

## ***India's entry into the NSG: A Long-winded Process***

Arun Vishwanathan\*

Multilateral Export Control Regimes comprise of four multilateral groupings, namely the Nuclear Suppliers Group (NSG), Missile Technology Control Regime (MTCR), the Australia Group (AG), and the Wassenaar Arrangement (WA). These groupings essentially function akin to trade cartels by seeking to control the supply of material, technology, and dual use items which can be used for manufacturing nuclear weapons in the case of the NSG; rocket systems and unmanned air vehicles (UAVs) in the case of the MTCR; chemical and biological weapons in the case of the Australia Group (AG); and conventional arms and dual use goods and technologies in the case of the Wassenaar Arrangement (WA).<sup>1</sup>

India's relationship with the above multilateral export control regimes has witnessed a remarkable turnaround in recent years. From being the rationale behind the establishment of the NSG and the MTCR, India has joined the MTCR as a member, and its application for membership into the NSG is under discussion amongst the group's members. One of the drivers for this transformation has been the growing strategic partnership between the USA and India which, among other things, has resulted in the liberalisation of American export control regulations with respect to India. The extent of the policy shift towards India becomes apparent from the fact that, post 2009, only 0.3 percent of US exports to India require export licence from the Bureau of Industry and Security (BIS). This is a substantial reduction from the close to 25 percent of US exports which required export licences in the year 2000.<sup>2</sup>

The September 2001 terrorist attacks on the USA and the Bush administration's efforts to de-hyphenate its relations with India and Pakistan provided fresh impetus to American attempts at widening and deepening its bilateral relationship with India. The November 2001 joint statement by President George W. Bush and Prime Minister Vajpayee paved the way for the January 2004 Next Steps in Strategic Partnership (NSSP) wherein both countries agreed to expand cooperation in the areas of civilian nuclear cooperation, civilian space programs, and high technology trade.<sup>3</sup> The 18 July 2005 joint statement by President George W. Bush and Prime Minister Manmohan Singh, which initiated the dialogue for an Indo-US civilian nuclear agreement, heralded American intention to overturn decades of non-proliferation

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\*The Author is Assistant Professor, National Institute of Advanced Studies, Bangalore.

policy and signalled US's resolve to mainstream India by making it a part of the global nuclear order.

The July 2005 joint statement and the 2006 Hyde Act resulted in Indian commitment to harmonise its export control legislations, and adhere to the NSG and MTCR Guidelines.<sup>4</sup> Fast forwarding a few years, India's act of formally submitting its membership application in mid-May 2016 and India's accession to the MTCR as the thirty-fifth member of the grouping on 27 June 2016 signalled that history had come full circle. This was because the NSG was established in 1975, essentially as a response to the May 1974 Indian peaceful nuclear explosion (PNE). Similarly, the public announcement in April 1987 about the establishment of the MTCR was motivated, *inter alia*, by India's satellite launch vehicle flight tests a few years earlier.<sup>5</sup>

### **Why Export Control Regimes are Important**

The multilateral export control regimes are important vehicles to control the supply of materials and technology in the domain that they operate. The largest of these groupings is the Nuclear Suppliers Group (NSG) which has 48 members, with the European Union and the Zangger Committee as Observers. The stranglehold of the NSG on the export of nuclear materials and technologies, including dual-use items, can be gauged from the fact that its members control roughly 80 percent of global uranium reserves and close to 80 percent of the global uranium production.<sup>6</sup>

The situation in the case of the other multilateral export control regimes is not very different. The MTCR's membership with India's accession to the group has grown to thirty-five members. The MTCR members include Western developed countries, with expertise in missile materials and technologies. China, of course, would not be happy with India's accession to the group given that its membership application to join the MTCR has been pending since 2004.<sup>7</sup>

The Australia Group - which seeks to control the spread of chemical and biological weapons - has forty-two participants and one Adherent in Kazakhstan. The Wassenaar Arrangement - which seeks to control transfers of conventional arms and dual-use goods and technologies - has forty-one participating states. In their domains, both these groupings have a majority of countries possessing the technology, material, and expertise as their members, thereby having the ability to control the spread of proscribed technologies, systems, and materials.

