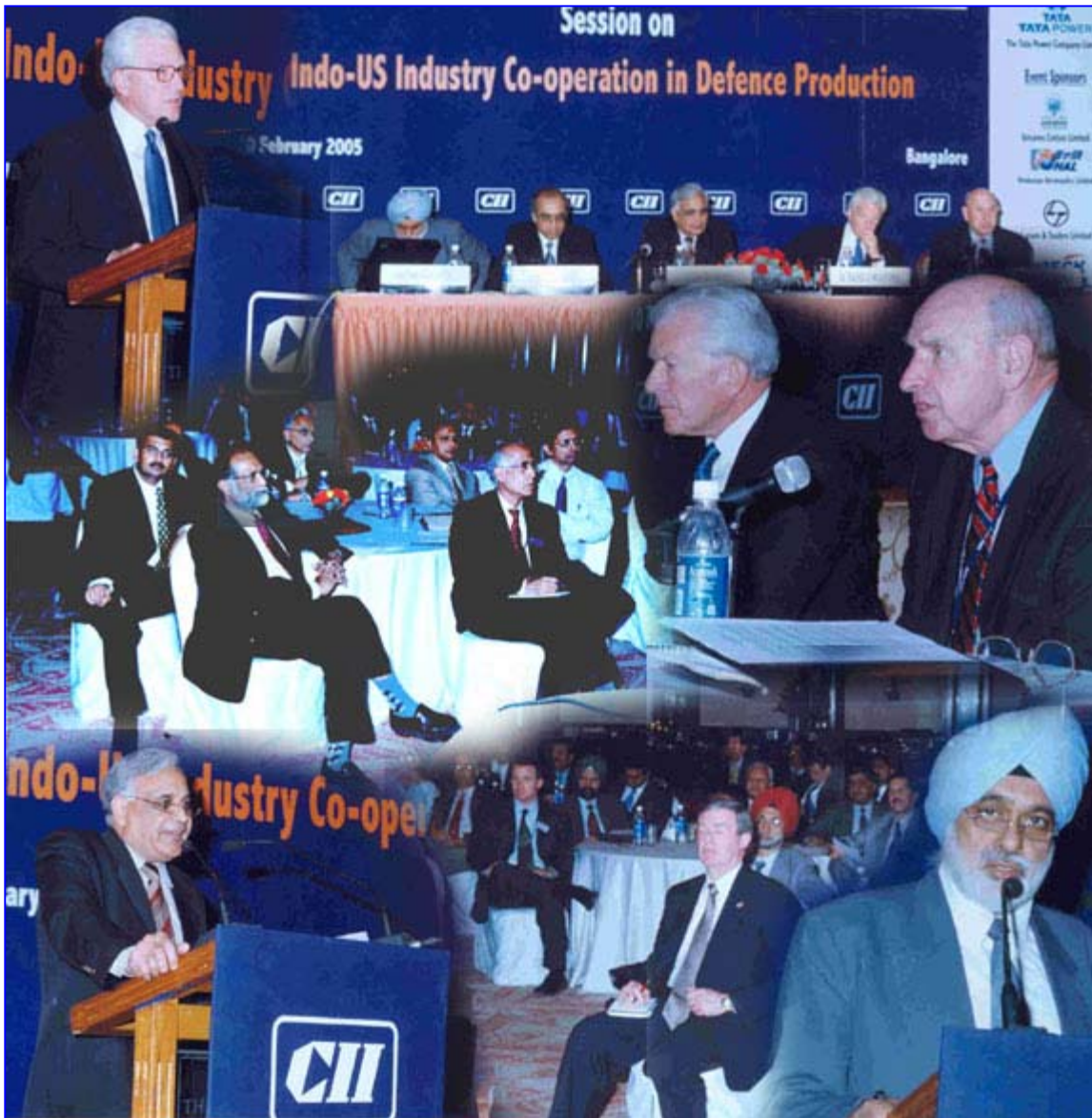

PROCEEDINGS OF THE SESSION ON INDO-US INDUSTRY CO-OPERATION IN DEFENCE PRODUCTION



10 FEBRUARY 2005: BANGALORE, INDIA



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Confederation of Indian Industry



USINDIA Business Council

**SESSION ON INDO-US INDUSTRY CO-OPERATION
IN DEFENCE PRODUCTION
10 FEBRUARY 2005: HOTEL TAJ WEST END: BANGALORE**

P R O G R A M M E

1530 Hrs	Registration	
1600 Hrs	Opening remarks	Lt Gen (Retd.) SS Mehta, PVSM, AVSM, VSM* Principal Advisor Confederation of Indian Industry
1610 Hrs	Opening Remarks	H.E. Dr David C Mulford United States Ambassador to India
1620 hrs	Key Note Address on "India's Defence Procurement Procedure"	Maj Gen H S Sehgal Technical Manager Land Systems Acquisition Wing Ministry of Defence Government of India
1640 Hrs	Remarks	Ambassador Thomas R Pickering Senior Vice President, International Relations The Boeing Company
1650 Hrs	Discussion of priority projects for US-India collaboration and challenges to such collaboration	Facilitated by Lt Gen Mehta and Ambassador Pickering
1750 Hrs	Summary and presentation of recommendations for US and Indian Governments	CII and USIBC
1800 Hrs	Session Closes	

