Frequently Asked Questions (FAQs) in U.S.-India Defense Relations (PART II)

The Relevance of Defense Regulations and Agreements between U.S. and India

1. What is the Defence Technology and Trade Initiative (DTTI) and How does it Enhance the India-U.S. Defense Technology Partnership?

The DTTI is not a treaty or a law. It is a flexible mechanism, which was conceived in 2012 and operationalised in late 2014. It is intended to focus senior U.S. and Indian leadership on opportunities and challenges associated with strengthening the India-U.S. defense partnership. This mechanism enables the two sides to move away from traditional "buyer-seller" relationships, towards a more collaborative approach in technology and trade. It elevates the shared commitment to defense cooperation, helps eliminate bureaucratic obstacles, accelerates timelines, promotes collaborative technology exchange, strengthens cooperative research, and enables co-production/co-development of defense systems for the sustainment and modernisation of our military forces.

The DTTI is led, on the US side, by the Undersecretary of Defence for Acquisition Sustainment and Logistics, and on the Indian side by the Secretary for Defence Production. The executive mechanism centres on the DTTI Interagency Task Force (DIATF) co-chaired by the Executive Director, International Cooperation, OUSD (A&S) and the Deputy Chief of India's Integrated Defence Staff (Policy, Planning and Force Development). Joint Working Groups (JWGs) of domain specialists are constituted from time to time, to address areas of focus, which remain dynamic. The JWGs functional at present are Land Systems (LS), Naval Systems (NS), Air Systems (AS), and Aircraft Carrier Technology Cooperation (ACTC).[1]

A narrative exists on both sides that the DTTI has not delivered adequately. This perspective however fails to take note of the immense progress made by the two sides in "learning to work" through each other's systems, which was a serious challenge hitherto. This impediment now stands substantially mitigated. Other contributions of the DTTI have been towards the designation of India

[1] U.S.-India Defence Technology and Trade Initiative https://www.acq.osd.mil/ic/dtti.html

as a "Major Defence Partner of the US"; conclusion of foundational (enabling) agreements; India being accorded STA-1 status; reforms in the Indian Defence Acquisition Procedure; and substantial cooperation in the field of Aircraft Carrier technology and Aero-engines. The DTTI has been a `silent – enabler' and its criticism seems to be largely on account of "unrealistic expectations" of trade and technology pegged by both sides, initially. The DTTI has helped moderate expectations on both sides, making these more realistic.

With the recent India-U.S. Initiative on Critical and Emerging Technologies (iCET), DTTI will function within its overall framework. It will continue to retain its primacy for cooperation in the field of defense.

2. How do CAATSA and Potential Sanctions Influence the Trust between the Two Countries?

The Countering America's Adversaries through Sanctions Act (CAATSA) Bill 2017 legislation was passed in the US Congress to impose sanctions on Iran, Russia and North Korea. On August 02, 2017, President Trump signed the bill into law. It codifies certain sanctions previously imposed, provides for new sanctions to Iran, Russia, and North Korea and establishes new congressional review procedures for terminating or waiving sanctions against Russia.[2]

The Act is divided into Title I, II and III. Title II of the Act primarily deals with sanctions on vital sectors of the Russian industry, such as oil and gas, defense and security, and financial institutions, in the wake of its military aggression in Ukraine and its alleged meddling in the 2016 U.S. Presidential elections. The President is required to impose five or more limited sanction measures (under Sec 235, Para 27) on a person/institution/entity if it knowingly engages in a significant transaction in the defense or intelligence sectors of the Russian Federation.

For considering waivers, the President is required to submit an application to the appropriate Congressional Committees, confirming that the waiver is in the vital national security interests of the U.S. He may also delay the imposition of sanctions if he certifies in a specified period that the person/institution concerned is substantially reducing its number of significant transactions with the blacklisted entities.