### Political Overtones

As Dinshaw Mistry states, in the case of the MTCR, the aim of multilateral export control regimes is 'technological containment.' These groupings seek to contain the proliferation of strategic weapons and technologies by denying access to foreign technology which is essential for weapons development.<sup>8</sup> Thus, the underlying aim of these regimes is to control the spread of technology and material. However, when seen in conjunction with the fact that, in most cases, it is the developed countries which possess these technologies/materials and the access to these technologies, the denial of materials to the developing world reveal the geo-political, geo-economic overtones of the export control regimes and renders their activities problematic.<sup>9</sup>

The narrow geo-political, commercial interests driving export control regimes are best exemplified in the history of the establishment of the NSG. It was the May 1974 Indian test, that resulted in the US initiating a dialogue to establish the London Club (later known as the Nuclear Suppliers Group) in 1975.

In the efforts to set up the NSG, the USA realised that getting France and Western Europe on board was crucial for the group's success. The fact that France was not a NPT signatory did not amount to much at this time. However, in the course of the negotiations, France and Germany sought to secure their narrow national and commercial interests, and opposed any American initiative to safeguard the entire fuel cycle or sensitive technologies, like enrichment and reprocessing technologies.<sup>10</sup>

The geo-political drivers of multilateral export controls drove the establishment and subsequent dissolution of the Coordinating Committee (CoCom) at the end of the Cold War. For decades the CoCom had worked to deny technology and materials to Eastern Bloc countries led by the former Soviet Union. With the end of the Cold War, the CoCom was no longer necessary and it was dissolved on 31 March 1994 with the aim of bringing in Russia and other former Eastern Bloc countries into the MTCR and the Wassenaar Agreement. As Brahma Chellaney states, the export control regimes "seek to control the market, not for pricing reasons, but to retain market dominance and strengthen their long-term security and economic interests."<sup>11</sup>

Political, security, and economic interests were again at the forefront of the American decision to sanction Russian *Glavkosmos* and the Indian Space Research Organisation (ISRO) for the transfer of cryogenic engine and technology for use in the upper stage of satellite launch vehicles. The USA's decision to sanction the two organisations, and pressurising France and Russia

to back out of the cryogenic deal was quite bizarre, given that the US firm General Dynamics had been the first to make the offer to sell the cryogenic engines to India. The American offer was primarily rejected because it did not provide for the transfer of the technology to India.<sup>12</sup> While the USA opposed the transfer of technology on grounds of furthering Indian missile capabilities, the opposition was essentially of a commercial nature - that is, to stymie Indian chances of staking a claim to the lucrative international space launch market.

Given the manner in which the export control regimes operate, Beijing's attempt to delay India's accession to the NSG by tying it to membership of the Nuclear Non-Proliferation Treaty (NPT) should not have come as a surprise. France was courted to become a member of the NSG when it had not yet signed the NPT. Similarly, as G. Balachandran points out, Argentina was admitted as an NSG member in April 1994 once full-scope safeguards (IAEA safeguards on all its nuclear current and future peaceful nuclear facilities) came into force, despite it not having acceded to the NPT.<sup>13</sup>

### **Why the Membership of the Export Control Regimes is Important**

The exemption that India was able to secure from the NSG with the support of the USA, Russia, France, the UK, and other NSG members enabled India to invite major international suppliers (like General Electric, Westinghouse, and Areva) to construct nuclear power plants in various parts of the country. The 2005 Indo-US nuclear agreement and the 2008 NSG exemption also allowed India to import uranium for its nuclear power reactors from various countries, including Canada, Kazakhstan, and Australia and sign civil nuclear co-operation agreements with close to 15 countries.