SESSION ON INDO-US INDUSTRY CO-OPERATION IN DEFENCE PRODUCTION

PROCEEDINGS

General SS Mehta, Principal Advisor, CII welcomed the participants to the session on Indo – US Industry Co-operation in Defence Production. General Mehta in his introductory remarks said that the session marks another milestone in the on-going dialogue to strengthen US-India co-operation in the critical field of Defence Technology. The second half of 2004 witnessed strides being taken between India and the US to further consolidate the growing high technology relationship. The meeting of Dr. Manmohan Singh, Prime Minister of India with President George Bush in September 2004 infused new momentum into this process. Subsequent to the meeting, the two leaders issued a statement marking the launch of the second phase in the Next Steps in Strategic Partnership. The first phase of the NSSP included the implementation of measures to address proliferation issues and ensure that US origin goods and technologies are used in accordance with US Export Control requirements. These measures allow the US to modify its export licensing policies to foster increased co-operation in the Commercial Space programmes and permit certain exports to power plants and safe guarded nuclear facilities.

In specific terms, in the category of Foreign Military Sales (FMS), one saw the progress in the fire finder radar system moving as a requirement placed by the Indian Ministry of Defence. General Mehta said that CII is hopeful and confident that the second phase will build upon this process of enhancing security and expanding trade. He said that removal of ISRO from the entities list, licensing requirements for low level dual use items and ease of controls on items being exported to civil nuclear area were culminated only after several rounds of discussions of the High Technology Co-operation Group between India and US.

General added that CII had the privilege of supporting industry component of the dialogue and had participated in all three meetings of the Forum, in July 2003 in Washington D.C., November 2003 in Bangalore and once again in November 2004 in Washington D.C. Last meeting of the Forum featured discussions on expanding business opportunities in the areas of defence technology and information technology and culminated in a set of joint recommendation by the U.S. and Indian Private Sector participants along with the U.S. and Indian Governments. A copy of the recommendations is at *Annexure II*. He said that the event also included a session on various aspects of US Export Licensing processes. General Mehta informed the participants that in accordance with the

recommendations of the meeting in last November, CII had formed the Defence Industry Working Group and looked forward to a similar announcement by the American side so that both sides can engage in a dialogue.

He said that today's meeting carried forward the process of dialogue to facilitate strengthening bilateral co-operation in defence sector. He said that India is also very much concerned about proliferation and various stringent rules and regulations are already in place. The time has now arrived for the US and India to forge ahead and take advantage of this great opportunity

General Mehta commented that in the industry's dialogue with the counterparts in American industry, there appears to be a lack of clarity of what they can give to India or what India can take from them. In such an environment how do both sides navigate? What are the checks and balances and therefore, linking up with this is the requirement of simplification of procedures. If NSSP has to have meaning and substance, and HTCG to carry forward meaningfully, there has to be clarity on both side on what one get, how one get it and how soon or how easily the procedures can get simplified.

Ambassador Mulford expressed his happiness to participate at the first meeting of the US – India Industry Working Group on Defence Technology organized under the aegis of the high-tech co-operation group.

Ambassador Mulford said that the strategic situation in the world has profoundly changed in recent years. The world faces threat from global terrorism and from the proliferation of weapons of mass destruction. Given the two countries' common interest in global stability and shared concerns about weapons of mass destruction, it is only natural that the United States and India should seek close strategic and defence relationships. According to Ambassador Mulford it was evident from the press coverage of Aero India indicating very clear statements from the Defence Minister of India of the desire to enhance co-operation between the two countries. Towards this goal, US are specially pleased with the bi-lateral initiatives. The NSSP launched by President Bush and Prime Minister Vajpayee in early 2004, in a way, is a corner stone of the relationship that paves the way for co-operation between two countries in the areas of high technology trade, civil space, civil nuclear and dialogue on missile defence through a series of reciprocal steps based on future phases of negotiations and actions. The NSSP also maintains ties between the US and Indian militaries which have been growing rapidly in recent years. In the past several years, there has been a significant increase in the numbers of senior level visits, exchanges, joint military exercises. According to Ambassador Mulford there have been visible benefits of

these activities such as recent tsunami when the Indian and US militaries worked extraordinarily closely together, very quickly to address the aftermath of that tragedy within the region affected.

As the US – India military relationship expands, the US also want to pursue new opportunities to partner with India in other strategic areas. US commercial defence sales to India are growing. Sales tripled from 5.6 million dollars in 2003 to 17.7 million dollars in 2004 and are projected to surge to 64 million in 2005, but this is much less than it should be, given the size of relationship, size of the two countries and the complementary of the security agendas. According to Ambassador Mulford, the India – US co-operation in defence is really just getting started.

Ambassador Mulford said that while the US can offer goods, services and technology, unrivalled by any other country, they continue to encounter misperceptions in India about US's alleged reliability as a defence supplier. Ambassador Mulford said to those who still question US reliability, "Let them test the US and they will not be disappointed." The relationship between the US and India is different today, it is stronger today than it has ever been, and it will not be easily derailed. Ambassador Mulford said that the context for the defence relationship has changed completely and that the NSSP is the proof of that change. The HTCG was formed in November 2002 to provide a framework for discussing high technology issues of mutual concern. The primary goal of the HTCG is to facilitate and promote high technology trade, focussing on cooperative steps that the United States and India can take to create the appropriate economic, legal and structural environments in which this trade can flourish.

