

## DEFENSE AND AEROSPACE ALERT

### LANDMARK U.S.-INDIA AGREEMENT SIGNALS BOON IN BILATERAL DEFENSE TRADE

After years of negotiations, the United States and India, on July 20, 2009, agreed on a landmark arrangement to facilitate the export of U.S. defense articles and services to India. At a practical level, the End-Use Monitoring Agreement (EUMA) opens up extraordinary commercial opportunities for U.S. defense contractors to partner with Indian companies and help India—which has one of the largest defense procurement budgets in the world—meet its defense capabilities requirements as it continues its rise on the world stage.

To fully realize this commercial opportunity over the long term, U.S. defense contractors and their Indian partners would be well-advised to do two things: (i) mitigate regulatory and reputational risk by maintaining rigorous, technically superlative and practical trade compliance programs; and (ii) fully capture upside opportunities by using policy and other insights to anticipate and navigate the next chapter in one of the most important and dynamic bilateral relationships in the world.

### LEGAL BACKGROUND

The U.S. Arms Export Control Act (22 U.S.C. 2785) and the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) require that recipients of U.S. defense articles and services agree to certain end-use monitoring arrangements. End-use monitoring is intended to allow the U.S. government to verify that military equipment sold by U.S. companies is used for its stated purpose and that the recipient is complying with U.S. requirements with respect to the transfer and security of such items. In the past, the Indian government has strongly resisted accepting end-use monitoring requirements, citing sovereignty and other concerns. This resistance has historically necessitated protracted negotiation and approval of deal-specific end-use monitoring arrangements in Indo-U.S. defense contracts. In the past, this hurdle has significantly slowed and sometimes stymied the approval of large defense deals between the two countries.

### NEW END-USE MONITORING STANDARD

The EUMA eliminates this hurdle by establishing a standardized end-use monitoring arrangement. Specifically, the EUMA will allow the United States to periodically inspect and inventory all articles transferred to India (provided that the physical inspection is done at a time and place agreeable to the Indian government and does not include on-site inspection at military installations) and verify whether India is using purchased defense articles for their intended

purposes. The EUMA also (i) restricts India's use of U.S.-origin defense equipment, (ii) prevents India from modifying a purchased defense article or system in any form, (iii) allows spare parts to be sourced only from the United States and (iv) requires U.S. permission before any secondhand sales or third-country service of U.S.-origin defense equipment.

### **POLICY CONTEXT**

Indian Prime Minister Manmohan Singh has applauded the EUMA, citing the need to diversify India's sources of military hardware so that India's defense forces can avail themselves of the best available technologies. This approach marks a significant departure from past practice, when India purchased defense articles primarily from non-U.S. suppliers, principally Russia, Israel and France. Now, as a result of a deepening bilateral strategic relationship, India has earmarked \$30 billion to modernize its aging military systems and is anticipating a sizeable portion of these investments to involve U.S. deals.

In particular, India is currently focusing on pursuing U.S. cooperation in developing its C4I network systems and in building out its optronics, electro-optics, encryption and sensor and jamming capabilities. The EUMA will also open the door for U.S. firms to other opportunities, including the sale of attack, heavy lift and utility helicopters, reconnaissance aircraft and a range of high-technology equipment such as missiles, smart ordnance, radar and battle management systems, night vision gear and border protection equipment.

In the near term, the EUMA could also prove an immediate boon to U.S. companies, who are competitively bidding for India's Medium Multi-Role Combat Aircraft tender for the purchase of 126 multi-role fighter aircraft. Estimated at \$12 billion, this deal would be one of the largest arms deals in the world.

### **CONCLUSION**

With this new standardized arrangement for end-use monitoring in place, the United States and India can look forward to an enhanced defense technology trade relationship in the years ahead. By adopting world-class compliance practices, becoming more familiar with the unique requirements and challenges of the Indian defense market and keeping in step with the broader U.S.-India bilateral relationship, U.S. defense contractors and their Indian partners will be well-positioned for long-term success.

### **CONTACT INFORMATION**

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