

Emerging Frontiers of US Dual-Use Export Control Laws

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Abstract

The paper examines the salient features of the principal statutory authority, the Export Administration Act (EAA), that is, at present, governing dual-use technology control in the US, and the frontiers of dual-use export control after the enactment of the new Act. An analysis of different provisions of the bills for the new Act indicates mixed features. It does not completely liberalise the control of dual-use technology, and continues to have in place a number of curbs. The changes in the Act have not satisfied many US interest groups; the industry feels that changes are not very substantial and are still, too bureaucratic. Six high technology and export intensive industries – computers, software, telecommunications, satellite, machine tools, and aerospace – have aired their grievances. At the same time, the export control lobby feels that the ensuing Act is biased in favour of industry.

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Introduction

Export control is an important security issue. During the Cold War, the US used export control as a tool to fight its adversary – the Soviet Union and the communist bloc. The control of advanced technology and armaments was a salient feature of US export control during the period. In the post-Cold War period, a struggle to reorient and broaden the scope of export control enabled the US to evolve comprehensive laws and regulations for administering its export activities.

The impact of export controls on the recipient countries is quite varied. It ranges from no licensing for almost all the goods for some countries to total embargo for others. At present, in the US, the Office of Defense Trade of the Department of State gives the export licence for defence articles and services under the Arms Export Control Act and International Traffic in Arms Regulations. The Nuclear

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Regulatory Commission gives the export licence for nuclear materials and equipment.

Export of dual-use technology – both military and civil uses – is controlled by the Bureau of Industry and Security (till recently, Bureau of Export Administration) of the Department of Commerce (DOC) through the Export Administration Act 1979 (EAA 79) and the Export Administration Regulations (EAR). Although many federal agencies such as the Department of Energy, Defense Technology Security Administration of the Department of Defense, the Federal Bureau of Investigation and the National Security Agency, Office of Foreign Assets Control of the Treasury Department are also involved in the export control process.

The EAA 79 is the principal statutory authority that gives the DOC the legal framework to implement regulations and to administer and enforce export controls. However, the US security establishment wants a comprehensive, clear and up-to-date statute for the dual-use commodity export control regime because over the years commercial technologies and products are becoming more relevant to military systems and capabilities. In 1985, the EAA 79 was drastically revised and lapsed in 1994. In 2000, the Congress extended the EAA 79 retrospectively. Finally, it expired on August 20, 2001. In the interim period, the National Emergency Act (NEA) and the International Emergency Economic Powers Act (IEEPA) administered export controls. Invoking the IEEA, George W Bush had issued Executive Order 13222 on August 17, 2001.¹ This was renewed, for one year, twice because there was yet an EAA to be passed.² The IEEPA is considered an inferior tool for keeping up export controls because of lower penalties and vulnerability to frequent litigation. A State Department release informs that efforts to revise EAA faltered 12 times in the 1990s because of disagreement between the US industry and the security community.³

In September 2001, the Senate passed the EAA. However, the House of Representatives version of the bill could not be passed. Now, a new bill, Export Administration Act 2003, is under deliberation. It has been referred to the House Committee on International Relations.

Export Administration Act: Features

Objectives

The US export control policy aims at balancing economic, commercial and trade interests with security and foreign policy interests so that the policy is consistent with American national interests. Section 3 of the EAA 79 lays down that the

export control policy is aimed at minimising uncertainties; encouraging trade with friendly countries; developing economy and advancing science of those countries; minimising restrictions on the export of agricultural commodities and products; fostering public health and safety; advancing fundamental national security, foreign policy, and short supply objectives; observing a uniform export control policy, and so on.⁴

The new bills⁵ aim at balancing three important American policy interests: First, controlling export of dual-use goods, services and technologies to limit the military potential of countries that threaten the US or its allies; obstruct the proliferation of Weapons of Mass Destruction (WMD) and means to deliver them; and to impede international terrorism. Second, economic and national security interests in aggrandising US exports and holding the American leadership in the world economy. Third, strong foreign policy interests in advancing international peace, stability, and human rights. In the bills, the section on short supply related control is missing.

