



Advantages of including Munitions Items in the SCOMET List

G. Balachandran

Dr. G. Balachandran is Visiting Fellow at the Institute for Defence Studies and Analyses, New Delhi.

May 4, 2010



Summary

Unless the SCOMET list includes munitions items, and is harmonised with the Wassenaar Agreement list, India will be unable to get the full benefits of international commerce in defence goods.

Internationally what goes under the category “defence goods and services” is well known and well defined. In the United States, according to the Arms Export Control Act (AECA), “The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.” [Sec. 38 (a)(1) of the US AECA)]. The US Munitions List (USML) has 21 categories and 106 subcategories and runs to about 20 pages.

The Wassenaar Agreement (WA), which is the export control regime in respect of defence goods, with 40 countries as Participating Countries – and accounting for well over 90 per cent of global production of defence goods – has an extensive munitions list consisting of 22 categories, 99 subcategories and running to about 25 pages. The EU’s list of military goods is the same as the WA list.

In India, however, the situation is radically different. The earlier Industrial Policy Statements had a one-line definition of defence industries – Arms and ammunition and allied items of defence equipment, and defence aircraft and warships supplemented by another category Electronic aerospace and defence equipment. When the Indian defence offset policy was announced as part of the Defence procurement Procedure (DPP), the definition was expanded somewhat to a one-page list of generic items (Appendix VI to Annexure D of DPP).

This very loose and lax definition of what constitutes defence goods and services can lead to some very serious difficulties. First of all, the very loose definition has led many of the foreign vendors to offer as part of offsets goods and services which are not part of any of the international definition of such goods. As a result India would end up getting goods and services which would not be part of any international list of munitions items and hence cannot be seriously considered as advancing the Indian defence industrial base. It has been reported that so far India has signed 11 offset offers to the tune of Rs. 9465 crore, without any analysis of the goods and services offered as part of the offsets. However, in the view of many who have been following the Indian defence offset efforts, many of the offset items are not defence goods and services and will not do much to advance Indian defence industrial capabilities. A strict definition of defence industry, preferably along the lines of WA, needs to be adopted by India to get the maximum benefits of the offset policy. There is an additional advantage to be gained by harmonizing the Indian list of defence goods and services – the Indian munitions list – in line with the WA.

The WA is one of the four major export control regimes in the world – along with the Nuclear Suppliers Group (NSG), the Missile Control Technology Regime (MTCR) and the Australia group (AG) – which has been setting the export control guidelines in respect of goods under their charter. India is not a member of any of these regimes and has suffered disadvantages in respect of its ability to procure items controlled by these regimes from the respective members of the regimes – because of license requirements.

India, for its part, has enacted a technology export control law with an export control list – the SCOMET (Special Chemicals, Organisms, materials, equipment and Technologies) list – as part of its efforts to prevent proliferation of weapons of mass destruction. The SCOMET list is harmonized with the NSG and MTCR lists and does not include at present any defence goods and services. It is one of India's goals to become member of these regimes so that it can gain the full benefits of free commerce in the goods covered by these regimes. Unless the SCOMET list includes munitions items, harmonised with the WA list, it will not be possible for India to get the full benefits of international commerce in defence goods. It is therefore necessary that the Indian list of defence goods and services is defined as early as possible to be in harmony with the WA.

There is another reason for including defence goods and services in the SCOMET list as soon as possible. All members of WA require the importing country to execute an end-user certificate – essentially an arrangement or understanding involving site visit, on-site verification or access to records/ documentation by a foreign government or a foreign third party either acting directly or through an Indian party. Under a Public Notification, issued in August 2009, the Indian government made it mandatory for all companies and their subsidiaries registered in India and all other business entities operating in India and involved in the manufacture, processing and use of SCOMET list to obtain permission of the Central Government before entering into any such end-user agreement. The idea behind the notification was to restrict foreign governments' monitoring of Indian activities under the guise of end-use verification. Since the SCOMET list does not include defence items at the moment, while Indian companies engaged in import of dual-use items are required to get a government permission for agreeing to end-use verification, companies engaged in production of defence goods and services - however ill-defined at present - are free to enter into an end-user agreement without any regulation or monitoring! Obviously, the security implications of such a breach are far more serious.

It is, therefore, recommended that: (i) the Indian list of defence goods and services be expanded to be in harmony with the WA list; and, (ii) such a list be included in the SCOMET list; and, (iii) defence offsets be conditioned on the requirement that the defence goods and services offered as part of offset be items in the Indian munitions list.