In July 2018 - Amid the debates in the U.S. about CAATSA's adverse impact on the US allies and partners, India's case (along with Vietnam and Indonesia) was highlighted. This probably played a role in providing the rationale for granting modified waivers under the National Defence Authorisation Act of 2019.

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[2] "The Countering America's Adversaries Through Sanctions Act Becomes Law", DavisPolk. https://www.davispolk.com/sites/default/files/2017-08-07_the_countering_americas_adversaries_through_sanctions_act_becomes_law.pdf

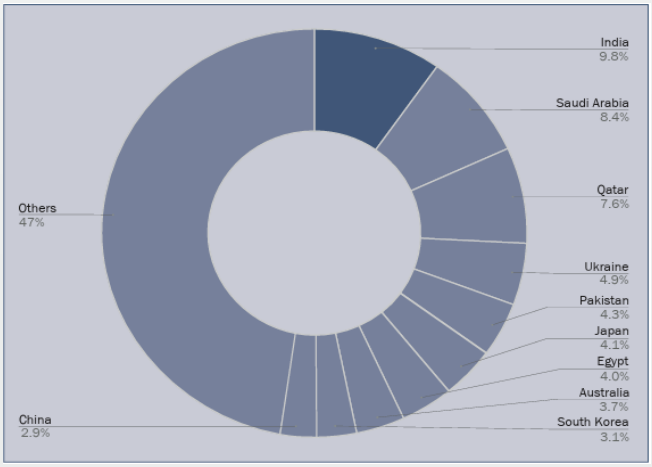
In July 2022, the U.S. House of Representatives passed a legislative amendment which allowed for the exemption of India from economic sanctions under CAATSA, after the latter went ahead with its procurement of the S-400 missile defense system.[3]

The waiver came after extensive brainstorming on the subject and was attributed to a realisation in the U.S. that the imposition of sanctions could have a detrimental impact on U.S.-India ties in the long run. There were also concerns that the sanctions could push the latter closer to Russia. This action demonstrates the extent of mutual understanding and the special significance of the India-U.S. partnership, for furthering shared interests, in the Indo-Pacific.

There is a continual move by India away from dependency on Russian systems and acquisitions. The S400 however complicates the math given the significant cost of the system which fundamentally undermines the basic principle of the amended legislation/waiver authority — meaning year over year total dollar value of annual purchases from Russia continues to diminish. To date, the President has chosen to ignore the matter and press on with the bilateral relationship despite the Government of India's intent to continue with the S400 acquisition.

It is also pertinent to note the Indian perspective, advocating against being subjected to sanctions under the CAATSA Act. Notably, an Intergovernmental Agreement (IGA) was signed between India and Russia, to procure five S-400 regiments in October 2016, on the sidelines of the BRICS Summit held in Goa. This was well before the enactment of CAATSA; the legislation process for which took place during the period June-August 2017. After being passed by the US House (June 15) and Senate (July 12), the bill became law upon signing by the President only on August 02, 2017.

Figure 1: Global Share of Imports of Major Arms by the 10 Largest Importers, 2019–23



Source: SIPRI Arms Transfers Database, March 2024

[3] "US. House Approves CAATSA sanctions waiver to India for purchase of S400 missile defence system from Russia", THE ECONOMIC TIMES; July 15, 2022 https://economictimes.indiatimes.com/news/defence/us-house-votes-for-india-specific-caatsa-waiver/articleshow/92890576.cms?from=mdr

India has a legacy defense relationship with Russia, built over decades, with the latter being the single largest supplier of defense systems. This relationship was built at a time when the U.S. was not able to partner with India. Though Russia is still the largest exporter of arms to India, its share has nearly halved to 36 per cent of imports, during the period 2019-2023, the gap being filled largely by France now.[4]

India has consistently maintained that as a sovereign state, its decisions on the purchase of important defense equipment will be guided by its national interests. The U.S. Secretary of Defence, during his visit to India in March 2021 aptly highlighted that it would be prudent to let Indian armed forces get used to the operational benefits and ease of use of U.S. origin systems, till these become acquisitions of choice; rather than being forced by U.S. pressure – which would be counterproductive. Prudence of this approach is already evident.