In addition to defence technology, the Group looks to cooperation in IT, biotechnology, and nanotechnology. These are sunrise Indian industries where India's intellectual capital can make important contributions. The US and India are natural partners in these fields. Under the HTCG, both sides have made much progress on exchanging information, on the barriers that affect bi-lateral high technology trade, and on dispelling misperceptions about such trade and taking measures to enhance the security of such trade, but admittedly much remains to be done.

Since President Bush lifted the last sanctions against India in 2001, the US Government has approved more than 700 export licenses for direct commercial defence sales to India. Each year, since then, there has been an increase in the export of controlled dual use items to India, with the approval rate for dual use

license applications currently running at or above 90%. The Ambassador informed that the Embassy's Export Attaché was participating at the meeting and he would be pleased to answer any technical questions, which participants might have about licensing and US Export Control Laws.

Ambassador Mulford said that the purpose of the session was to identify specific projects for collaboration and to develop actionable recommendations for the US and Indian Governments and on how to reduce barriers to co-operation. The goal should be to walk away from the session with a list of specific items and steps for both Industry and Government that will lead to tangible results.

Maj Gen H S Sehgal, Technical Manager Land Systems, Acquisition Wing, Ministry of Defence gave a detailed and informative presentation of India's Defence Procurement Procedure for the benefit of US industry. A copy of the presentation made by General Sehgal is at *Annexure I*.

Ambassador Thomas R. Pickering, Senior Vice President, International Relations, The Boeing Company and Co-Leader of the USIBC Executive Defence Mission to India thanked CII and USIBC for their role in bringing American and Indian companies on a common platform. He said that the US defence industry welcomed the creation of the HTCG, and it is an act, which has precipitated three public – private Forums in bringing down the results that we see today.

He said that the effort to link the HTCG to other sector specific activities, such as Aero India for which many industry executives plan their participation, months in advance, is a positive move and will increase participation in this important bi-lateral dialogue. He welcomed the key recommendations put forward by the US and Indian Industry at the November 18, 2004 HTCG Public – Private Forum in Washington D. C. He said that creation of a bi-lateral US – India Defence Industry Working Group could consider this session as the launch of that group.

He also made a note of the recommendation made to US industry by Defence Minister, Pranab Mukherjee on 9 February 2005 to create a small working group that would include both public sector and private sector representatives from both sides. The proposed working group would focus particularly on issues and problems that arise in connection with the abilities to work together to support and assist Indian defence activities from the private sector in the US. He said that USIBC welcomed that suggestion by the Defence Minister and hoped very much to have it pursued, and that the USIBC will be reporting to the US

Department of Defense and the US Department of State on its Defense Mission to India.

Ambassador Pickering said that he had the pleasure of co-leading this delegation with General Ralston, Vice Chairman of The Cohen Group. The delegation comprises of 16 senior representatives of 12 great American defence companies including BAE Systems North America, Bell Helicopter (Textron), The Fremont Group, General Dynamics, International Turbine Engine Company (Honeywell), ITT Defense (ITT Industries), Lockheed Martin, Northrop Grumman, Raytheon, and Sikorsky Aircraft Corporation (United Technologies).

The Mission had a great set of discussions for four days, both in New Delhi and Bangalore with representatives of the Government of India, the Indian Armed Services, Indian industry and with US Ambassador and US Embassy team. The US industry welcomes and wants to play a key role in furthering the strategic relationship between India and the US. US industry commitment to the Indian defence sector is evident in the increasing number of US companies with permanent offices in India, the amount of bid and proposal funds spent in pursuing programmes in India, the 16 American companies exhibiting at Aero India, and the senior-level composition of this Mission. He said that US is a reliable supplier, probably the most reliable supplier to its close friends and allies, providing integration with existing systems, after sales service and lifetime support. Consistency and intensity of US military-to-military engagement with India is evidence of US Government' commitment to India's defence and its Armed Forces. That US industry is willing to establish work in India consistent with US Government regulations and to lay the ground work for opportunities that may still be several years away, is further evidence of US intention to be a truly reliable long-term supplier.

US industry is interested in pursuing both major platform tenders as well as sub-systems, components, and other small opportunities with Indian industry. US industry views the Indian defence sector, not only as a market but also as a potential supplier and partner, and recognises that major defence sales to India will need to include some elements of collaboration. The USIBC Mission came with some questions and concerns about India's procurement processes. As such, we appreciated the presentation by General Sehgal on India's Defence Procurement Process. Many American companies want to register official company agents and they have been told by the Defence Ministry that they would prefer that US companies not use agents here in India in connection with Government of India procurement processes.

Ambassador Pickering also stressed the critical role of Technical Assistance Agreements (TAAs) in enabling US companies to collaborate with the Ministry of Defence, the Armed Services and Indian industry. These agreements are one type of export license issued by the US Government and are necessary in order for US companies, even to begin to discuss co-production licensing and technology transfer with their Indian counterparts. The TAA's do not obligate the Indian signatory to make future purchases. He said that the launch of the bi-lateral US – India Defence Industry Working Group and two governments' support for it, places the burden of progress at this stage of the HTCG process in the hands of industry. Government stands ready to help, but it is up to industry to be as specific as possible about what they need government to do, or not to do, in support of industry's efforts.

