by supply-chain proliferation.

Of the old laws which have provisions for controlling WMD, perhaps the most important is the Atomic Energy Act of 1962 which helps to control nuclear goods, technology and services. Interestingly, Section 18 of the Act restricts the disclosure of information. This information disclosure could form the basis of deemed exports and intangible controls of nuclear items. The Environment Protection Act of 1986, and the Narcotic Drugs and Psychotropic Substances Act of 1985 support the control of exports in WMD areas. Meanwhile, the Arms Act of 1959 and Explosive Substances Act of 1908, along with the Arms Rules of 1962 helped to shape India’s control framework for conventional arms.

Lists	NSG	MTCR	Wassenner	Australia
			DU	Mil
Harmonisation	√	√	X	X

Table 3: Status of harmonisation between Indian export controls and international regimes.

On the 31st March 1995, India issued a notification in which it published a list of controlled items. This list was called the Special Materials, Equipment and Technology (SMET) list. The SMET list was regularly updated and, on the 1st April 2001, it was replaced by another notification. The new list is known as Special Chemicals, Materials, Equipment and Technology (SCOMET), a list that is also regularly updated. India's signature and ratification of the Chemical Weapons Convention (CWC) meant that it had to include in the SCOMET list at least those items which are in the three Schedules of the Convention. Although the Biological and Toxin Weapons Convention (BTWC) does not have any specific list of controllable biotechnology items, as a BTWC signatory with a growing biotechnology industry and aware of advances in recombinant DNA technology, India decided to include those items in its SCOMET list. India also restricts the transfer of controlled items to the countries which are placed under UN Security Council sanctions.

The SCOMET list included the items listed on the MTCR and NSG annexes, though these may not be in the same order as the lists of the US and other participant countries. Besides this, India is committed to a policy of not supplying Enrichment and Reprocessing (ENR) technology and goods to countries that do not possess them. Interestingly, India adopted this rule in 2005, although in many areas the international community is still struggling with its terms. In the 2011 plenary meeting, the NSG decided merely to restrict the supply of ENR items to the non-members of the NPT. Of course, the move was resented in India, although the NSG member countries such as the US and France reassured India that the restriction is not meant for it. The 2012 NSG plenary public statement reassured India that the ENR restrictions would not be applied on India.

India has developed a system for pre-licence screening. It ensures that the exporter is denied a licence for violating laws such as the Foreign Exchange Regulation Act, and the Foreign Exchange Management Act, or placed on the caution list of the Reserve Bank of India. Since an end user undertaking is required, the exporter is also expected to submit the purchase order from the foreign buyer, consignee, and end user along with the technical specification of the item for which a licence is sought. A number of factors resembling the US red flag and 'know your customer' measures are also taken into account before the authority grants the licence. Any nuclear item is to be supplied under safeguards, whilst suppliers are to specify 'port of discharge and route'. The route cannot be changed after the licence is granted to prevent against the risks of transshipment or onward diversion.

The Indian Trade Classification (Harmonised System) helps to facilitate transactions of goods. Technology and service exporters are under the Importer-Exporter Code. This code may be withdrawn, suspended, or cancelled if an exporter violates the conditions of the licence or relevant Indian laws. Government officials may search, inspect and seize goods, documents, and conveyances and other items pursuant to relevant legislative violation. However, the entire exercise is to be undertaken with certain safeguards and a supplier has the right to appeal against any activity. If a supplier is found to be in violation of the act, or rules and order, it may have to pay a fine of up to five times the price of the item.

The WMD Act along with other acts provides a multi-layered punitive system. Those violating India's export control acts may be imprisoned depending on the nature of violation of the Act. The period of the prison term may vary from 5 years to life imprisonment. In addition, a supplier may be fined on top of any prison sentence. Severe punishments are meted out for involvement in terrorist activities. The WMD Act describes in detail the nature of punitive measures in the event of any violation and the punishment and penalty for it. Since the amendment, individuals or firms may be punished for the violation of the CWC Act, with penalties ranging from one year to life imprisonment in addition to a fine.