3. Do American Investments Help India in Building Domestic Manufacturing Capacity?

A key objective of India's defence reforms is to progressively reduce defence imports by becoming self-reliant. Inherent in this quest is an endeavour to become part of the global supply chains of foreign Original Equipment Manufacturers (OEMs). Incentivising American manufacturers to `make in India,' for India, and the world, will go a long way towards realising this vision.

Presently, however, India's defence ecosystem is inadequately equipped to deliver high-technology solutions to meet the growing demands of the Indian Armed Forces. This gap can be bridged over the long term by systematic capability development, including joint development and absorption of technology, co-development and co-production, enhancing levels of precision manufacturing and through planned investments in all these fields.

The Indian defence PSUs have successfully integrated imported components and sub-systems around the core design of foreign vendors. This has, however, not always been accompanied by the absorption of technology. For example, HAL's value addition in Su-30 production stands at less than 20 per cent.[5]

American companies can take note of this trend and endeavour to improve upon it by offering to progressively share/transfer technology – the levels of transfer and the time periods for this can be worked out mutually. Joint ventures between the American defence companies and their Indian partners, which initially began as mere offset obligations, have strengthened India's domestic

[4] "Russia is still India's largest arms supplier, says report", BBC News; March 14, 2023 https://www.bbc.com/news/world-asia-india-64899489

[5] Mishra S.N., "The myth of Atmanirbhar Bharat in Defence Manufacturing", The Wire, October 11, 2021 https://thewire.in/political-economy/the-myth-of-atmanirbhar-bharat-in-defence-manufacturing

defence-industrial base. This has boosted India's defence exports, and at 34 per cent, the U.S. constitutes the largest destination for these. This is also indicative of the growing integration of the Indian defense industry, including micro, small and medium-sized enterprises (MSMEs) in American global defense supply chains.

Table 1: India's Defence Exports (2016-2024)
Dashboard For Defence Minister (ddpdashboard.gov.in)

Year	Export Authorizations to Private Companies (Rs Cr)	Export by DPSU/7 New of Companies* (Rs Cr)	SCOMET Issued by DGFT (Rs Cr)	Contract Value (Rs Cr)	Total Export (Rs Cr)
2016-17	194.35	1327.51	0.00	0	**1521.86**
2017-18	3163.16	1519.20	0.00	0	**4682.36**
2018-19	9812.91	932.86	0.00	0	**10745.77**
2019-20	8007.81	904.74	203.00	0	**9115.55**
2020-21	7271.25	984.64	178.94	0	**8434.83**
2021-22	5965.03	386.19	6.70	6456.60	**12814.52**
2022-23	9050.84	385.78	351.28	6130.26	**15918.16**
2023-24	13119.03	109.13	2090.44	5764.78	**21083.38**

Major U.S. OEMs/Tier-1 suppliers have already entered the Indian market and are in the process of exploring avenues of increased participation through tie-ups /joint ventures (JVs). Many U.S. OEMs over the years have also set up facilities across India through JVs to support indigenous production and enable a robust infrastructure for research and development. These investments help India in acquiring the defense technology that the country is looking for to modernize its defense equipment.[6]

Some notable illustrations of collaboration are a JV between Boeing and TATA group to manufacture Apache fuselages and other structural parts in Hyderabad, a JV between Lockheed Martin and the Tata Group to set up India's first metal bonding facility (inaugurated in 2018), etc. The recent GE Aerospace and HAL MOU to produce F 414 jet engines in India would be the latest addition to this list.

