


The 24th Asian Export Control Seminar


DEVELOPMENTS IN INDIA'S EXPORT CONTROL SYSTEM

FEBRUARY 21-23,2017

TOKYO, JAPAN



APPROACH

- Long standing commitment to non-proliferation of WMD and their delivery systems and conventional arms
 - Expanding capabilities as producer and exporter of dual use and defence items
 - Law-based export control system
 - Outreach
- 

LEGAL FRAMEWORK

- Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005
- Foreign Trade (Development and Regulation) Act, 1992; amendment made in 2010; Chemical Weapons Convention Act, 2000
- Customs Act, 1962
- Atomic Energy Act, 1962
- UNSC Act 1947
- Environment Protection Act, 1986
- Rules and Regulations under these Acts issued from time to time

INDIA AND THE GLOBAL NON-PROLIFERATION ORDER



IAEA 1971- Founding Member



BWC 1972-State Party since 1974.Active participant in BWC meetings Geneva



CWC 1993-State Party since 1996 Destruction of CWs within deadlines 04/2009
Member of Executive Council OPCW



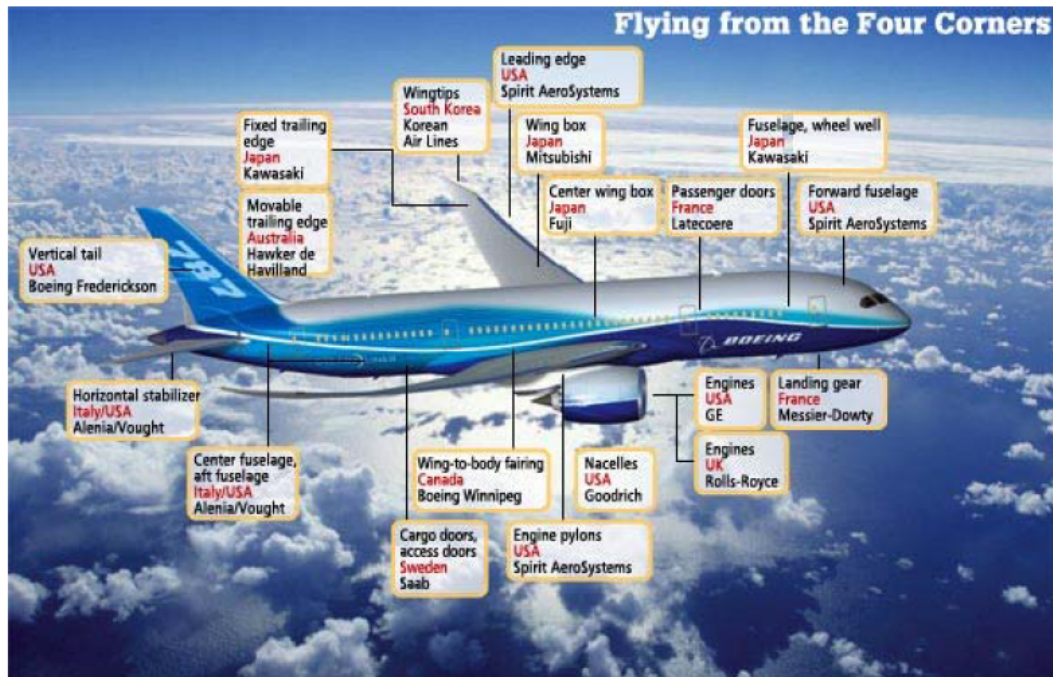
HCoC 2002- Member since June 2016



MTCR 1987-Joined MTCR in June 2016

Boeing 787

Global Value (Supply) Chain Partners



Fibrous and filamentary material is used to make composite material, which has extensive commercial use



Carbon fiber

Variety of carbon, glass, and aramid fibers

- **Nuclear Use**
 - High-speed rotors of gas centrifuges
- **Missile Use**
 - Structural Components (i.e. nose cones)
- **Non-WMD Use**
 - Numerous other uses, including aerospace and sporting equipment
- **Control**
 - Fiber types meeting physical parameters such as specific modulus, specific tensile strength, and melting temperature
 - Resin-impregnated or pitch impregnated fibers, metal or carbon-coated fibers (preforms) or carbon fiber preforms, as follows, ...