Institutional Framework

To implement and enforce its export control laws, India has developed an impressive institutional framework. The Directorate-General of Foreign Trade (DGFT) is the nodal agency for the implementation of the export control system and the licensing of goods controlled under SCOMET. SCOMET items are to be divided under eight categories, starting from category 0 to category 7. Categories 0 and 4 are nuclear items. The items listed under category 0 are licensed by the Department of Atomic Energy. However, all licence applications are submitted to the DGFT.

Category 6 of the SCOMET list marked for conventional munitions is yet to be populated. It is possible that India may draw up an exhaustive list of conventional munitions and related items once India's membership of the four multilateral export controls regimes enters into a serious phase. India's private defence industry is developing very rapidly, and this sector is increasingly interested in exporting its products. As such, the Indian defence industry wants the SCOMET list to provide details on related controlled items.

Although the Director-General of Foreign Trade is officially the principal licensing authority, it is an officer of the rank of a joint Director-General of Foreign Trade who, for all practical purposes, heads and handles the licensing applications for SCOMET. The Additional Director-General of Foreign Trade in charge of SCOMET items coordinates with different government agencies. This official remains at the forefront of the organisation and answers queries from applicants.

Any application for the supply of SCOMET items is cleared by an Inter-Ministerial Working Group (IMWG), with the Director-General of Foreign Trade chairing meetings of the IMWG. Representatives from the Ministry of External Affairs, the Ministry of Defence, the Defence Research and Development Organisation, the Department of Defence Production, the Department of Atomic Energy, the Department of Space, the Indian Space Research Organisation, National Authority of the Chemical Weapons Convention, the Department of Chemicals, the Department of Chemical & Petrochemicals and intelligence agencies all participate in the IMWG.

The IMWG has some permanent invitee departments or ministries and others are called depending on the item for which a licensing judgment is to be made. Each application is cleared on the basis of its content. For nuclear items, approval comes from the Department of Atomic Energy. For other items, the approval is given by the IMWG on a consensus basis. The IMWG is a standing body that meets every month and a No Objection Certificate is necessary from the relevant members of the IMWG before a licence can be approved. Licensing authorities are required to provide feedback to the company after the IMWG meeting informing the applicant that the licence has been granted, denied, or in the event that it is deemed that no licence is required. If the information provided in the application is found to be lacking, the licensing authorities may ask for additional information.

India's customs department has a large staff base which is assisted by a fully automated IT system to assist with training and operations. The Customs Department and other border control agencies are trained through an orientation programme and through international interactions in order to implement export controls effectively. The automated Customs Risk Management System is an important mechanism for managing the challenges of assessing the appropriate export controls for sensitive items.

At present, most of India's exports consist of services chemicals. Importantly, all major customs houses in India maintain their own chemical labs so that any suspect consignment is immediately tested. In the event that officials require further explanation, the consignment is sent to a laboratory of the Defence Research and Development Organisation. There are indications that India may make refinements to technological tools which will allow for the instant identification of not only chemicals but also other goods the Indian suppliers intend to export in the future.

India has introduced an advanced automated export control system that requires dual-use suppliers to register with customs offices under an accredited client system. The customs and excise department has vastly improved its coordination with other intelligence agencies, including foreign agencies. In this task, it is assisted by the Special Intelligence and Investigation Branch and the Directorate of Revenue Intelligence.

However, it is clear that India still has some work to do to improve its system. First, its SCOMET list does not include defence items, and Category 6 of the list is currently vacant,

with 'Reserved' marked against it. For some time now, the policy making community has been expecting the government to put defence-related items in this category, and with India's private sector now producing and exporting spare parts and technologies that may be used for defence items, an update to this Category seems critical and timely. Although at present a supplier may instead take a *No Objection Certificate* from the Indian Ministry of Defence for selling defence items, categorisation of these items in the SCOMET list would nonetheless enhance the country's licensing system and enable exporters to understand the significance of the controls.

Second, the SCOMET list's items are in harmony in some places with those of some of the multilateral export controls. However, these items are not placed in the same order as those of other countries, such as the US. This creates confusion in many instances, especially where multiple lists need to be consulted, and it leaves the impression that India has not fully harmonised its lists with the MTCR and the NSG. Therefore, India might consider rearranging the lists and increasing their conformity with those of others, especially the dominant export control countries such as the US. India's membership of the multilateral export controls regimes will also facilitate the standardisation of the export control list.