He commented that the session should be focused on identifying possible specific priority programmes for US – India defence collaboration and the barriers that may exist to such collaboration that can only be removed by the respective governments. The programmes recommended must also be of mutual interest and benefit. There should be platform systems or equipment that the Government of India is looking to procure and/or develop in the near-term. There should also be platform systems or equipment that American defence companies can produce, and will likely be allowed by the US Government to export to India. Ambassador Pickering invited comments from the floor with respect to potential priority programmes and any associated barriers, they see in moving those ahead. Ambassador Pickering began the process by citing the Indian interest in a multi-role combat fighter, and said that at least two American firms present at this session would very much like to participate in that competition.

Question / Answer Session

Question: Conditions under which the US was making sales, pre-98 hasn't changed post-98, after the sanctions were removed. In India "buy", "make" and "buy and make" happens to be a tender process. Extensive dialogues have taken place between the two countries, as to what the process of granting license from the US Government to participate at the Indian tendering process. It becomes impossible for US companies to comply because these licenses come stage by stage and therefore, at the very beginning, the US companies had a disadvantage. So would somebody in the process consider amendment of laws?

Ambassador Mulford said that first thing one learns in US Government is that the Congress is a sovereign body and therefore it can abrogate legislation and set

new terms at any time and that is the part of the problem. He said that it is a different time now and both India and US have a different relationship. In the past, India had a different vision of its position in the world, it had a different mission, it had a different set of relationships in which the relationship with the US was not a priority and that has changed. India is now charting a course where its vision is to become a major regional power, ultimately a global power, and it has recognized that in order to do that, it needs a close strategic relationship with the US.

Secondly, there is a very large Indian population in the United States today, which in the last four or five years has become more politically active and better politically organized. India's capability to mount resources and lobby is quickly becoming second only to that of Israel. That means India has got a formidable body of activists, potentially in the US, who can first of all support the initiatives; and second, act as an insurance policy, when India runs into any difficulty by reminding US legislators what their longer term interests are. He indicated that if the Government of India is worried about reliability, then India should buy as much as it can, spread it judiciously around the US, so that it has a friend in Congress from every region, and that will give an insurance policy worth its weight in gold. This takes an active vision on part of the Indian Government and knowledge about how the US system works which India could get from the non-resident Indian population in the US who have just been allowed to be dual citizens.

Question: Mr. Ambassador, if I just go back to the question that was asked really then. If the licensing for 'make', 'make and buy' is not going to come together, that is the main question, then technically, you are not allowing the US firms to even compete, because that is the status, that has been now. The Indian Government can consider amending its procedure to favour the American licensing procedure or alternatively the US can also find a way out, so that the two Governments talk and make a conducive environment.

In response, General Mehta said that the procurement procedures in the Indian system have been reworked only two years ago after years of scrutiny. He commented that this may not be the right moment to ask for a change, besides, he felt that the Ministry of Defence would prefer to institute systems that allow for global tendering.

Maj Gen Sehgal said that the time frame of the acquisition process is a very important issue. The vendors only come to know, as to what India wants to acquire, either at the time, after the Ministry of Defence issues a Request for

Proposal (RFP), or certain indications are given at the time of Request for Information (RFI). Generally, after the RFP has been issued, the vendors are given about four months time to respond to the technical offer. In the recent past, we had a number of cases, in which the vendor has responded and they have given an indication that the licensing process will be done after the contract has been signed which is certainly not acceptable to the Ministry of Defence because even after the contract has been signed, the licence has not been granted by the US Government and the entire acquisition process has gone back by two years. Therefore upfront, the Ministry of Defence wants the US Administration to give them an indication that the transfer of technology will take place.

One of the participants from Indian Industry said that alternate sources for India are also democracies such as the United Kingdom, France, Israel, etc. All of them are democracies and there also, the people's will prevails. He hoped that it must be possible, given the necessary will to find a way of without taking away the sovereignty of the legislature. He also mentioned about the need for having a legal framework to protect the sanctity of existing commercial contracts with India. In absence of such an arrangement, if today's political mood changes, the sanctity of the existing commercial contracts would be sick, and then there would be a fundamental problem of reliability. Any amount of good wishes and 'try me once more' is not likely to change the situation. Given the fact that ultimately a State can decide, what is good for them in terms of the will of the people, that should be abrogating an existing contract, should be under extreme circumstances like active hostility against United States or something of that nature but if the sanctity of the contract can be broken on any other consideration, then one would look askance at this kind of situation, given the fact that alternate sources, global sources are also democracies and they do have Parliaments and laws.

In response Ambassador Mulford said that law couldn't bind future Congresses. A future Congress could just easily undo that law, if it is not written in the constitution of the US. Then there is no method of locking the Congress from passing a law with respect to a particular subject. Amending the Constitution would achieve the objective, however it would be very controversial and it would take a very long time to amend. Hence it is not feasible to give legal protection to existing commercial contracts. Ambassador Mulford also mentioned that there is no broadly accepted conventional international law that binds governments in the commercial field never to take steps in any way to infringe upon existing contracts.