DUAL-USE ITEMS -- SCOMET

S	SPECIAL
C	CHEMICALS
O	ORGANISMS
M	MATERIALS
E	EQUIPMENT
T	TECHNOLOGY

10

Major Milestones-Export Control System

1947

First controls over sensitive nuclear materials Monazite and Thorium Nitrate

1995

First dual use Control list SMET notified

2000

SCOMET List notified with CWC chemicals, biological agents; separate categories for space/missile items

2005

- India enacted the WMD Act 2005
- Announced adherence to NSG and MTCR

2011

SCOMET list reissued to incorporate technology transfers, brokering, catch-all provisions in line with FTDR Act (Amendment 2010)

2013-16

SCOMET fully adheres to NSG and MTCR. Regular updates

SCOMET NOTIFICATIONS

- **14th March 2013** SCOMET list reissued. Adherence to MTCR Annex(2012)
- **3rd July 2013** Notified amendments to SCOMET list to include CWC chemicals and AG-relevant items
- **13th March 2015** Notified amendments to SCOMET list to include CWC chemical items and adherence to MTCR Annex(2014)
- **13th March 2015** Notification of Military Stores List and SoP
- **29th April 2016** Notified amendments to SCOMET in adherence to NSG(2015) guidelines

Above notifications available on www.dgft.gov.in

SCOMET CATEGORIES		Licensing Jurisdiction
0	Nuclear materials, nuclear-related other materials, equipment and technology	Department of Atomic Energy
1	Toxic chemical agents and other chemicals	DGFT
2	Micro-organisms, Toxins	DGFT
3	Materials, Materials Processing Equipment and related Technologies	DGFT
4	Nuclear-related other equipment and technology, not controlled under Category 0	DGFT
5	Aerospace systems, equipment, including production and test equipment, and related technology	DGFT
6	[Reserved]	DDP-NOC
7	Electronics, computers, and information technology including information security	DGFT

APPENDIX-3: LIST OF SCOMET ITEMS AVAILABLE AT
[http://dgft.gov.in/Exim/2000/NOT/itc\(hs\)/Eschedule2.pdf](http://dgft.gov.in/Exim/2000/NOT/itc(hs)/Eschedule2.pdf)

INTERNATIONAL BEST PRACTICES COVERED UNDER WMD ACT

Regulation of export, re-export, transit and transshipment

Section 5 of the WMD Act empowers the Government to identify, designate, categorise or regulate the export, transfer, re-transfer, trans-shipment, or transit of any relevant item.

Section 13(1) provides for regulating export, re-export, transit and transshipment

Catch-all control

Section 11 of the WMD Act “ 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 system”.

Brokering control

Section 12 of the WMD Act provides a brokering control. No person resident in India shall knowingly facilitate a transaction that is prohibited under the Act. However, mere carriage or provision of certain services in relation to such transaction, without knowledge, would not constitute an offence.

Section 14 of FTDR(Amendment Act 2010 and WMD Act together addresses evolving export control issues

Regulation of transfer of Transfer of Technology under WMD Act 2005

Section 13 of the Act enables the regulation of transfer of technology that is related to a prohibited activity.

The transfer of technology could be

- (a) by a person or from a place within India to a person or place outside India or
- (b) by a person or from a place outside India to a person, or a place, which is also outside India (but only where the transfer is by, or within the control of, person, who is a citizen of India, or any person who is a resident in India).

Licensing Process –SCOMET

Members of IMWG

DGFT (Chair)
 Min of External Affairs
 Defence Research
 Development
 Organisation/Department
 of Defence Production
 Dept of Atomic Energy
 Dept of Space
 National Authority, CWC
 Dept of Chemicals
 Dept of Bio-technology
 Central Board of
 Excise & Customs

Case by case examination

APPLICATION

1. Exporter

2. DGFT

License // Denial

3. Review by
 Inter-Ministerial
 Working Group

Clarifications

In case of absence of consensus in IMWG

4. High Powered Committee

In case of absence of consensus in HPC

5. Cabinet

Decision of the Cabinet/CCS

Policy level inter-ministerial body

Decision of the HPC

Decisions By consensus meets monthly

END USE DECLARATIONS SET PROHIBIT RE-EXPORTS WITHOUT PRIOR AUTHORISATION

- That the item(s) exported will not be used for purposes other than those declared in the EUC
- That the item(s) would not be subsequently transferred(re-exported) without the prior authorization of the original exporting government;
- Exported goods will not be diverted, sold or transferred to any Third Party whatsoever;
- that the above items would not be used to develop, acquire, manufacture, possess, transport, transfer or use, chemical, biological, nuclear weapons or for missiles capable of delivering such weapons
- that if required, verification/certification that the possession of the item(s) has occurred would be provided.