6 "India-U.S. Defence Partnership", KPMG India; September 2021 https://assets.kpmg.com/content/dam/kpmg/in/pdf/2021/09/indo-us-defence-partnership-road-ahead.pdf

4. What is International Traffic in Arms Regulations? And how does it Hinder Technology Transfer to India?

The International Traffic in Arms Regulations (ITAR) is a US regulatory mandate which controls the export from the U.S. of defense-related articles and services as defined in the U.S. Munitions List (USML), and the regulations state that no non-US person can have physical or logistical access to the articles governed by the ITAR absent licensed approval to do so.

Articles that are covered by the ITAR United States Munitions List (USML) include equipment, components, materials, software, and technical information that can only be shared with US Persons (US Citizens/US Green Card Holders) unless under special authorisation or exemption. Every company involved in the handling, manufacturing, designing, selling or distribution of items on the USML is required to comply with ITAR regulations.

The objective of ITAR is to prevent the unauthorised exports of important defence equipment to foreign persons/organisations; the rationale is that niche defense technology that offers a distinct edge to the US armed forces should not get compromised, by allowing unrestricted access to these by other countries.

The stringent regulatory requirements under ITAR make it difficult, even for close allies, to source critical military equipment from the U.S. This also creates a challenge for American firms with an overseas presence, creating barriers to industry-to-industry cooperation. It could disincentivise industry players from the U.S. and India from pursuing long-term projects that involve the sharing of technologies, important for India's defence requirements.

An endeavour has been made to mitigate this problem between the U.S. and India, according to Strategic Trade Authorisation (STA) – 1 status to India (August 2018). This allows India license-free access to dual-use military technologies and allows certain controlled items to be exported under defined conditions without transaction-specific licenses. Besides, The "Industrial Security Annex (ISA) to GSOMIA, enabling the private sector defence industry to share classified information and technology was signed in December 2019. These restrictive norms under ITAR may likely get further eased with the implementation of the Initiative on Critical and Emerging Technology (iCET).

5. How far have the Foundational Agreements between India and the U.S. been able to enhance the Bilateral Strategic Partnership?

India and the U.S. have concluded the following four foundational agreements, also referred to, in India, as the `Enabling agreements':

- Logistics Exchange Memorandum of Agreement (LEMOA) (August 2016)
- Communications Compatibility and Security Agreement (COMCASA) (September 2018)

- Industrial Security Annex (ISA), added to the General Security of Military Information Agreement (GSOMIA) (December 2019)
- Basic Exchange and Cooperation Agreement (BECA) (October 2020)

The agreements are designed to institutionalise operational engagement between the armed forces of the two countries. The U.S. has entered into such agreements with many other countries, to enhance its operational coordination in different theatres, globally; allowing, the sharing of information, platforms, and logistics.

These agreements represent 'strategic convergence' and contribute towards enhancing interoperability between the two nations. The agreements also constitute a step towards institutionalising defense operational and industrial-cooperation between India and the U.S.

6. Do Indian Defense Manufacturing Policies Encourage U.S. Original Equipment Manufacturers to Invest in this Sector in India?

Several steps have been taken by the Government of India to encourage foreign OEMs to invest in defence manufacturing in India. With six of the world's ten largest defence OEMs headquartered in the U.S., leading American giants can tap into this fast-growing market. In March 2023, the Government of India informed the Parliament that as many as 45 companies/JVs operating in the defence sector with foreign OEMs had been approved.[7]

The two proposed defence corridors, one each in Tamil Nadu and Uttar Pradesh, offer plug-and-play support to the corridor's businesses, including FOEMs. The packages offered include specific incentives such as GST-based sales refunds, stamp duty concessions on land allotment, electricity tax exemptions, capital subsidies and subsidies for training workers.[8]

Additionally, FOEMs are now also permitted to share product and Indian offset partner's details after contracts are signed. The Strategic Partnership Model proposed by the Government in 2017, is aimed at facilitating long-term partnerships between Indian and foreign entities through an open, competitive process in which they can jointly carry out technology transfers, establish domestic supply chains and set up manufacturing infrastructure.[9] This concept, however, has met with internal headwinds and is yet to be implemented.