Industry

For several decades, high or advanced technology in India had to come either from outside or from laboratories or entities owned or funded by the government. Private industry had only a very small share in advanced technology production. As long as advanced technology was produced by through government funding, controlling the export of these items was relatively easy. Gradually, the private sector, too, entered into advanced technology production. With the increasing role of India's industry in advanced technology production, including dual-use technologies, strategic trade control has assumed a new meaning. Industry in India is now having to consider the first lines of defence in supply chain management. Nonetheless, the burgeoning private sector in India will present a significant challenge in the future for Indian licensing and enforcement authorities.

Failure to comply with Indian laws and regulations may lead to penalties, including imprisonment and company licence withdrawals. However, companies have been given some measures of protection, including the right to appeal against a decision. If non-compliance is deliberate all company officials involved in the decision may be sent to jail. However, if the violation occurs because of ignorance, the authorities take a lenient view and do not insist upon prosecution. The Indian government, which is relatively new to export controls, has had to make special efforts to conduct industry outreach, although the rules and regulations have for a long time included provisions for protecting industry's right to do fair business.

The DGFT and the Ministry of External Affairs are the two principal government departments that undertake outreach activities to Indian industry. Of the two, the DGFT, which is the nodal agency of licensing and the primary contact point for Indian industry, is expected to play a

more pro-active role in outreach activities. Indeed, the DGFT has already begun outreach activities and either organises outreach seminars or has its officials participate in outreach activities organised by different organisations. The DGFT helps industry to comply with export controls by making all of the notifications, rules, and regulations available online.

The Handbook of Procedures contains information for licensing, and it is freely available on the DGFT website. Industry also gets advice through its website about licensing, how to file an application online, and any other responses to clarifications or queries on request. The Joint Director General may be contacted by e-mail or by phone. One of the most significant challenges currently faced by the authorities is the determination of commodity jurisdiction. At present, the DGFT informs a company as to whether a particular item is on the SCOMET list or not, and, when, it is determined that the particular item falls on the SCOMET list, the supplier has to take a license to sell abroad.

Indian companies do not generally resist compliance with law since supplying sensitive goods to entities of concern can affect Indian security, the country's reputation, and thus also the willingness of foreign firms to trade with Indian businesses. Indeed, some of the largest Indian companies, like Larsen and Toubro, have very advanced compliance systems for mitigating these risks. These companies tend to have export control compliance divisions, drawing personnel from different departments such as legal and finance into 'integrated divisions' for compliance. Foreign companies also have to register themselves as if they were Indian companies and comply with Indian export control laws accordingly. These foreign companies, too, have advanced compliance divisions, staff and technology. Small and medium companies keep in touch with DGFT and related activities through different service providers, such as legal firms or chartered accountancy firms.

Personnel from Indian companies are quite active in participating in outreach activities organised by different organisations and agencies. Business associations such as Federation of Indian Chambers of Commerce and Industry (FICCI) and the Confederation of Indian Industries (CII) and the Indian Chemical Council are becoming active in terms of outreach activities. Although such activities are not yet commonplace, they are expected to increase in the future. Business associations like CII are also looking at ways to develop a code of conduct for industry. In the past, foreign governments like the US sent their technical divisions to conduct outreach in collaboration with India's business houses and the Indian government, which has increased awareness and expertise. In addition, representatives of Indian business associations participate in activities organised by the UNSCR 1540 committee and international organisations like the Organisation for Prohibition of Chemical Weapons. More recently, one Indian company has joined with a foreign partner to enhance its understanding of export control laws.