National Security Control

Section 5 of the EAA 79 is devoted to national security controls. The section has sub-sections on policy toward individual countries, foreign availability, multilateral export controls, agricultural commodities; control list; Militarily Critical Technologies (MCT), etc. This section empowers the US licensing authority to prohibit or curtail the export of any goods and technologies to a country that poses or may pose a threat to US security. However, except for supercomputers, goods and technology for sensitive nuclear uses, and goods and technology leading to surreptitious interception of wire and oral communications, the act suggests dealing leniently with countries that have been cooperating with the US in multilateral or international export control. The Secretary of Commerce maintains a list of such countries.

The EAA 79 also asks the US President to prepare a list of ‘controlled countries’ taking into account certain security related factors. This list is to be revised by the President within three years. In the new bills, the US export control authorities are supposed to pay attention to countries sharing common security objectives with the US.

National Security Control List

The Department of Commerce maintains a list of goods and technology for effective and efficient control. The bills for the new act, too, have this control list,

namely, Commerce Control List. The EAA 79 prefers agreement between the Secretary of Defense and the Secretary of Commerce on the control list. In case of disagreement between the two secretaries, the Act vests the final authority in the President. As and when needed, the list undergoes changes.

The bills for the new Act also seek some role for other departments and agencies related to security, especially intelligence agencies, in preparing the national security list. A section of the American strategic community has been demanding more involvement of the Department of Defense, Pentagon and intelligence agencies in export control.⁶ Combining national security concerns and economic costs, the bills for the new Act have devised a *system of risk factors* to determine and check the misuse or diversion of items that pose a threat to US' security. The risk factor list relates to foreign availability and mass-market status.

Foreign Availability

US industry has an old complaint against interested countries and parties who easily procure items controlled by the US export control authority from outside the US.⁷ The Report⁸ of the Senate Committee on Banking, Housing, and Urban Affairs in its version of the bill notes that dual-use goods, services and technologies are available even in firms in newly industrialised countries. The Report has also found problem with national discretion in application of national security export controls among the countries of the Wassenaar Arrangement, which had led to differential control.

The EAA 79 states that when an item becomes available to controlled or even non-controlled countries from outside the US in *sufficient quantity* and *comparable quality*, an exporter of such an item might ask for special treatment of the item, including the removal of control. The bills added *price competitiveness* to its earlier criteria for determining the case of foreign availability of an item. Unlike the present act, the bills for the ensuing act are silent on the supply of an item to countries other than the controlled.

Mass Market Status

The US policy-making community has been talking of changes in the nature of dual-use technology.⁹ Several dual-use technologies have got 'mass audience'. It is admitted that these goods may have military utilisation and thus scepticism prevails because of their production in millions and market availability through countless retail outlets.

The bills of both the Houses for the new EAA introduce the new concept of mass-market status into the Act. The bills offer some criteria for determining mass-market status for an item or its substantially identical or directly competitive object. First, the item should be produced and be available in large volume to multiple potential purchasers; second, extensive distribution is done through commercial channels such as retail stores, direct marketing catalogues, electronic commerce; third, shipment and delivery of the item is done through common commercial transportation; and fourth, the use for the item's normal intended purpose without substantial and specialised service is provided by the manufacturer, distributor, or other third party. Furthermore, the bills for the Act postulate that on the basis of fair assessment of end users, the properties, nature and quality of the item or a *substantially identical item* may also be declared a fit case of getting mass-market status.

Militarily Critical Technologies

There is a section on 'critical technologies' in the EAA 79. This provision was introduced into the laws on the basis of recommendations of the Bucy Report.¹⁰ Section 5 (d) of the Act targets the process of control of export of dual-use technology, not its end products. The Act gives the Secretary of Defense the primary responsibility for evolving a list of militarily critical technologies and the Secretary of Commerce is to assist him in integrating such technologies into the control list. However, bills for the new Act do not contain MCT.