Given the above, an important question that is asked is: why is the membership of the Nuclear Suppliers Group so important for India? The same is also thrown at India's bid to join the other export control regimes. In the case of the NSG, the answer to this question lies in the modification of the NSG guidelines in 1992 following the groups' plenary meeting at Warsaw. The modification introduced a new set of guidelines (Part II) to control the export of dual-use items, namely items which have both civilian applications but can also be used for building nuclear weapons.<sup>14</sup>

In addition, the revised guidelines, also called the Warsaw guidelines, made full-scope safeguards mandatory. This change in essence meant that safeguards had to be in place in all current and future peaceful nuclear activities

if the country wished to import nuclear material and technology from any of the NSG members.<sup>15</sup> As India had nuclear weapons, not all its facilities were under international safeguards. This caused a big problem for the Indian nuclear power sector as it could not import uranium and other items from any of the NSG members.

With a growing nuclear power program, India does not want to be at the wrong end of the stick in case NSG modifies its guidelines in the future. If India is not a member, it will not have any say in the change, and will be consigned to the role of a follower of rules made by others rather than a rule-maker. The situation is similar in the case of the MTCR and the other export control regimes. As a member of the MTCR, India would have a say in the formulation of the rules and guidelines of the group. This is especially important if such modifications were to hamper Indian national or commercial interests. This privilege is not available to an adherent of the grouping who simply applies the guidelines on a national basis, without having any say in the decision-making process.

In addition, membership of the NSG will accord India easy access to the global nuclear market. NSG membership will also accord India 'equal partnership' in R&D in new reactor systems.<sup>16</sup>

In the case of the MTCR, the most important benefit of becoming an MTCR member is having market access in the space domain. This essentially translates into MTCR countries including the USA having access to launch their satellite payloads on ISRO's space launch vehicles. Though the MTCR does not make a distinction between members, adherents and non-members, MTCR members like the USA do make such a distinction in their national export control procedures. As a result of becoming a member of the MTCR, India would have access to other important technologies in the domain of avionics, diagnostics, testing and evaluation, which would have been denied to India by the USA and other Western countries had New Delhi not become a member of the MTCR.<sup>17</sup> Similar benefits would accrue to India as and when it joins the Wassenaar Arrangement (WA) as well as the Australia Group (AG).

Despite India's relationship with the multilateral export control regimes undergoing a transformation in recent years, India's entry into the NSG is bound to be a long-winded process. This is essentially due to the fact that India's accession to the NSG is a clear reversal of decades-old thinking on international non-proliferation policy. This will, no doubt, take many countries some time to accept. In addition, India's membership has also become

embroiled in geo-politics. This was apparent with the Chinese linking India's membership to the NSG with membership of the Nuclear Non-Proliferation Treaty (NPT).

NSG's engagement with India began in 2003-04 when India decided to send representatives to NSG Seminars, and played host to a NSG team in April 2004. It is important to remember two things: first, in seeking to join these export control groupings as members, we are embarking on a long-term game which will be shaped, inter alia, by the evolving international geo-political environment and competing commercial interests; secondly, India does not have any alternative but to play this game because remaining out of these regimes will put the country at a serious political, economic, and technological disadvantage.

