

INDIA'S INCLUSION IN THE MISSILE TECHNOLOGY CONTROL REGIME ("MTCR")– ITS ECONOMIC IMPACT AND LEGAL OBLIGATIONS FROM AN INTERNATIONAL PERSPECTIVE

Siladitya Dasgupta, Associate Consultant (legal), Subject Matter Expert (SME) of Export Control Laws, Ernst & Young LLP

In this Article I would try to explain why India's inclusion in the MTCR Regime is important, along with its economic impact and legal obligations.

The Article is divided into four parts, such as:

- ***Part I-Introduction:*** *What is MTCR? – Under this part we will be learning about the MTCR Regime and the history behind its formation.*
- ***Part II-Why inclusion into MTCR is important to India?*** – *Under the second part we will be learning about the importance of India's MTCR membership.*
- ***Part III-The Impact of India's MTCR Inclusion on Indian Economy*** – *Under Part III, the co-relation between India's MTCR membership and Indian economy will be discussed.*
- ***Part IV-Legal Obligations of MTCR from an International Perspective*** – *Under this part, I will be covering the legal obligations and compliance requirements of this regime from an International perspective, and*
- ***Part V-End Note.***

Keywords: Dual-Use Goods, Export Control Laws, Missile Technology, MTCR.

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PART I - INTRODUCTION: WHAT IS MTCR?

Inception of MTCR happened in the year of 1987. The founding members of this regime are Germany, Canada, Italy, Japan, France, the United Kingdom and the United States.

The Missile Technology Control Regime is an informal and voluntary association of countries which share the goals of non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction, and which seek to coordinate national export licensing efforts aimed at preventing their proliferation.

The MTCR was initiated partly in response to the increasing proliferation of weapons of mass destruction (WMD), i.e., nuclear, chemical and biological weapons. The risk of proliferation of WMD is well recognized as a threat to international peace and security, including by the UN Security Council in its Summit Meeting Declaration of 1992. One way to counter this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD.ⁱ

It is a voluntary association of 34 countries and India would be the 35th country to join the regimeⁱⁱ. Most of these countries are the world's major missile manufacturers. In other words it can be said that, the main objective of this group is to prevent the spread of missiles and other unmanned delivery technology which can be used for nuclear, chemical or biological attacks. The MTCR seeks to limit the risks of proliferation of WMD by controlling exports of dual-use goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons. The regime prescribes to its members, to prohibit exports of rockets / unmanned aerial vehicles and related technologies capable of carrying a payload of 500 kg for at least 300 km or delivering any kind of WMDⁱⁱⁱ. Also this regime prohibits exportation of such equipment, software, and technology which can be used in any such systems as mentioned above.

PART II –WHY INCLUSION INTO MTCR IS IMPORTANT TO INDIA?

Inclusion in the MTCR is a milestone in the history of Indian diplomacy. It will enable India to acquire (armed) Predator drones from the United States of America. Non-MTCR nations can only acquire unarmed versions of such drones. In the past non-MTCR countries (like Morocco) have been sold unarmed versions of predator drones which are primarily used for surveillance. Only MTCR members can acquire armed drones which can be used for tactical defence services. Recently United States of America tracked and killed the leader of the Taliban in the territory of Pakistan using such armed Predator drones^{iv}. It is very evident that, from a defence infrastructure perspective inclusion into MTCR has immense importance for India.

PART III –THE IMPACT OF INDIA’S MTCR INCLUSION ON INDIAN ECONOMY:

The MTCR membership enables India to export its supersonic BrahMos cruise missile. Already India is in talks with Vietnam for exportation of BrahMos missile. Although the BrahMos’ range is reported to be fractionally below the threshold limit for the MTCR. India’s membership, therefore, makes no difference to whether New Delhi can export it or not. After all, MTCR member Russia co-developed BrahMos with (the then) non-member India; ipso facto, the regime alone cannot be a stumbling block to Indian transfers to a third party. But if, as many suspect, the BrahMos’ true range has been understated, and it is in fact covered by the regime, then India’s membership makes export harder, not easier, not least because all of these potential customers, apart from South Africa, countries like Vietnam are not MTCR members. However, India can point to past British missile sales and French missile sales to get an exemption. It can also emphasise the voluntary nature of MTCR commitments^v.

On the other hand the MTCR membership will directly impact the Government of India’s one of the flagship program ‘Make in India’. To make the flagship program a success the Government’s primary target is to increase manufacturing into the defence sector. The MTCR membership will now open new horizons and a huge market to organizations such as ISRO, DRDO, HAL. It will enable these organizations to collaborate amongst each other and create new missiles, tactical drones and such other (related) controlled technologies. Which can eventually be exported to other ‘friendly’ countries. Hence it is very evident that the MTCR membership will open new horizons for India in the import / export market of missile technologies etc.

PART IV- LEGAL OBLIGATIONS OF MTCR FROM AN INTERNATIONAL PERSPECTIVE:

MTCR is not a treaty, it is a voluntary arrangement between the member countries sharing a common interest in controlling missile proliferation. All the MTCR Partners have committed to apply a common export control policy (MTCR Guidelines) to a common list (MTCR

Annex) of controlled items, including all key equipment and technology needed for missile production, development and operation.

The MTCR Guidelines and its Annexure are implemented by each Partner in accordance with its respective national legislation. In the year 2003, MTCR Partners made it a requirement that all members have "catch-all" export controls. This "catch-all" controls provide a legal basis to control the export of items which are not included on a control list when they are destined for a missile program^{vi}.