A section in the US wanted the export control officials to focus their resources on WMD-related technology. The dictum was: erect taller walls around smaller items.¹¹ It was felt that targeting of general military technology had unnecessarily burdened the export control machinery, and adversely affected profit of the US industry. After September 11, the committee on Armed Services of the House of Representatives in its report for EAA-2001 recommended reinsertion of MCT. However, the bill for EAA 2003 did not include MCT. The Committee Report also recommended greater role for the Secretary of Defense. It further gave exclusive authority over the creation and maintenance of this list to him, and veto authority over any licences entailing an item on this list.¹²

Country Tiers

The bills for the new Act ask for establishment and maintenance of a country tiering system within 120 days of the enactment of the Act in order to implement national security related export controls. The proposed bills want the President to

establish at least three tiers. The President has also been given power to change position of a country or countries. Assessment of a country for positioning in a tier, through risk factors, is based on certain parameters. These parameters are:

- The present and potential relationship of the country with the United States.
- The present and potential relationship of the country with countries friendly to the United States and with countries hostile to the United States.
- The country's capabilities regarding chemical, biological, and nuclear weapons and the country's membership in, and level of compliance with, relevant multilateral export control regimes.
- The country's capabilities regarding missile systems and the country's membership in, and the level of compliance with, relevant multilateral export control regimes.
- Whether the country, if a NATO [North Atlantic Treaty Organization] or major non-NATO ally with whom the United States has entered into a free trade agreement as of January 6, 1986, controls exports in accordance with the criteria and standards of a multilateral export control regime as defined in section 2 (14) pursuant to an international agreement to which the United States is a party.
- The country's other military capabilities and the potential threat posed by the country to the United States or its allies.
- The effectiveness of the country's export control system.
- The level of the country's cooperation with United States export control enforcement and other efforts.
- The risk of export diversion by the country to a higher tier country.
- The designation of the country as a country supporting international terrorism.¹³

Foreign Policy Export Controls

Section 6 of the EAA 79 deals with foreign policy controls. This section empowers the US President to prohibit or curtail export of good, technology and other information, if he feels that other alternative methods like negotiations have failed to deliver the foreign policy objectives of the US. The President will have to ensure that the control can be implemented effectively. For this purpose, he has been advised to study foreign availability of the item as well as world reaction to the control.

In the bills for the new Act, there are specific clauses for US declared international obligations. These are promotion of the foreign policy objectives; international peace and stability, respect for fundamental human rights; deterrence and punishment of acts of international terrorism and encouragement to deny the use of their territories or resources to the persons engaged in directing, supporting or participating in acts of international terrorism.

The Committee on International Relations of the House had brought amendments and added two more purposes in the House bill. These purposes are: controlling the export of “test articles intended for clinical investigation involving human subjects”¹⁴ and “goods and substances which are banned, severely restricted, highly regulated, or never regulated for use in the United States.”¹⁵ Both purposes are designed to advance public health and safety, and to prevent damage to US foreign policy and the credibility of the US as responsible trade partner.

The bills provide that export control for foreign policy shall terminate on March 31 of each renewal year. However, such a termination shall not be applicable where the US law desires control, and to any country seen as supporting international terrorism. Moreover, under the new Act, the President may terminate foreign policy export control itself, if he feels that the control has substantially achieved the objective for which it was imposed. Again, the requirement for law and international terrorism would remain notable exceptions.

Multilateral Export Controls

The US export control system has an interactive relationship with the multilateral regimes. Although, at present, there are five multilateral regimes – Zangger Committee, the Nuclear Suppliers Group, the Australia Group, the Missile Technology Control Regime (MTCR), and the Wassenaar Arrangement – the definition provided in the draft Act, does not include the Zangger Committee. The Coordination Committee on Multilateral Exports (COCOM) was the first regime, but it was disbanded in 1994. These multilateral regimes can be enforced only through domestic legislation.

