

Biological Weapons Export Controls in India

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Summary

India's growing biotechnology industry is a subject of discussions all over the world. There are several Indian companies and laboratories which have come up against heavy odds and are known as world class. In the coming years, the Indian biotech industry is going to become very active in the world market. Its top companies are allocating substantial resources in the Research & Development sector.

President Obama, during his India's visit, announced liberalization of American export controls for India. Later, in a joint statement signed with the Indian Prime Minister Shri Manmohan Singh, he endorsed the candidature of India for membership of four multilateral export controls regimes, namely, the Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR), the Australia Group (AG) and the Wassenaar Arrangement.

Of these, the AG controls chemical and biological agents. This Group was formed in 1985. Initially, it controlled only the chemical agents that could be used for chemical warfare. However, since the early 1990s, the AG also started controlling biological agents. Like other small-group multilateral export control regimes, this informal body provides a set of guidelines and a technology list to its participant countries. The participant countries are supposed to incorporate the guidelines and technology list in their export controls systems.

As the announcement for the Indian candidature has been made in the joint statement during Obama's visit in November 2010, it is evident that India is also willing to become a member of the AG. The joint statement indicates 'the evolution of regime membership criteria, consistent with maintaining the core principles of these regimes' for India. At the same time, it takes commitment from the Indian government to fully adopt 'export control requirements' of a prospective member of these regimes.

India has already adopted guidelines and technological lists of the NSG and the MTCR after the July 18, 2005 India-US joint statement which is better known as the India-US nuclear deal. For the membership of the Australia Group India may have to adopt requirements for a prospective

member.

The Australia Group lays down the following criteria for the membership¹:

- A commitment to prevent the spread of CBW [Chemical and biological Weapons] proliferation, including being a party, in good standing, to the Biological and Toxins Weapons Convention and the Chemical Weapons Convention.
- Being a manufacturer, exporter or transshipper of AG controlled items.
- Adopting and implementing the *AG Guidelines for Transfers of Sensitive Chemical or Biological Items*.
- Implementing an effective export control system which provides national controls for all items on the AG common control lists and is supported by adequate licensing and enforcement regimes.
- Creating legal penalties and sanctions for contravention of controls and being willing to enforce them.
- Creating relevant channels for the exchange of information including: accepting the confidentiality of the information exchange; creating liaison channels for expert discussions; and creating a denial notification system protecting commercial confidentiality.
- Agreeing to participate in the AG in a way that will strengthen the effectiveness of the AG in preventing CBW proliferation.

To take the membership, India may have to send a third party application to the Chair of the group. The Chair will examine India's performance on the criteria requirements. The AG maintains that additional criterion

may be added to the specified criteria for the membership of the group. However, considering the current international mood and dynamics of world politics, it does not seem the AG chair may impose any additional criteria for India's membership since India already fulfills almost all the criteria requirements as discussed below.

India, on a number of occasions, has given statements regarding its commitment to arrest proliferation of WMD. India will definitely participate in AG meetings and proceedings actively. India is known for contributing positively to international organizations and it is campaigning for the permanent membership of the United Nations Security Council.

Additionally, India has implemented all its commitment to WMD nonproliferation through its institutional, legal, and regulatory frameworks. Although the nodal agency for licensing purposes of biological items is Directorate-General of Foreign Trade of the Indian Ministry of Commerce and Industry, there are a number of other departments and agencies of the government of India involved in the export controls process. All the licensing applications for dual-use items go to inter-departmental coordinating agency. The Customs as well as different intelligence and security agencies are enforcing export controls at different entry and exit points quite well.

India has the elaborate legal and regulatory framework. There are different such mechanisms in operation. The prominent are the Indian Environmental (Protection) Act of 1986, Rules for the Manufacture, Use/Import/Export and Storage of Hazardous, Microorganisms/Genetically Engineered Organisms or Cells. 1989, Recombinant DNA Guidelines formulated by the Department of Biotechnology in 1990, Guidelines developed in 1999 for generating pre-clinical data for rDNA vaccines, diagnostics and other

biologicals, The Drug Policy of 2002, The Guidelines for research in transgenic plants & guidelines for toxicity and allergenicity evaluation of transgenic seeds, plants and plant parts, National seeds Policy 2002, The Ethical Policies on the Human genome, Genetic Research and Services, Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act 2005 –WMD Act 2005, and Special Chemicals, Organisms, Materials, Equipment and Technology (SCOMET) List.

The WMD Act has a graded penalty system. In other Indian acts, penalty for different degrees of violation of law has been given in details. In the SCOMET list, category 2 has been allocated for listing biological agents. To meet additional requirements of the Australia Group, the category-2 may have to be elaborated and expanded to include the items of the AG list which is regularly updated. In the same way, the Indian regulatory system may adapt itself for the required “exchange of information including: accepting the confidentiality of the information exchange; creating liaison channels for expert discussions; and creating a denial notification system protecting commercial confidentiality.”

India is a member of both the Conventions—the Biological and Toxins Weapons Convention (BTWC) and the Chemical Weapons Convention (CWC). The CWC has a more detailed arrangement for chemical export controls, but the BTWC, too, has provisions which provide principles for export controls of biological agents with warfare potential. Article III of the BTWC lays down, “Each State party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents,

toxins, weapons, equipment or means of delivery.”

India’s growing biotechnology industry is a subject of discussions all over the world. There are several Indian companies and laboratories which have come up against heavy odds and are known to be world class. In the coming years, the Indian biotech industry is going to become very active in the world market. Its top companies are allocating substantial resources in the Research & Development sector. A number of countries are showing interest in collaborating with Indian biotechnology industry.

Thus, India, which already has a highly refined biological export controls system, may not have difficulty in meeting the criteria for the membership of the AG. India has already effected attitudinal changes toward the regime which it once criticized as a technology denial regime but strategically insignificant. True, the rising biotechnology profile of the country may help it in taking confidence building measures with global biotechnological commercial actors through the membership of the AG. It is acknowledged in India as in the world that the membership of this regime would not be very problematic for India. The joint statement mentions the phase wise membership of the regimes. Most likely, the membership of the AG would be the first to come.

Endnotes

- ¹ Australia Group Membership Criteria, accessed on 28-12-2010, available at <http://www.australiagroup.net/en/membership.html>