As the Indian government eyes an annual defense production value of US$25bn by 2025, globally established American OEMs will have a crucial role to play in scaling the defense production

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7 "Govt. approval to 45 companies/JVs operating in defence sector with foreign OEMs", THE ECONOMIC TIMES; March 24, 2023 https://economictimes.indiatimes.com/news/defence/govt-approval-to-45-companies/jvs-operating-in-defence-sector-with-foreign-oems/articleshow/98969574.cms?from=mdr

8 "FDI Reforms in the Defence Sector", India Brand Equity Foundation; August 16, 2022 https://www.ibef.org/blogs/fdi-reforms-in-the-defence-sector

9 *Ibid*

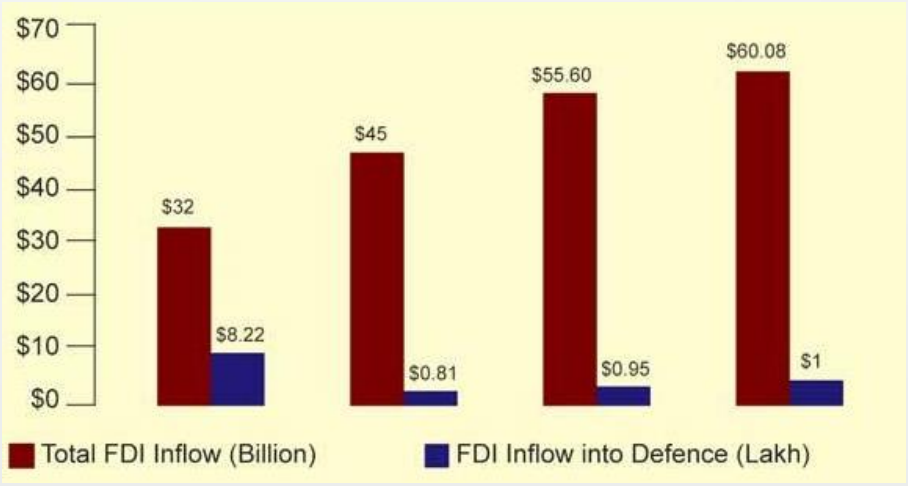
ecosystem in India. American OEMs also have an opportunity to extend their global supply chains to India, to make these cost-effective and secure.

7. Are India's Atmanirbharta Defense Policies a Threat to Foreign Manufacturers?

The objective of 'Atmanirbharta' is to make India self-reliant in key sectors, particularly in the field of defence. India sits in a dangerous neighbourhood, amidst two nuclear-armed neighbours. It, therefore, remains constrained to import essential equipment for its defence and security needs, making it the largest importer of global arms (9.8 per cent of all global arms imports during the period 2019-23). This unenviable reality drives India's quest for self-reliance.

Also, as a significant middle power, maintaining strategic autonomy in the complex global geopolitical environment entails being self–reliant for a country's essential security needs. In achieving this, however, India does not intend to insulate itself from global defense manufacturers. The Chief of Indian Army Staff, General Manoj Pande, stated sometime back that 'collaboration with foreign companies is intrinsic to India's ambition of becoming 'Atmanirbhar' (self-reliant) in defence production.[10] He further went on to indicate that the nature of collaboration will be one of co-development and co-production.

Figure 3: FDI Inflow Trend: Total and in the Defense Sector



Source: http://www.indiandefencereview.com/news/towards-a-more-vigorous-make-in-india-in-defence-manufacturing/

While it is true that the Government of India is intent on reducing reliance on foreign manufacturers for strategic reasons, it should not be construed as totally ignoring the capabilities which such makers have to offer. Instead, the focus has now shifted to leveraging their strengths to

[10] "Collaboration with foreign companies is intrinsic to becoming 'Atmanirbhar' in defence production: Army Chief", The Economic Times; July 28, 2022 https://economictimes.indiatimes.com/news/defence/collaboration-with-foreign-companies-is-intrinsic-to-becoming-atmanirbhar-in-defence-production-army-chief/articleshow/93190217.cms?from=mdr

build a globally competitive domestic ecosystem. Some American OEMs, including Boeing, Lockheed Martin, BAE Systems, Honeywell Systems, and Raytheon have invested in partnerships with Indian manufacturers in recent years.