A senior official from Hindustan Aeronautics Limited said that during discussion / negotiation with many of the American firms one finds that the prices are right but they come with a proviso: “subject to the export licence.” Probably, they themselves are not sure about the timeframe within which, they could get the export licence. He suggested that companies like HAL which comes under the Defence Ministry, should be probably given a treatment different from other companies in the country so that the process of getting the export licence must be faster.

Mr. M.V. Kotwal, Co-Chairman, CII National Committee on Defence and Senior Vice President, Larsen & Toubro Limited suggested that the US Government should come out with a clear list, which the industries can operate without going in for a licence because what it seems, in whatever dialogues they had that this clarity does not exist. The US companies are not very clear whether licence is required at all, and, if it is required, how long it is likely to take. Now, if some clarity emerges, there is a list of items for which there is either no licence required or given a time frame that licence will be available, then there can be another category which could be a very sensitive one and which will require a case-by-case treatment. According to him now everything becomes case by case. Mr. Kotwal also said that apart from getting American companies to work in India one should also look at accelerating the process of Indian companies participating in American defence programmes. According to him that will build some element of synergy and trust. There are some cases where some areas reserved for American companies and American citizens working on the projects of that type, may take a second look at that class which could enable a lot of Indian companies to participate in the American programmes and if that is accelerated, the whole process may get speeded up.

In response, Ambassador Pickering said that there is a list published by the United States in the Federal Registrar called the “Munitions List” which is the basic fundamental document for defence licensing by the US Department of State. There is also a “Dual Use” list of items which are licensed by the Department of Commerce.

General SS Mehta said that some of the Indian companies had indicated that they were having difficulty getting approvals for innocuous items like high speed metal cutting machine tools, high-tech paints, chemicals, lubricants, opto-electronics, surveillance equipment, equipment for counter-terrorism etc. He said that since both sides have a problem with terrorism, it would be a good step if all equipment relating to counter-terrorism be on that particular list.

Ambassador Pickering said that the US process exists for the whole world so it will be difficult to secure special consideration for one country. The amazing and interesting fact is that of course, Indian firms don't have to apply for licences, the American seller applies for the licence. Secondly, as Ambassador Mulford said, over 700 licences have already been issued for defence sales to India. After the cut-off in 1998 and both sides went into basically no activity, one can see, all of the problems that have arisen through lack of information, lack of understanding of the process.

One US industry representative suggested that the US Administration should provide more transparency on the numbers of licenses issued and percentage of approval. He felt that it might give the Indian side a very clear snapshot of what is the state of play in licensing for defence products to India. For example, the areas in which the licenses are issued, what are the approval rates for the different categories and the pace at which those approvals or denials are being granted. He also mentioned that an experience sharing session with concerned officials from the US Administration especially from the State Department, Defence Department etc. along with export licensing officers of US industry regarding export licenses to India would be of great use. There needs to be a better infusion of information in the US system so that the different heads in the different places in the different parts of the US Government get the point.

Ashley Hubka of USIBC said that in the November 2004 HTCG meeting in Washington DC there were presentations by the Department of Commerce (that does the "Dual Use" licensing) the Directorate of Trade Controls (the part of the State Department that does "Munitions List" licensing), and those presentations were made available along with the summary of proceedings from that meeting. These proceedings are available at <http://www.bis.doc.gov/InternationalPrograms/IndiaCooperation.htm>.

One of the CEOs from Indian industry commented that neither side would change their procedures to give special preference to the other. There are inherent suspicions which are in their respective systems and they have happened over, specially after 1998 when certain supplies, even for small little items got cut. He suggested that instead of straightaway talking about fighter aircraft, one should start looking at a possibility of joint development in high technology areas, specific areas where probably, the Indian talent could help.

In response, Ambassador Pickering said that it is another starting point but they have to have licences to engage in that kind of joint research, which involves

technology that has military purpose and sensitivity. However certainly a number of companies are looking at that area as a potential way to move ahead.

One of the representatives from US industry suggested that counter-terrorism could be used as a tool to promote high-technology co-operation. He commented if some legislative staffers could write into legislation a provision for expedited treatment of license applications for equipment supporting counter-terrorism efforts by close allies such as India, this would accelerate the licensing process.

Ambassador Mulford said that today the US and India has a very good political relationship. He hoped that there will be scrutiny from political leaders in both countries regarding the so-called incompatibility of Indian procurement and American licensing procedures. Ambassador Mulford said that the political shift is taking place at a speed which is really measurable each month.

Conclusion:

General Mehta in his concluding remarks said that India has a large human resource skill base. One needs to find an opportunity for collaboration and partnership in this area. CII and USIBC should work together with support of both governments to promote co-operation in technologies for counter-terrorism equipment. The US Embassy should also help the Indian companies to understand the process by which Indian companies can supply goods and equipment to US that is otherwise bought from the world market.