- **(Integrity of entire supply chain to be established)**

EXPORT OF MILITARY STORES

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- Military stores exported against an authorization (**no-objection certificate**) from DDP as per SoP at <http://ddpmod.gov.in/showfile.php?lid=175>
- List of military stores notified by DGFT in March 2015 given at **Appendix-I** of SoP; akin to WAML

SOP MILITARY STORES EXPORTS

Military Stores

Appendix II

sensitive items and major platforms
(Govt EUC)

Items other than Appendix II

accessories, components, less sensitive items
(EUC from private intermediaries/endusers)

For testing/participation in tenders/RFP and exhibitions abroad/exploring opportunities abroad NO EUC.

DEFENCE EXPORT LICENCING –PROCEDURE-APPENDIX-II ITEMS

Defence Export Steering Committee led by Secretary(DP)

In specific cases of disagreement

JS(DIP) chair
MoD(PIC)
MEA
DRDO
Army, Navy, Airforce Service Hqrs
Other experts

Inter-Agency Committee led by JS(DDP) -fortnightly

national security and foreign policy

Case by case examination

DDP

2 weeks(other than Appendix-II)
4 weeks for issue of NoC for Appendix II

<http://ddpmod.gov.in/>

Exporter files on line application)

MAJOR DESTINATIONS Defence Exports

Afghanistan, Algeria, Belgium, Botswana, Brazil, Burkina Faso, Chile, Ecuador, Egypt, France, Germany, Ghana, Indonesia, Israel, Italy, Malaysia, Mauritius, Myanmar, Namibia, Nepal, Nigeria, Oman, Republic of Korea, Romania, Russia, Seychelles, Sri Lanka, Slovak, Surinam, Tajikistan, Thailand, UK, USA

Recent Policy Initiatives Defence Manufacturing And Exports

FDI in Defence Sector

- ✦ Up to 49% allowed under automatic route.
- ✦ Above 49% allowed through Govt. route in cases where access to technology is involved

Manufacturing of defence items

- ✦ Manufacturing of defence items under compulsory licensing under Industries Development and Regulation Act 1951.
- ✦ Notification of Defence Product List in June 2014.
- ✦ Most parts components, casting, forging, test equipments, production equipments etc. de-licensed and removed from purview of licensing.

Defence Offset guidelines liberalised

ENFORCEMENT

FTDR Act

- Penal provisions for violation of export policy
 - ✦ Suspension/cancellation of 'IE Code' [Section 14(D)]
 - ✦ Fiscal penalty/Criminal prosecution, imprisonment
 - ✦ Penalty **up to 5 times** the value of the goods exported[Section 11] and power to confiscate carriage of goods and technology

Customs Act

- Power to search, seize, interrogate, arrest, impose fiscal penalties, initiate prosecution

GRADED PENALTIES UNDER WMD ACT

- Minimum punishment of **five years** extendable to **life imprisonment** - In case of violation of provisions related to a nuclear weapon, chemical weapon, a biological weapon, or their means of delivery; and in the case of provisions involving terrorists[Section 14 & 15].
- Imprisonment, with a minimum punishment of **six months but which may extend to five years** – In case of export control violations[Section 16,17, 18,19]
- Penalties for unauthorised exports- maximum penalty **Rupees twenty lakhs**[Section 16]
- Penalties for forgery, wrong declarations and statements-maximum penalty may extend to **Rupees twenty five lakhs or five time the value**[Section 18] whichever is more