One question that often is asked is: does Indian industry influence the export control policy making process? The answer to this is 'yes', but in a limited way. When any legislation is introduced or a law is amended, Parliament seeks views from different sectors of society, with

Indian industry associations recording their ideas on the introduced bill through representation and testimonies. However, industry does not have much say in regulation making, especially in terms of list making and introducing any other provisions to the Indian export system. Businesses often complain about delays in the clearance of laws but, since the licensing authority is subject to limitations only those licence applications that do not have complete documents or have vague destinations/ recipients/end users. Small and medium sized enterprises often raise objections that the government does not give them as much as attention as the larger enterprises receive and many Indian companies want appropriate measures to be introduced, in the sense of the 'effective practices' described by one of the reports of the UNSCR 1540 committee.

The Indian government needs to increase its interactions with industry and develop a more meaningful engagement with export control policy, especially in regulation and list-making. There is a need for a proper communication channel between the government and businesses on national and international risks if industry is to be made a partner in export control implementation. In the future, industry associations will need to form consortiums and work with Indian universities train personnel.

India may also need to undertake capacity-building or enhancement for its export controls system. Cost effective detection equipment that does not compromise enforcement should be made available to Indian enforcement authorities. Similarly, for the awareness programme, Non-Governmental Organisations (NGOs) should be encouraged. The involvement of the NGOs may increase levels of awareness amongst all of the different stakeholders potentially interested in export controls and may ease the burden on the current bureaucracy. In order to achieve these goals, the established export control countries need to share their experiences with these NGOs to enable them to build their existing capacity.

Conclusion

India has been using trade regulations to strike the correct balance, limiting the risk of proliferation without creating unnecessary impediments to legitimate trade. There are laws, regulations and institutions to enforce export controls for safeguarding India's national security and promoting global non-proliferation and foreign policy goals. The same rules, regulations and institutions have provisions and mechanisms for addressing suppliers' grievances. Global best practices have been converted into national best practices for the purposes of export control and India shares global concerns about security risks. India may harmonise its system more fully when it is granted membership of all the four export control regimes. Thus, membership of the regimes will be a win-win situation for global export control regimes and India alike.

Response

Ian J. Stewart

It is important to note that India's working towards membership of the international export control regimes should be welcomed. To become a regime member, all other members of the regime must agree that India has met the particular entry requirements of that regime. It has long been recognised that the Nuclear Suppliers Group in particular would benefit from India's membership, with the UK actively campaigning for Indian membership in the regime as long ago as 1975 when the NSG was founded. The UK and US continue to be strong advocates for Indian membership with both also having campaigned for the NSG exemption.

It is not yet clear, however, to what extent other countries support India's membership of the NSG. Therefore, to maximise support within the regimes for a membership application, India must demonstrate compliance with both the letter and spirit of the international rules and treaties to which the export control regimes contribute. India's implementation of export controls can be evaluated from four different angles.

Legislative

The legal basis for export controls is perhaps the most measurable aspect of a country's commitment to implementing non-proliferation principles. As India moves towards regime membership, those who will consider any application from India to join the regimes will thus focus on India's legislative system. Therefore, India should ensure that it is fully aligned with international standards.

As Dr Nayan's comments show, the legal basis for India's export controls is as strong as in most countries: India has the legal toolset required to implement non-proliferation controls. The limitations of India's legislative system relate, not to the legal foundations, but to the incorporation of the international export control regimes. Dr Nayan highlights that India has incorporated the control lists of the Nuclear Suppliers Group and Missile Technology Control Regimes, albeit with the lists appearing in a different format from those of the regimes. India has more to do in this area. India should adopt the structure of the export control regimes and ensure that these lists are updated automatically should the lists of the regimes be updated.

India should also adopt the controls of the Australia Group and the Wassenaar Arrangement. A failure to do so could be interpreted as an attempt to pick and choose which non-proliferation efforts to support, rather than supporting non-proliferation in and of itself. Moreover, if India opts to apply for membership of one or all of these regimes, the application should demonstrate that Indian industry will be compliant from the day membership comes into effect. This can only be guaranteed if both the lists are enshrined in law and engagement with affected industries takes place long before membership takes effect.

Institutional Capacity

The interdepartmental process for considering export licence applications in India is in keeping with international best practice. Nonetheless, questions remain about the capacity available within this system. Dr Nayan highlighted recently that around 200 licence applications are considered each year. This appears to be a particularly low number given India's growing technological and scientific capability, thus leading to questions about whether there is a substantial volume of non-licenced trade. This question is revisited below.