Post-9/11, the Department of Commerce and the Department of State promised to work in tandem to extend formal denial notification procedures to all multilateral regimes. This makes it difficult for a regime member to supply an item denied by another regime member. It involves bilateral consultations. It was visualised that, “Anything less than a united front with respect to multilaterally-

based export controls undermines their effectiveness.”¹⁶

The EAA 79 does have certain sections and provisions for multilateral export controls. However, these were not found adequate by the US industry and the policy-making community. For a long period, they were demanding reorientation of the multilateral export control regimes.¹⁷ They maintained that as the US is not a single supplier of most dual-use technologies, so, for the success of the export control system, multilateral agreements among suppliers are indispensable. In fact, the bills for the new Act carry provisions for the strengthening of multilateral export controls and asks the US to participate in ‘additional multilateral export control regimes’. It also asks the President to ensure the effectiveness of the existing regimes through full membership; a common list of items and countries of concern; harmonisation of license procedures and standards; a ‘no undercut’ policy and a common basis of enforcement.

Types of Licence

In the EAA 79, Section 4, various types of licence are described. The term ‘validated licence’ was used for authorisation to export. The term is missing in the bills for the new Act. However, the sense of the term has found expression in these bills. Like the EAA 79 the bills for the new Act contain a system of licensing for specific export, multiple export, project-specific export and service supply export. In the bills for the new Act, the Secretary of Commerce may establish reporting and record keeping requirements for the proper use of the licence or other authorisation.

However, in the bills there is an absence of some of the arrangements of the EAA 79 such as distribution licence and comprehensive operations licence. A distribution licence authorises exports of goods to approved distributors or users of the goods in countries other than controlled. However, the Secretary of Commerce might set up a separate distribution licence for consignees in China.

The comprehensive operations licence authorises exports and re-exports of technology and related goods, including items from the list of militarily critical technologies developed from a domestic concern and its foreign subsidiaries, affiliates, joint ventures, and licensees located in countries other than controlled countries. China was clearly mentioned as an exception here. The Act laid down, “The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter’s systems of control, including internal proprietary controls, applicable to the technology and related goods to be

exported rather than approval of individual export transactions.”¹⁸

Incorporated Parts and Components

The bills for the new Act ask not to impose control on any item just because it has parts and components subject to export controls. The bills call for removal of controls from parts and components of an item which are necessary for the functioning of the item, customarily included in sales of the item in countries other than controlled countries and consist of 25 per cent or less of the total value of the item. However, export controls can be continued, if ‘functional characteristics’ of the item meaningfully assist the military or proliferation potential of a controlled country or an end-user adversely affecting national security of the US and act against US international obligations.

In the bills, there is a course of action for re-exports of foreign-made items incorporating US controlled content. It says no authority or permission is needed to re-export an item, which is manufactured in a country other than the US and incorporates parts or components that are liable to the jurisdiction of the US and the value of the controlled US content of the item produced in such other country is 25 per cent or less of the total value of the item. However, re-export of an item with more than 10 per cent of the total value of the item having US content to a country supporting international terrorism will be subject to export controls.

Enforcement and Verification

Of late, the US export control authorities are encouraging the adoption of “end-use oriented controls – ‘catch-all’ or ‘catch-more’ controls – in the multilateral regimes.” This method is employed when the end-user is known and suspected. The direct impact of 9/11 can be evidenced from the statement of a US official, “Indeed, we see the trend in export control shifting from being primarily ‘list based’ to being a mixture of ‘list based’ and ‘end-use based’ controls. And the recent terrorist attacks will only accelerate this trend.”¹⁹

To meet the growing demand of effective enforcement of the US strategic community after September 11, US officials cite measures for meeting such a threat. Richard Mercier, Executive Director for Investigative Programs of Office of Investigations of the United States Customs Service said that the focus of laws and regulations such as *Operation Exodus* was shifted after the September 11 incident.²⁰ Operation Exodus was an enforcement programme operating since the early 1980s for the EAA and other export control statutes to hamper illegal exports

of munitions, strategic technologies and shipment destined for certain marked countries. Richard Mercier said, in the post-Cold War period, apart from China and the 'rogue states', enforcement authorities would target new threats such as the possibility of international terrorists acquiring WMD, the rise in illicit trafficking in arms, and military equipment going to international criminals and political insurgents.