RECOMMENDATIONS

1. Industry will operationalise the US-India Defence Industry Working Group, composed of a small number of companies from industry on each side and meeting via videoconference as a starting point.
2. US industry indicated that for this Working Group to be effective, it must have government representation as well. On the US side, in addition to its existing HTCG ties, the group should also have point people within and report to the US Departments of Defense and State. On the Indian side, the group should be linked to the Indian Ministry of Defence as suggested by Defence Minister Pranab Mukherjee.
3. There is a disconnect between the commitments required by India's defence procurement procedure (for "Buy & Make" which requires clarity upfront on number of imported products as well as technology transfer and co-production in later stages) and the US phased export licensing process. Industry would like both the US and Indian governments to examine this issue:
 - a. Can the US adopt a new licensing approach?
 - b. Can India change its procurement procedure (for all countries, not just the US)?
4. The US Industry would like to understand if the US Government can make any changes to its licensing process:
 - a. Issue a "lifetime license," that is a 15-20 year license to cover the expected lifetime of a system or platform
 - b. Pre-clear certain Indian end users so that only the technology and the end use have to be verified for a given license application
 - c. Expedite export license processing for a short list of Indian end users
5. US industry recommends placing a Dept. of State, Directorate of Defence Trade Controls (DDTC) specialist in the US Embassy in Delhi, transforming the planned Dept. of Commerce export licensing seminars in India into broader seminars covering both dual use and purely military technologies (with participation by the Department of Commerce, State and Defence), and covering direct commercial sale (DCS) and foreign

military sale (FMS) processes in all Office of Defence Cooperation seminars in India.

6. Industry will look more closely at opportunities to collaborate in joint research and/or development, e.g. at early stages rather than focusing only on production.
7. US industry will re-examine the opportunities and strategies for greater engagement with the US Congress on Indian issues in general, and defence collaboration in particular, e.g. expedited licensing for counter terrorism equipment exports to India given our shared interests in this area.
8. Indian industry would like to have more of its content included in US military procurement and requests information and guidance on how to achieve this.
9. Indian industry would like to develop specific ways for the US and India to collaborate on counter terrorism, as a starting point for broader defence cooperation.

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**PRESENTATION BY MAJ GEN HS SEHGAL ON INDIA'S DEFENCE
PROCUREMENT PROCEDURE**

Defence Procurement Procedure
2002 (version : Jun 2003)

Ministry of Defence
Government of India
New Delhi

Scope

- Objectives.
- The Planning Process.
- Structure of Acquisition Wing
- Acquisition Process.

Objectives

- Expeditious procurement of the approved requirement.
- Optimal utilization of Budget Allocations.
- Probity, Public Accountability & Transparency.
- Free competition and impartiality.
- Self-Reliance.

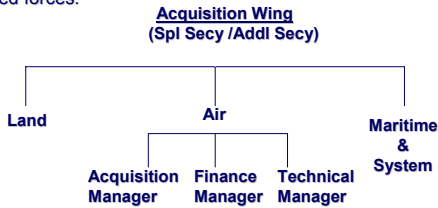
The Planning Process

- 15 year Long Term Perspective Plan.
- 5 year Services Capital Acquisition Plan.
- Annual Acquisition Plan.
- Governing Bodies
 - Defence Acquisition Council.
 - Defence Procurement Board.
- Functional Entity
 - Acquisition Wing of Ministry of Defence.

- Defence Acquisition Council
 - Headed by Defence Minister.
 - Approves the Long Term Perspective Plan & Services Capital Acquisition Plan.
 - Categorizes each procurement case as -
 - 'Buy', 'Buy & Make' and 'Make'.
- Defence Procurement Board
 - Implements the Annual Acquisition Plan.
 - Two year acquisition cycle.
 - Amendment to Annual Acquisition Plan on the basis of -
 - Operational urgencies.
 - National Security Objectives.
 - Budgetary provisions.

Structure of Acquisition Wing

- Assists the Defence Procurement Board in its functioning.
- Deals with all matters concerning acquisition of capital nature.
- Integrated set up comprising of : -
 - Department of Defence.
 - Finance division.
 - Armed forces.



Acquisition Process

- Formulation of Services Qualitative Requirements (SQRs)
- Acceptance of Necessity (AON)
- Issue of Request for Proposal (RFP)
- Technical Evaluation
- Field Evaluation
- Staff Evaluation
- Technical Oversight Committee(>Rs 300 Cr)
- Commercial Negotiation
- Award of Contract
- Post- Contract management

Formulation of Services Qualitative Requirements (SQRs)

- Drafted by Services Headquarters / User Directorate.
- Views of Defence Research & Development Organisation (DRDO), Directorate General of Quality Assurance (DGQA) and Defence Production (DP) taken.
- SQRs approved by Services Equipment Policy Committee.
- SQRs are realistic yet broad based.
- SQRs delineate Essential & Desirable parameters.



Acceptance of Necessity

- Acceptance of Necessity (AON) accorded by Competent Financial Authority keeping in view the following aspects –
 - ▷ Deficiency of items.
 - ▷ Operational Justification.
 - ▷ Financial Effect.



Issue of Request For Proposal

- The Technical Manager is the nodal agency for issue of Request For Proposal .
- In case of Transfer of Technology – Defence Production, Defence Research & Development Organisation and Nominated Production agencies give inputs to the RFP.
- Single Stage- Two Bid System, where-in Technical & Commercial Offers are invited together.
- Solicitation of Offers from OEMs/ Authorised Vendors & Govt sponsored Export Agencies.
- Standard Request For Proposal adopted for all procurement cases.