The Government of India has also, in the recent past, raised the level of permissible FDI, in the defense sector, under the automatic route to 74 per cent. It can, however, be raised even up to 100 per cent through the government route in any area where it is likely to provide access to contemporary technologies.

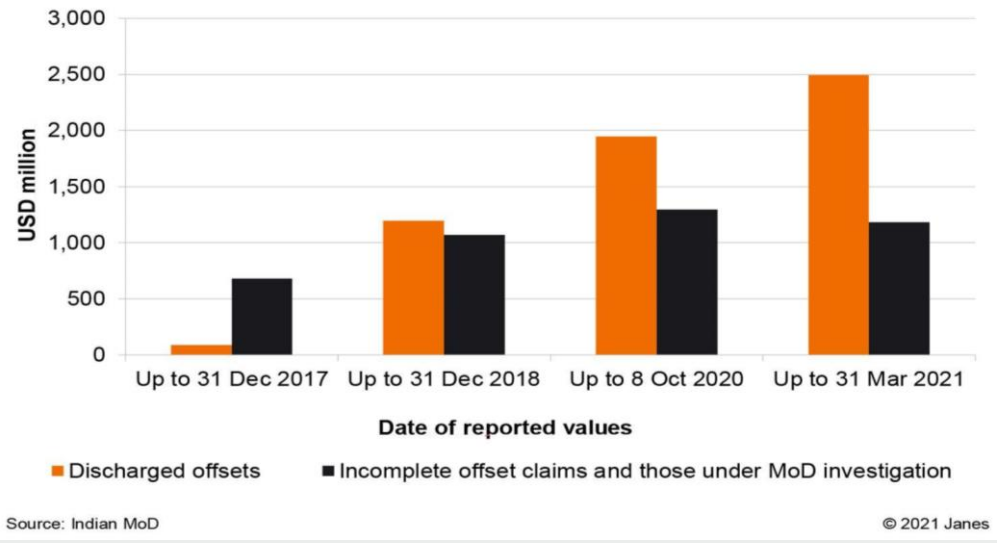
Therefore, Atmanirbhar Bharat is an initiative which blends with the government's overarching vision to leverage the respective strengths of foreign manufacturers, to reorient the defense manufacturing landscape of India.

8. How can India's Defense Offset Policy Facilitate Defense Manufacturing and what are its Limitations?

The key objective of the Defense Offset Policy is to leverage the capital acquisitions by India from global defense firms to strengthen the defense industrial ecosystem. Offset regimes around the world are designed to ensure that leading arms makers of the world selling equipment in purchasing countries invest a percentage of the contract value in the domestic industry.

Under the DAP 2020, the offsets obligation will be applicable to acquisitions made under the Buy Global Category, for purchases valued over ₹2000 crores. This category includes the acquisition of equipment manufactured by global vendors (either completely on their own or as part of a joint venture with an Indian manufacturer). DAP 2020 removed offset obligations from some of the categories.

Figure 4: Defense Offset in India



DAP 2020 also did away with the requirement for offsets from G to G deals between the two countries as well as single vendor deals. The revised procedure aims to optimise the utility of offsets in contracts where value addition can be made to the capacity of domestic enterprises. It seeks to enhance the capacities of the domestic manufacturing ecosystem by ensuring that a percentage of the contract value involving foreign OEMs in the purchase of critical equipment gets channelled towards the domestic industry.