Richard Mercier informed that the US government started an operation called *Project Shield America* under Customs Commissioner Bonner on December 4, 2001²¹ for gathering and disseminating information. This was designed as an industry outreach programme so as to get assistance and cooperation of companies engaged in export business of US origin high technology and munitions used for WMD and delivery systems. The US Customs Service launched this operation with Office of Export Enforcement, Department of Commerce and the Federal Bureau of Investigation.

The issue of end-use, referred to briefly in the EAA 79, has been dealt with in a different manner in the bills for the new Act – giving special treatment for post-shipment verification. The Secretary of State has been asked to conduct post-shipment verification of the export of the greatest risk to national security. In the new Act, if an end-user declines to let post-shipment verification of a controlled item, the end-user would be denied a licence for export. The denial may be extended to “any person related through affiliation, ownership, control, or position of responsibility”²² to such an end-user. However, it can be restored, if post-shipment verification is allowed.

The new bills further state, “If the country in which the end-user is located refuses to allow post-shipment verification of a controlled item, the Secretary may deny a licence for the export of that item, any substantially identical or directly competitive item or class of items, any item that the Secretary determines to be of equal or greater sensitivity than the controlled item, or any controlled item for which a determination has not been made pursuant to section 211 to all end-users in that country until such post shipment verification is allowed.”²³

The new Act will permit the Department of Commerce to appropriate money to employ 10 additional overseas investigators for China, Russia, the Hong Kong special Administrative Region, India, Singapore, Egypt and Taiwan. The Secretary of Commerce may deploy additional overseas investigators at other places to verify the end use of high-risk, dual-use technology.

The new Act may get a special segment called ‘undercover investigation operations’ to be conducted by the Office of Export Enforcement (OEE). The bills have defined this as an operation “in which the gross receipts (excluding interest earned) exceed \$25,000, or expenditures (other than expenditures for salaries of employees) exceed \$75,000, and which is exempt from section 3302 or 9102 of title 31, United States Code, except that clauses (i) and (ii) shall not apply with the respect to the report to Congress required by paragraph (4)(B).”²⁴

Funds made available for this purpose may be utilised to purchase property, buildings, to lease equipment, conveyances, and space within the US, to establish or to acquire proprietary corporations or business entities, and to deposit in banks and other financial institutions. These activities are to be run on a commercial basis. The profit from undercover operations could be made use of balancing ‘necessary and reasonable expenses incurred in such operations’ as the bills engross. When property or equipment bought for this purpose is not required, it shall be treated as ‘surplus’. This would be settled as ‘surplus government property’.

Punishment

Section 11 of the EAA 79 lays down rules for penalties for the violation of the Act in general and violation of multilateral export controls, missile proliferation control, chemical and biological weapons proliferation in particular. The COCOM was referred to in the context of multilateral export control in the Act. This section prescribed sanction for two-five years for a foreign person that had substantially enhanced the capabilities of the Soviet and Eastern bloc in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence.

If an American knowingly exports, transfers, conspires, facilitates or is otherwise engaged in the transactions of a category II item on the MTCR Annex, the President shall deny that person licences for the transfer of missile equipment or technology controlled under this Act for two years. Likewise if the US person does the same thing for the Category I item, the person would be denied for two years all licences for items controlled under this Act. If the activities of a foreign person help the design, development, or production of missiles of a non-MTCR adherent country through US equipment and technology of category II of the Annex, that person will be denied licences for the transfer of missile equipment or technology controlled under the Act for two years. For the same act for category I item, the person will be denied licences of all items controlled under this act for two years. In addition, the President may disallow any import from that person to the US for at least two years.