Technical Evaluation

- To carry out paper evaluation of the proposal.
- No change in proposal once submitted.
- Vendors invited for technical presentations / clarifications on technical issues, or incomplete proposals.
- Compliance statement of all equipment parameters prepared by Technical Evaluation Committee (TEC).
- Non-compliance to essential parameters may result in rejection.
- In very exceptional cases, waivers accorded by the competent authority in case of single vendor or deviation from essential parameter recommended by Technical Evaluation Committee.
- TEC recommends equipment/(s) to be short listed for field trials.



Commercial Negotiations

- Commercial Negotiation Committee constituted by Acquisition Wing – Chaired by Acquisition Manager.
- In cases involving Transfer Of Technology, reps of Defence Research and Development Organisation and Department of Defence Production are associated.
- Role of Commercial Negotiations Committee :
 - Bench-Marking.
 - Determination of L-1.
 - Most reasonable & economical price.
 - As close as possible to standard contract terms.



Request for Proposal - Buy

- General Requirements.
- Technical Parameters.
- Commercial Aspects.
- Evaluation & Acceptance Criteria.

Request for Proposal-Buy & Make (ToT)

- Current and State-of-Art technology be provided.
- Transfer of Technology to cover design, manufacturing know-how, technical specifications so as to assemble, integrate, test, install, commission, repair, overhaul, support and maintain the equipment.
- Critical technology without which Transfer of Technology is not relevant.
- Proprietary items to be completely spelt out by vendors.
- Phased Manufacturing Programme.
 - Fully formed.
 - Semi Knocked Down.
 - Complete Knocked Down.



Conclusion

- The procedure placed on the official website of Ministry of Defence www.mod.nic.in
- Provision for periodic review to bring in transparency, accountability & probity.

Field Evaluation

- Vendor informed to provide equipment / ammunition at **No Cost No Commitment.**
- Provisioning of equipment in India under vendors' responsibility (Cost of transportation etc).
- Trial Directive issued by Service Headquarters to evaluate equipment against Qualitative Requirement parameters.
- Service Headquarter nominates the trial units and formations to conduct trials.
- Equipment evaluated for claimed parameters under extreme climatic & terrain conditions.
 - 40 deg to +55 deg C.
 - Terrain conditions Viz. deserts, mountains (HAA, >150000 ft, humidity.

Contd..

Field Evaluation

- Environmental Trials. Durability tests as per JSS-55555 (Military standards of the Indian Armed Forces).
- Vendors presence permitted during trials.
- Fair chance given for rectification of minor shortcomings within the trial period.
- In case major changes required, which are common to all equipment, vendors given sufficient time to modify the equipment and produce for trials again.
- MET. Maintainability Evaluation Trials by Repair & Maintenance agency to confirm suitability of Equipment Support Package.
- Confirmatory Trials carried out, after Commercial Negotiations Committee finalisation at times, in cases where minor modifications / up gradations are required.



Staff Evaluation

- Evaluation of Field Trials.
 - Trial reports received at Service Headquarters after recommendations of the commanders in the chain giving out the acceptability of the equipment in its present form, or after modifications, if any.
 - Analysed by staff and approved by Vice / Deputy Chief.
 - Based on the evaluation of the field trials, equipment/(s) recommended for introduction into service.
 - Fully compliant equipment preferred over non-compliant.
 - All vendors with equipment compliant with Qualitative Requirements called for opening of commercial offers.



TECHNICAL OVERSIGHT COMMITTEE

- Constituted under orders of Defence Secretary for cases over Rs 300 crores as a matter of abundant caution.
- Consists of 3 members — one service officer, one scientist from Defence Research & Development Organisation and one representative of Defence Public Sector Undertaking.
- Tasked to see whether the selection of vendors, trials, compliance to qualitative requirements and trial evaluations done according to prescribed procedures.
- Ruling within 30 days.
- Commercial negotiation process to commence only after report of Technical Oversight Committee.



JSS-55555

- Vibrations tests.
- Low / high temperatures.
- Damp heat.
- Sealing.
- Altitude.
- Tropical exposure.
- Rapid temperature.
- Dust test.
- Corrosion etc.



**“HTCG Dialogue on
Defence Technology, Data Privacy, and Export Licensing”**

**A PUBLIC-PRIVATE FORUM UNDER THE AUSPICES OF THE U.S.-INDIA HIGH
TECHNOLOGY COOPERATION GROUP**

SUMMARY OF PROCEEDINGS

Overview

On November 18, 2004, the U.S. and India convened the third public-private forum under the auspices of the U.S.-India High Technology Cooperation Group (HTCG) in Washington, DC. Titled “HTCG Dialogue on Defence Technology, Data Privacy, and Export Licensing, the half-day forum treated these three topics in depth, culminating in a set of joint recommendations by the U.S. and Indian private sector participants to the U.S. and Indian Governments.

Opening Remarks

Under Secretary of Commerce for Industry and Security, Kenneth Juster thanked the various trade associations for organizing the forum, the Indian delegation for making the trip to Washington, and Phil Bond and Shyam Saran for their demonstrated commitment to resolving the issues raised by high technology trade. Juster noted how far the U.S. and India have come from the November 2002 decision to form the HTCG and the February 2003 statement of principles, to the announcement of the conclusion of Phase I of the Next Steps in Strategic Partnership (NSSP) in September 2004. He also provided statistics (available at www.bis.doc.gov) on the increase in bilateral trade over the last several years. Finally, Juster emphasized the importance of this type of forum—occupying the middle layer between government-to-government talks and company-specific issues—to shaping policy areas that make a difference to high technology trade. He closed by stating that he hoped the forum would help to change old mindsets, “institutionalise habits of cooperation,” and to deepen commercial ties and the overall relationship between the U.S. and India.