Enforcement

The effectiveness of a country's export control system cannot be evaluated by counting the number of prosecutions secured by the government each year. Nonetheless, the existence of an effective enforcement system is a vital prerequisite to the implementation of a state's non-proliferation commitments. Not only can such a system prevent and deter exports to programmes of concern, but an effective enforcement system is vital in detecting the illicit trade in proliferation-sensitive technologies that sustains programmes of concern in numerous countries. Therefore, it is laudable that India has taken steps to enforce its export control laws.

Industry Engagement

Whilst difficult to substantiate, it seems likely given the low number of licence applications submitted to the Indian government that there is an amount of trade that takes place without the required licences.

The risk of the private sector engaging in non-licenced trade is particularly high in rapidly growing economies. Since the state's reforms in 1994, Indian industry has become more decentralised and responsive to market forces. Therefore, there is a growing number of firms that manufacture proliferation-sensitive technology, particularly in the nuclear sphere. These risks are compounded in India's case because of the country's isolation from the international nuclear market: Indian firms have indigenised capability of many nuclear components and technology. Of particular concern is the supply chain for India's heavy water reactors as these firms manufacture components suitable for use in heavy water reactors elsewhere—reactors that tend to be particularly well suited to plutonium production. The Indian government must work with the manufacturers of such technologies to ensure that the goods cannot be diverted to prohibited end uses

Outlook

For India to join the international export control regimes, there are both technical and political hurdles to overcome. Whilst this paper has focused on technical issues, it has been noted that without whole-hearted implementation of these technical measures in India, the political climate within the export control regimes would be less amenable to approving any applications from India for membership. India does have more to do to bring its system in line with international best practices. The export control regimes should consider working with India to ensure that this takes place. In particular, the chair or secretariat through the process of 'outreach' to non-members should prepare a roadmap for India's entry to each regime. Whilst there is scope for coordinating roadmaps across the four regimes, fundamentally it is for each regime to set out what India must do prior to an application for membership being approved.

Response

Dr Rajiv Nayan

The US and the UK along with several member countries of the multilateral export controls regimes are supportive of India's membership. Over time, the number of vocal supporters of Indian membership has dramatically increased and the number of sceptics has decreased. The countries that had been raising questions about India's membership are also expected to support its inclusion in 2013.

Mr Stewart asks India to comply "with both the letter and spirit of the international rules and treaties to which the export control regimes contribute." Some treaties like the NPT cannot be complied with because India is not a member. It remained for nuclear weapons countries to comply with it by renouncing and dismantling their nuclear weapons. Moreover, there are differences in the systems of the EU and the US, both in letter and spirit. India has adopted the appropriate practices of global export control norms. The Indian defence industrial base is basically catering to domestic demand. This may be the reason for India providing only a few licences. It is true that, with the expansion of the private sector, industry may look more towards exports if domestic demands are inadequate. India may also have to undertake outreach programmes for industry. At the same time, India has a fool-proof export control system, as advanced as the highly industrialised countries. To some extent, India has very well developed legal and enforcement frameworks compared to many of the established countries in the export control field. India also has a very comprehensive dual-use technology list for making decisions on licence approvals. It is, thus, almost impossible to have a non-licensed export.

India has harmonised its export control list with the technological annexes of the MTCR and the NSG. A section of the Indian strategic community maintains that the ordering of the Indian list allows for a more stringent control system and that it is, in many ways, better organised than the EU system and American system. However, the list may be reorganised to make it more user-friendly for industry. India has also harmonised its system with the guidelines of the MTCR and the NSG. On the 14th March 2013, DGFT, the licensing body of India, issued a notification in the gazette which updated India's export control list to conform with the updated lists of the MTCR and the NSG.

India and the US had issued a joint statement in Delhi during the 2009 visit of President Obama. The joint statement expects India to take "steps towards the full adoption of the regimes' export control requirements to reflect its prospective membership, with both processes moving forward together." India may, however, wish to develop a road-map of the membership of the regimes before it adopts the lists and the guidelines of the Wassenaar Arrangement and the Australia Group.

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