

## Indian Chemical Export Controls System and the Australia Group

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### Summary

Set up in 1985, the Australia Group has been controlling exports of chemical agents with military ramifications from the very beginning. It included Biological agents in the early 1990s.

India has an elaborate and comprehensive export controls system for chemical agents that can be used for chemical warfare. Strict control of chemical agents is considered important because, of all the dual use items, chemicals constitute the largest category of Indian exports. President Obama, during his trip to India, endorsed India's candidature for the Australia Group. Later, France supported the Indian candidature. A team of the Australia Group visited India in the last week of April 2011 and interacted with Indian officials and experts working on export controls.

Set up in 1985, the Australia Group has been controlling exports of chemical agents with military ramifications from the very beginning. It included Biological agents in the early 1990s. After the operationalisation of the Chemical Weapons Convention (CWC), it was assumed that this informal group would cease to exist. The Australia Group reinvented itself. The CWC has detailed provisions for export controls. It has three schedules of chemical considered relevant for chemical weapons. The Australia Group controls some additional items outside the CWC list and uses this as one of the reasons for its continued existence.<sup>1</sup>

The international community, of late, has realized the importance of bringing India into the multilateral export controls regimes because of the increasing Indian profile. The move started at the track-II level and resulted in the acceptance at the governmental level. Some countries have explicitly supported the Indian membership for the multilateral export controls regimes and many more are informally accepting the merit of India joining the regimes. Generally, analysts think that of all the multilateral export control regimes, the membership for the Australia Group will come first. However, the Government of India wants membership

to all the regimes as a package and not in an incremental fashion.

Since the group is going to exist, it is recommended that India should join the Australia Group since it issues informal guidelines and classifies new items for export control. True, strategically, it is not as fascinating as the Nuclear Suppliers Group (NSG) or the Missile Technology Control Regime (MTCR) is. The membership may provide India an opportunity in managing export of global commerce in chemical and bio-technology. There are a couple of issues regarding the future of the Indian membership to these groups. The first is that India may have to move a third party application to the Chair of the group that it has fulfilled all the criteria. Secondly an associated question that will be asked is whether India has indeed fulfilled all the criteria.

India has fulfilled all the criteria but putting additional items of the Australia Group in its export controls policy. The move is facing resistance from chemical industry. Putting additional item on the Indian Control list called Special Chemicals, Organisms, Materials, Equipment and Technology List, which is more popular by its abbreviation SCOMET, means additional licensing burden may be imposed on Indian exporters. The item 1 of the SCOMET list contains special chemical items.

The Indian export control system has impressive legal, institutional and enforcement frameworks. India is a signatory to the CWC. As a result, it has to incorporate all the three schedules of CWC into its control list which India has already done. India has passed laws such as the Chemical Weapons Convention Act of 2000. Section 17 of the Act lays down: “No person shall export from, or import into, India a Toxic Chemical or Precursor listed in any of

the Schedules 1 to 3 in the Annex on Chemicals to the Convention except in accordance with the provisions of the Export and Import Policy determined by the Central Government from time to time... .” India is further amending the CWC Act to include some enforcement provisions, especially regarding personnel.

According to a government of India notice<sup>2</sup>:

1. Exports of schedule 1 chemicals are prohibited. Further, no import of schedule 1 chemical can take place except with prior permission from the National Authority obtained under Section 15 of the CWC Act 2000.
2. Export of schedule 2 chemicals to a non-State Party of the Convention is prohibited. Similarly, import of schedule 2 chemicals from a non-State Party to the Convention is prohibited.
3. Export of schedule 2 chemicals to State Parties can be made only by those exporters who have obtained a general permission from the DGFT for two years (at a time). They are further subject to information and disclosure requirements as laid down in the DGFT Notification.
4. Export of schedule 3 chemicals to State Parties is conditional upon information and disclosure requirements as laid down in the concerned DGFT notification.
5. Exports of schedule 3 chemicals to non-State Parties can be made only after obtaining an export license in this behalf and also subject to information and disclosure requirements as well as End-Use/End User Certificate as laid down in the concerned DGFT Notification.
6. All importers and exporters of schedule 2 and schedule 3 chemicals are required to submit declarations to the Department

of Chemicals on an annual basis as detailed in the Chapter on declarations.

India issues notifications on trade policy under another law, the Foreign Trade (Development & Regulation) Act. This 1992 Act has been amended in 2010. One of the principal objectives of the amendment was to bring about tighter control on export or trade of dual-use goods and related technologies. Through the new act, the Government of India seeks to control services as well. The amended act has included other than services technology as well. The Amendment also focuses on provisions such as transfer, re-transfer, transit and trans-shipment in the act, though these provisions had already existed in the Indian regulatory system. Transshipment control along with capability to monitor the export of Australia Group controlled items is one of the criteria for the Group membership. The amended rules also provide for the search and seizure with the approval of a very senior officer of the Directorate General of Foreign Trade. This amendment also grants enabling provisions for establishing controls as in the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 or the WMD Act.

In 2005, the WMD Act was passed to implement India's commitment on United Nations Security Council Resolution (UNSCR) 1540. The Section 11 of the Act explicitly states: "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." In addition, it has an intricate and graded penalty system for dealing with acts of violation. One of the criteria of the membership of the Australia Group is legal penalty. The Act introduced several new elements into the Indian export controls system such as transit and trans-shipment controls, retransfer provisions, technology transfer controls, brokering controls and end-use based controls. Besides, the Customs Act and the Unlawful Activities (Prevention) Amendment Act, 2004 provide statutory authority for export controls.

At the implementation level, the Directorate General of Foreign Trade is the nodal agency for granting license for SCOMET controlled chemicals. However, all the licenses for such export are referred to inter-service agency. The Directorate has devised several parameters and a license application is scrutinized on these.

At the enforcement level, there are enforcement officers. The amendment in the 2000 CWC Act is in progress to introduce some enforcement related provisions. Once this amendment is passed, enforcement arm of the nodal agencies will be further strengthened. As for the chemical industry, there are certain global problems, such as difficulties in distinguishing a commercial consignment from a chemical weapons-related consignment, establishing appropriate commodity thresholds, personal safety inspectors and the diversified but highly specialised nature of chemicals. Importantly, all major customs houses in India have their own chemical labs so any suspicious items are immediately tested. If there is need for further clarification, the item is sent to a laboratory of the Defence Research and Development Organisation.

India will abide by the guidelines of the Australia Group for export of chemicals. It could and should strike a right balance between confidentiality and transparency. India has also an unblemished track record on not only nonproliferation but also on disarmament. It completed the task of chemical weapons destruction within the set time limit. Membership of the Australia Group will not only further authenticate India's principled nonproliferation policy on the chemical weapons, but also enhance India's participation in the global non-proliferation drive. To that extent, it is a welcome step.

### **Endnotes:**

1. For the comprehensive lists of the items controlled by the Australia Group see, Australia Group Common Control Lists, accessed on 23 June 2011, available at <http://www.australiagroup.net/en/controllists.html>
2. Government of India, National Authority Chemical Weapons Convention, Export and Import of Schedule Chemicals, <http://nacwc.nic.in/>, accessed on June 6, 2011