This section provides a general Presidential waiver for national security reason and an additional Presidential waiver, if the person concerned is first, a 'sole source supplier' of the product and second, service and the requirement for the product or service is impossible to be met on time even by ameliorating manufacturing processes and technological growth. If articles or services to be supplied to the US are necessary for national security under defence co-production agreements or the NATO programme of cooperation, an exception can be made under this Act. Exceptions are also available to products or services granted under contracts entered into before the date on which the President publishes his intention for imposing of sanctions, to spare parts, to component parts for US products and production, to routine services and maintenance of products in absence of alternative sources; and to information and technology necessary for American products and production.

Section 11c on chemical and biological proliferation lays down that if the US President determines that a foreign person through US or non-US exports willingly and materially promotes the venture of a country, project and entity to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons, the President shall impose both procurement and import sanction against it for at least 12 months. The bills for the new Act have retained all these provisions.

As the EAA 79 put, "...whoever knowingly violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than 5 years, or both."²⁵ In case of a wilful violation helping a controlled country and harming the foreign policy controls, the penalty would be different. For an individual wilful violator it would not be more than \$250,000 and imprisonment of not more than ten years. However, the individual may have to experience both pay fine and undergo imprisonment. An entity other than an individual can only be fined up to five times the value of the export involved or \$1,000,000 whichever is greater.

Taking the case of illegal missile transfer to China, the US policy-making community assessed that even if the culprits are punished, it is not enough. US decision-makers and the export control authorities describe the existing laws for penalties as 'trivial'. The bills for the new Act provide that the Secretary of Commerce and the Customs service may undertake enhanced cooperative activities to ascertain unlawful exports and to enforce violation. The present set of bills provides new criminal and civil penalties for knowing and wilful violations. In the bills for the new Act, an individual for wilful violation shall be fined up to "10 times

the value of the exports involved or 1,000,000, whichever is greater, imprisoned for not more than 10 years, or both, for each violation.”²⁶ For a person other than an individual, a wilful violation shall be “fined up to 10 times the value of the exports involved or \$5,000,000, whichever is greater, for each violation.”²⁷

The bills also note that any person “. . .in addition to any other penalty, forfeit to the United States (a) any of that person’s security or other interest in, claim against, or property or contractual rights of any kind in the tangible items that were the subject of the violation; (b) any of that person’s security or other interest in, claim against, or property or contractual rights of any kind in the tangible property that was used in the export or attempt to export that was the subject of the violation; and (c) any of that person’s property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.”²⁸

In the EAA 79, the civil penalty in general was not to exceed \$10,000 for each violation, whereas civil penalty for national security controls or controls imposed on the export of defence articles and defence services were not to exceed \$100,000. In the bills for the new Act, the Secretary of Commerce is empowered to impose a civil penalty up to \$500,000 for each violation. In the bills, a civil penalty may be “in addition to, or in lieu of, any other liability or penalty which may be imposed for such a violation.”²⁹ The Secretary of Commerce may deny export privileges, exclude a person “acting as an attorney, accountant, consultant, freight forwarder, or in any other representative capacity from participating before the Department of Commerce with respect to a license application or any other matter under this act.”³⁰

Implications for India

Indian industry is modernising fast and would increasingly require dual-use technology and goods. Although it has received certain dual-use goods and technology from the US in the past, there have been cases of denial of technology for important projects – a case of bitter experience with US exports laws.

The end-use verifications in the new Act may list India as one of the principal targets. India has been specifically mentioned at one place, where the bills authorise additional overseas investigators. However, the provisions for determination of mass-market status and foreign availability of an item may lead to the removal of some items from the control list. This may benefit India.