## Notes

- <sup>1</sup> "About the NSG", *Nuclear Suppliers Group*, available at <http://www.nuclearsuppliersgroup.org/en/about-us>; "Frequently Asked Questions (FAQ)", *Missile Technology Control Regime*, available at <http://mtcr.info/frequently-asked-questions-faqs/>; "The Australia Group: An Introduction", *The Australia Group*, available at <http://www.australiagroup.net/en/introduction.html>; "About Us", *The Wassenaar Arrangement*, 7 July 2016, available at <http://www.wassenaar.org/about-us/>
- <sup>2</sup> Ajay Kuntamukkala, "Defence Trade Regulatory Requirements & National Security Reviews of Foreign Investment in the United States," Presentation to IACC Aerospace, Defence & Homeland Security Session, Hogan Lovells, 24 May 2012, available at <https://www.iaccindia.com/suite2012/PRESENTATIONS/AEROSPACE,%20DEFENSE%20&%20HOMELAND/AJAY%20KUNTAMUKKALA%20-%20IACC%20Presentation.ppt>
- <sup>3</sup> "Statement on the Next Steps in Strategic Partnership With India", White House, 12 January 2004, pg. 61, available at <http://www.gpo.gov/fdsys/pkg/WCPD-2004-01-19/pdf/WCPD-2004-01-19-Pg61-2.pdf>
- <sup>4</sup> "Joint Statement by President George W. Bush and Prime Minister Manmohan Singh", US Department of State, 18 July 2005, available at <http://2001-2009.state.gov/p/sca/rls/pr/2005/49763.htm>
- <sup>5</sup> Dinshaw Mistry, "Technological Containment: The MTCR and Missile Proliferation," *Security Studies*, Vol. 11, no. 3, Spring 2002, pg. 98.
- <sup>6</sup> Extrapolated from OECD Nuclear Energy Agency (NEA) and International Atomic Energy Agency (IAEA) (2014), *Uranium 2014: Resources, Production and Demand*, NEA No. 7209, available at <https://www.oecd-nea.org/ndd/pubs/2014/7209-uranium-2014.pdf>
- <sup>7</sup> Iran, North Korea, and Pakistan are other countries with fairly advanced missile programmes which remain outside the MTCR. This is because of their history of proliferating missile systems and technologies to other countries in the past.
- <sup>8</sup> Dinshaw Mistry, "Technological Containment: The MTCR and Missile Proliferation," *Security Studies*, Vol. 11, no. 3, Spring 2002, pg. 91.
- <sup>9</sup> For more information, see also Michal Mastanduno, *Economic Containment: COCOM and the Politics of East-West Trade*, Ithaca: Cornell University Press, 1992; Gary Bertsch, Richard T. Cupitt, and Steven Elliott-Gower, *International Cooperation on Nonproliferation Export Controls: Prospects for the 1990s and Beyond*, Ann Arbor: University of Michigan Press, 1994.

- <sup>10</sup> William Burr, "A Scheme of 'Control': The United States and the Origins of the Nuclear Suppliers' Group," 1974–1976, *The International History Review*, Vol. 36, no. 2, 2014, pg. 252–276.
- <sup>11</sup> Brahma Chellaney, "An Indian Critique of U.S. Export Controls," *Orbis* Summer 1994, pg. 442H443.
- <sup>12</sup> Vasudevan Mukunth, "Why Haven't ISRO and the US Signed Their Commercial Space Launch Agreement Yet?" *The Wire*, May 23, 2016, available at <http://thewire.in/37883/why-havent-isro-and-the-us-signed-their-commercial-space-launch-agreement-yet/>; Brahma Chellaney, "An Indian Critique of U.S. Export Controls," *Orbis*, Summer 1994, pg. 447–448.
- <sup>13</sup> G. Balachandran, Reshmi Kazi and Kapil Patil, "Membership Expansion in the Nuclear Suppliers Group," *Institute for Defence Studies and Analyses*, Special Feature, 22June2016 available at [http://www.idsa.in/specialfeature/membership-nuclear-suppliers-group\\_gbalachandran\\_220616](http://www.idsa.in/specialfeature/membership-nuclear-suppliers-group_gbalachandran_220616)
- <sup>14</sup> International Atomic Energy Agency, "Guidelines for transfers of nuclear-related dual-use equipment, materials, software, and related technology," INFCIRC 254/ Rev.9/ Part 2, 13November 2013, available at <https://www.iaea.org/sites/default/files/publications/documents/infcircs/1978/infcirc254r9p2.pdf>
- <sup>15</sup> International Atomic Energy Agency, "Guidelines for Nuclear Transfers," INFCIRC 254/ Rev.12/ Part 1, 13November 2013, available at <https://www.iaea.org/sites/default/files/publications/documents/infcircs/1978/infcirc254r12p1.pdf>
- <sup>16</sup> Email conversation on 20 June 2016 with V. Siddhartha, retired Distinguished Scientist DRDO
- <sup>17</sup> Email conversation on 24 August 2016 with Dr. V. Siddhartha, retired Distinguished Scientist, DRDO