However, India's defense offset policy has its share of limitations, as it has not yielded the desired results over the years. The Union Minister for Defence, Ajay Bhatt informed the Parliament in May 2022 that there were as many as 21 offset contracts, amounting to US$2.24bn, in which the vendors defaulted/did not fulfil offset obligations during the five years till December 31, 2021. He also mentioned that penalties amounting to US$43.14mn were imposed against defaulters/non-performing vendors in 16 of these cases.[11]

Indian defense manufacturers still lack the technological know-how to ensure efficient utilisation of technology transferred by foreign suppliers in their internal manufacturing processes and to fulfil offset obligations. A study conducted by the Manohar Parrikar-Institute for Defence Studies and Analyses (IDSA) in 2019 revealed that more than 90 per cent of offset obligation was discharged by the vendors through direct purchase of products and services from Indian companies.[12]

The fact that the Indian defense industrial ecosystem has struggled to come up with indigenous high-value solutions since the offsets regime was introduced, calls for a relook and reorientation of the policy as well as the implementation mechanism. Experience suggests that the larger problem lies in the latter.

9. What is the Arms Export Control Act of the U.S.? What is the Act's Significance for defense-related Technology Transfer to India and whether it requires an Amendment?

The U.S. Arms Export Control Act, of 1976 is an overarching legislation which stipulates the authority and general rules for the conduct of Foreign Military Sales and commercial sales of defense articles, defense services, and training in the U.S. The Arms Export Control Act (AECA) came into existence with the passage of the Foreign Military Sales Act (FMSA) of 1968. An amendment in the International Security Assistance and AECA of 1976 changed the name of FMSA to the AECA. The Act gives the U.S. President the authority to control the import and

11 "India's Defense Offsets Policy: A comprehensive analysis", Financial Express; August 09, 2022 https://www.financialexpress.com/business/defence-indias-defence-offset-policy-a-comprehensive-analysis-2623186/

12 Cowshish, Amit "Making the offsets policy work better", MP-IDSA; March 20, 2019 https://idsa.in/idsacomments/making-the-offset-policy-work-better_acowshish-200319

export of defense articles and services. It requires governments that receive weapons from the U.S. to use them for legitimate self-defense.

The Act has multiple implications for countries involved in making major defense acquisitions from the U.S., such as India. Historically, the State Department's insistence on maintaining close oversight over the transfer of important defence technology has seen it apply a wide definition to terms such as **'defense article.'** According to the Act, a 'defense article' can be considered as an item or tangible good, a service, or technical data, none of which are clearly defined by this law or elsewhere.[13]

The Department has used this definitional construct to bring most defense articles under its ambit, which dissuades the industry from carrying out unhindered exports, even to allies/ partners/friendly countries. The Indian Industry thinks that this Act needs to be amended or modified to remove certain anomalies. There is no level of materiality, tiered system or hierarchy of classification for different types of defence items: everything, therefore, must be treated the same and with equal vigour.[14] Furthermore, this is significant for Indian Industries to collaborate more directly with US partners to expand India's commercial and defense cooperative engagements.

However, ITAR is one of the most stringent American laws governing trade in defense items and safeguarding its domestic industry from market access issues, intellectual property theft, and forced technology transfer and it's a general legal framework aimed at no specific country. Therefore, both sides would need to reach a consensus on how to navigate the ITAR export controls that could thwart the seamless access to high technology envisioned under the iCET and co-production and co-development initiative of India.

[13] ARMS EXPORT CONTROL ACT [Public Law 90-329] [As amended Through P.L. 117-263, Enacted December 23, 2022], Available at https://www.govinfo.gov/content/pkg/COMPS-1061/pdf/COMPS-1061.pdf

[14] Breaking the Barriers: Reforming U.S. Export Controls to Realize the Potential of AUKUS, UNITED STATES SERVICES CENTRE, May 17, 2023. Available at https://www.ussc.edu.au/analysis/breaking-the-barriers-reforming-us-export-controls-to-realise-the-potential-of-aukus

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