Title II in the bills for the new Act has got three purposes for national security

export controls. Out of these three, India may be covered only for proliferation-related control. The other two purposes: restricting transfers for those countries which may prove detrimental to the national security of the US, its allies or countries sharing common strategic objectives with the US, and deterring acts of international terrorism is unlikely to have any implications for India.

Title III in the bills for the new Act has also got three purposes for foreign policy-related control. Here, too, India should not have problems with two purposes: promoting foreign policy objectives of the US and deterring and punishing international terrorism. In fact, India is being encouraged to share terrorism-related technology. However, the purpose of promoting international peace, stability, and respect for fundamental human rights may create some problem for India; now and then official and unofficial bodies and individuals have been expressing concern in relation to India. Even for the transfer of crime control instruments, export control authorities have been instructed to take into consideration the question of fundamental human rights.

With the new Act, all countries will be placed in one of the tiers. For administrative purposes, the DOC has been adopting a tiering system. For example, for supercomputer transfers, it has a four-tier system. India is in tier-III. The location of India in the new system will have great implications for technology transfers. The upper tier will have a better licence approval rate than the lower ones.

The mandate of the Act entrusting the US Administration to have additional regimes and to negotiate for full membership of non-members of the existing multilateral export regimes may witness some pressure on India. Already, a Senate committee in its observation of the bill noted, "... non-regime members do not respect Wassenaar regime guidelines, further weakening its effectiveness. For example, China is making great inroads in the computer and semiconductor field, and India is producing high-quality encryption software, yet neither are members of the Wassenaar regime. Current controls on these items could become ineffective if these non-members continue to produce and freely export items that exceed the control criteria of the Wassenaar regime."³¹

Trend Analysis

An analysis of different provisions of the bills for the new Act indicates a somewhat mixed picture from an Indian perspective. Control over dual-use technology is not completely liberalised and a number of old provisions continue. Issues like deemed export have not been covered in the bill. American industry

feels that changes are not very substantial and are still, too bureaucratic. Some Congressmen like Jessie Helms threatened to block the bill in the Senate. However, after an assurance from the President that their demands would be taken care of, while implementing the Act, they allowed the passage of the bill.³²

India's diplomacy should be geared towards seeking entry into tier-I or II of the new system. Towards this end, India would have to convince the US Administration the advantages of closer strategic cooperation between the two countries particularly in countering proliferation and fighting the global war against terrorism. India would also have to forthrightly indicate to the US that it already has elaborate export control architecture and has been among the most responsible states in the world in this regard.

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- ¹⁷ For example, “Hearing on the Establishment of an Effective, Modern Framework for Export Controls before the Senate Committee on Banking, Housing and Urban Affairs”, February 14, 2001, Testimony of the Honorable John J Hamre, President and Chief Executive Officer, Center for Strategic & International Studies, and former Deputy Secretary of Defense, February 14, 2001.
- ¹⁸ The Department of Commerce, Export Administration Act 1979, no. 4.

- ¹⁹ no.16.
- ²⁰ US Department of State, “Statement of Richard Mercier”, Executive Director for Investigative Programs, Office of Investigations, United States Customs Service, before the United States-China Commission, January 17, 2002, at <http://usinfo.state.gov/regional/ea/uschina/mercier.htm>
- ²¹ Ibid.
- ²² The US Congress, no. 5.
- ²³ Ibid.
- ²⁴ Ibid.
- ²⁵ The Department of Commerce, Export Administration Act 1979, no. 4.
- ²⁶ The US Congress, no. 5.
- ²⁷ Ibid.
- ²⁸ Ibid.
- ²⁹ Ibid.
- ³⁰ Ibid.
- ³¹ The United States Senate, Committee on Banking, Housing, and Urban Affairs, *Report to Accompany S.149*, The Export Administration Act of 2001, 107th Congress, 1st Session, 89-010, April 2, 2001.
- ³² The White House, Bush Administration Letter of Support for S.149, Washington, March 21, 2001.

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