The Guidelines of MTCR restrict transfers of "missiles" –which is defined as unmanned aerial vehicle (UAV) systems (including cruise missiles, target drones, and reconnaissance drones) capable of delivering weapons of mass destruction (WMD), rocket systems (including ballistic missiles, space launch vehicles, and sounding rockets) and -- and their related equipment and technology. The Regime places particular focus on unmanned delivery systems capable of delivering a payload of at least 500 kg to a distance of at least 300 km, so called "Category I" or "MTCR-class" systems^{vii}.

The Annexure of MTCR prescribes all the controlled items, which are divided into two sections Category I and Category II.

Category I of the Annexure, include complete rocket and unmanned air vehicle (i.e., "missile") systems, capable of delivering a payload of at least 500 kg to a range of at least 300 km, and their major complete subsystems, production facilities, and related technology. Exports of Category I items are subject to a strong presumption of denial, except that transfers of specially designed production facilities for Category I items are expressly prohibited^{viii}. Few more examples of Category I items are: Ballistic / Cruise Missiles, Target Drones, Reentry Vehicles, Sounding Rocket etc.

Category II of the Annexure include propulsion and propellant components, launch and ground support equipment, various other missile-related components, and related technology, as well as certain other missile systems. Exports of Category II items are subject to case-by-case review against specified nonproliferation factors, and are subject to a strong presumption of denial if the system is intended for WMD delivery^{ix}. Some examples of Category II items are: Propulsion components – motor cases, Radiation Hardened Microcircuits, Propellant production tech – mixers, Flight control systems etc.

The member countries implement the MTCR Guidelines through their "Export Control Laws", for example: Export Administration Act, 1979 (EAA) and Regulation of USA.

Basically under the Export Control Laws there are certain compliance requirements for an exporter / importer. Such legal requirements include the following:

1. Licensing Requirements: The Export Control law makes it necessary for every exporter to obtain a specific license from the controlling authority to carry out any exportation of controlled items.

2. General Prohibition and determination in relation to export controls: The items listed under the ‘Prohibited Goods List’ can never be exported to any country even if the exporter has a license to export controlled items.
3. Reporting Requirement: Another compliance requirement under the export control laws is the reporting requirement. Under this obligation the exporter is bound to submit a semi-annual / annual report to the Statutory Authority of the country from where the exportation is taking place. Such reports can be filed electronically as well as manually (varies from country to country).
4. Record Keeping Requirements: One of the other requirements under the Export Control laws are maintaining adequate supporting documents related to all such exports. Such documents must include detailed information on the exported item(s) (i.e. specifications), the party to whom such export is made and the purpose of such export. Usually the period of such record keeping requirement is for 5 years, subject to respective national legislation.
5. On-going screening of business activities: Under this obligation the exporter is required to carry an on-going screening of business activities in order to avoid to set up of a business relationship with a prohibited party (Prohibited parties could be an entire jurisdiction or any particular entity).

Another aspect of Export Laws is ‘Dual-Use’ goods.

Concept of Dual-Use of Goods under export control laws: Dual-Use Goods is another important aspect of the Export Control Laws.

What is **dual-use goods**?

In a simple language, ‘dual-use goods’ also known as ‘strategic goods’ means, such goods which can be used for manufacturing WMDs or Missiles (i.e. use for Military purposes) and also it can be used for civilian purposes. Dual-use goods also include ‘software services’.

Under Export Control laws, exportation of dual-use goods are also regulated. To export such dual-use goods the exporter is required to obtain a license from the statutory authority.

PART V – END NOTE:

Currently India has single unified list of export control which was notified vide notification No. 37 (RE-2012)/2009-2014, dated 14/03/2013, issued under the Foreign Trade (Development and Regulation) Act, 1992. It is contained under the Appendix 3 to Schedule 2 of ITC (HS) Classification of Export and Import Items, 2009-14. Also it is known as the SCOMET list. The term “SCOMET” stands for Special Chemicals, Organisms, Materials, Equipments and Technologies. After the official announcement of India’s MTCR membership India must focus on revamping its Export Control regime to make it at par with the International standards. Also from an international perspective enactment of stringent export control laws will play a very important role, as it will make evident India’s seriousness on the matter of ‘non-proliferation’. Since India is also eyeing a berth in the coveted Nuclear Suppliers Group (NSG), proving its seriousness on the matter of ‘non-proliferation’ is very important. In order to do that a new Export Control regime in India is a necessity, where all

export control laws (both existing and to be implemented legislations) will be under one umbrella. As they say, “*with great power comes great responsibility*”.

References:

ⁱ [Missile Technology Control Regime](#)

ⁱⁱ Business Standard article - http://www.business-standard.com/article/current-affairs/india-gets-entry-to-mtcr-hopes-of-nsg-membership-brighten-116060700990_1.html

ⁱⁱⁱ supra

^{iv} The Wall Street Journal - <http://www.wsj.com/articles/u-s-tracked-taliban-leader-before-drone-strike-1464109562>

^v The Wire - <http://thewire.in/2016/06/09/what-the-mtcr-membership-means-for-india-and-what-it-doesnt-41725/>

^{vi} supra

^{vii} U.S. Department of State - <http://www.state.gov/t/isn/rls/fs/120017.htm>

^{viii} supra

^{ix} supra