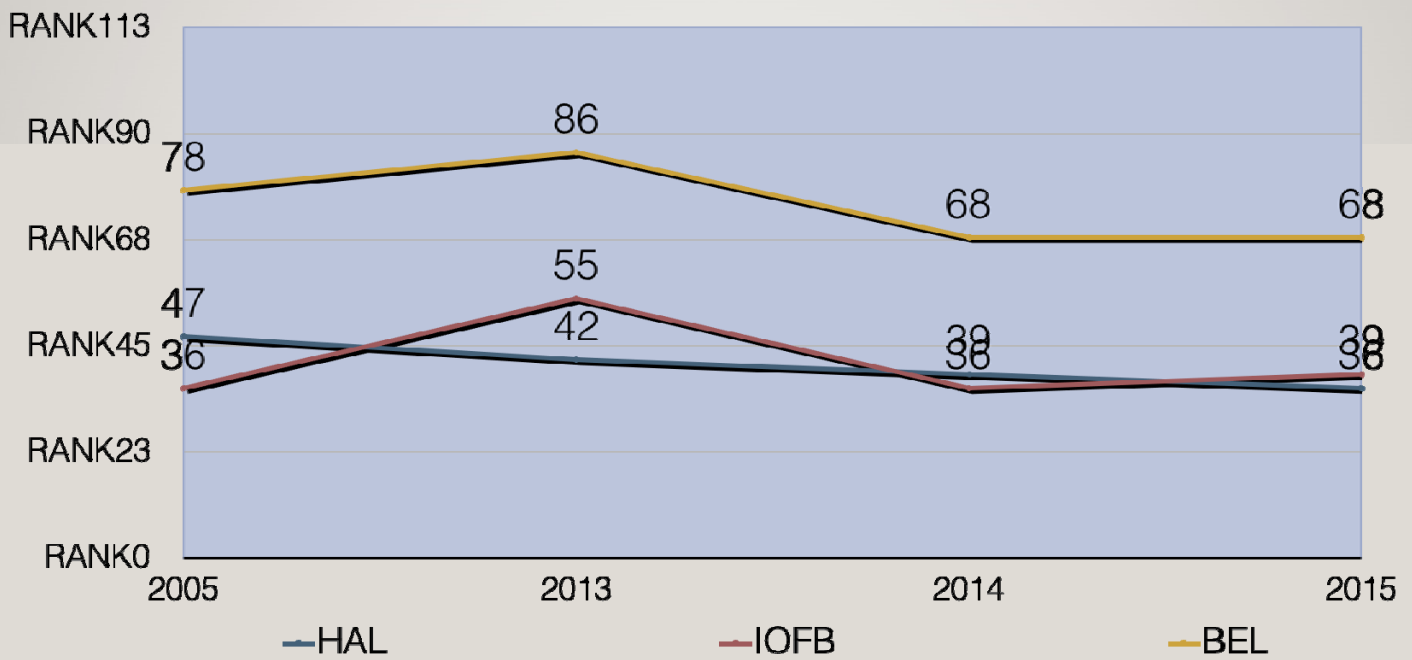
OUTREACH

- INDUSTRY OUTREACH EVENTS CONDUCTED BY DGFT/MEA
- INDUSTRY OUTREACH EVENTS BY DAE/DOS/DRDO/DPSUS WITH THEIR LABS AND TIERED VENDORS
- INDUSTRY ASSOCIATIONS' ENCOURAGED TO JOIN INTERNATIONAL OUTREACH WORKSHOPS ON ICPs- LENDS OWNERSHIP TO INDUSTRY- TRAINER OF TRAINEES
- ESTABLISH INTERNAL COMPLIANCE PROGRAMS IN INDIAN INDUSTRIES
- OPEN HOUSES/SEMINARS/NATIONAL CONFERENCES
- OUTREACH PROGRAMS FOR CUSTOMS/ENFORCEMENT OFFICIALS
- CLOSE COLLABORATION WITH THINK-TANKS/ACADEMIA

EMERGING TRENDS & PROJECTIONS

- India's GDP growth expected to grow three fold from current levels of USD 1.9 trillion in the next 20 years
- Make in India aims to increase in share of manufacturing in GDP from current levels of 15% to 25%
- Chemicals, biotech, electronics, defence among 25 key sectors identified under 'Make In India'
- Revision of Defence Procurement Procedures, Defence offsets, level playing field for private sector and FDI in defence to catapult co-production and co-development with foreign entities
- Shift from G2G to B2B
- Promotion of defense exports

RANKINGS OF INDIAN COMPANIES IN TOP 100 ARMS-PRODUCING & MILITARY SERVICES COMPANIES IN THE WORLD(SIPRI DATABASE)



- Aluminum powder use in propellant in Ballistic missiles
- Receive information from a foreign country
- DRI and MEA shared information, interdict-item declared as '*atomized aluminium powder of fine and superfine grade*' not in control list
- Sent to lab confirmation that it can be potentially used for missile program
- Foreign Trade Policy that prohibits export to country under sanction invoked.
- Detained goods seized, show cause notice issued and penalty imposed
- Other cases as well- Hydrogen Flouride (catch all provisions invoked)

CONCLUSION

- India's growing capacities in dual use and defence manufacturing involves greater integration with global value chains
- India's efforts and commitment pursued unstintingly over the last few decades has led to establishment of strong export control system
- The system is evolving in tandem with international export control regimes
- India is carrying out inter-agency and industry interactions to align SCOMET lists with regime lists
- India is engaged with NSG, WA and AG regimes actively towards membership

Thank You

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