Foreign Secretary Shyam Saran noted that the HTCG is a unique U.S.-India process in which no other two countries are engaged. He indicated that this forum takes place at a time of growing high technology trade and following several months of very broad and intense U.S.-India interaction, including the September 2004 meeting between President Bush and Prime Minister Singh,

and the conclusion of Phase I of the NSSP. He reiterated the considerable interest in the HTCG process on the part of both governments and both private sectors. Saran indicated that biotechnology and nanotechnology remain key areas for the HTCG, and though not being treated in the public-private forum, would be discussed in the November 19, 2004 government-to-government talks. Saran suggested that in order to make a real difference in high technology trade the Government of India must engage in an almost continuous consultations with Indian industry and HTCG meetings must become more regular with greater advance notice. Finally, Saran thanked Under Secretary Juster and the American organizations for hosting the forum.

Under Secretary of Commerce for Technology Phillip Bond welcomed the participants, especially Foreign Secretary Saran, and reiterated the U.S. Department of Commerce's commitment to the high technology dialogue led by Under Secretary Juster. Bond opined that technology and innovation are the keys to competitiveness, economic growth and prosperity, and present opportunities for international cooperation. But he cautioned that these opportunities come with challenges and responsibilities that, in turn, require critical attention. Bond suggested that bilateral trade is a tide that lifts all boats and that the HTCG continues in the spirit of Thomas Jefferson who sought "peace, commerce and honest friendship" with all nations. Finally, Bond characterized the forum as an opportunity to tap private sector expertise and input.

Defence Technology Roundtable

The Defence Technology Roundtable was approximately 2.5 hours in length. What follows is a list of the issues raised during the discussion, without any attempt to reconstruct the entire session or to attribute remarks to individual participants. The final recommendations of the Defence Technology Roundtable are summarized later in this document.

- U.S.-India cooperation actually dates back to the 1950 when our two countries engaged in joint exercises along with the British and Australians. In 1984, India and the U.S. signed a Memorandum of Understanding (MoU) on sensitive technologies.
- Defence, beginning with the first meeting of the Defence Policy Group in December 2001, has "led the charge" in accelerating the overall U.S.-India relationship in the last several years. The Joint Technical Group has met six times to date, and the Security Cooperation Group is scheduled to

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- meet for the fifth time in December 2004. Lt. Gen. Kohler, head of the Defence Security Cooperation Agency (DSCA), U.S. Department of Defence recently visited India. However, much work remains to be done—implementation to match the rhetoric.
- Old mindsets remain powerful and more work, interaction and information is required to change them. For example, public and private sector Indian participants expressed concerns about U.S. supply reliability, and product and lifetime support.
 - Government of India defence policy is changing. New defence procurement policies and bodies, e.g. the Defence Procurement Board, are in place. 26% foreign direct investment in the defence sector was approved in May 2001. The Kelkar Committee is in the process of formulating a policy (recommendations due in early 2005) to govern Indian private sector involvement in the defence area, with the intent of encouraging greater public-private engagement and collaboration.
 - India industry is changing—becoming more competitive, more productive, and more efficient. It should be recognized not only as a burgeoning market, but also as a potential research and design source, a potential supplier of components and sub-systems, and a potential partner for joint exports to third countries.
 - A potential mechanism for these types of relationships is through the International Armaments Cooperation program, Under Secretary for Acquisitions, Technology and Logistics, U.S. Department of Defence. This program is designed to reduce the cost to the U.S. Government of acquiring systems by tapping technology from other countries. As such, it also benefits interoperability and bolsters strategic alliances and friendships. This program has not benefited India to date, but the February 2004 signing of a U.S.-India Master Information Exchange Agreement and the current negotiation of a master research and development agreement will lay the groundwork for participation in the Foreign Comparative Testing Program, acquisition and servicing agreements, and personnel exchanges. The Indian participants wanted to understand more about how such master agreements are translated into tangible actions and programs.
 - We must “force” the U.S. and Indian government gears to mesh because just creating opportunities for industry is not enough. Cooperation is not yet the default position.

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- U.S. defence companies need to put people on the ground in India, to include in tech transfer/co-production/licensing as a component of any given proposal, to collaborate with Indian industry, to utilize the Foreign Military Sales (FMS) route, and to simultaneously pursue both “small” opportunities as well as major platform tenders. The U.S. defence companies face significant competition for Government of India purchases, and do not always have superior technology.
 - India needs to recognize that there will be greater opportunities for tech transfer/co-production/licensing with legacy rather than next generation systems. For example, the U.S. has not shared Gen 3 night vision with any country.
 - Indian participants requested more industry-to-industry outreach, and several indicated willingness and availability to consult with their American counterparts.
 - **Indian participants also expressed interest to access better understand US Government defence requirements, to access opportunities to supply components, sub-systems to the US military.**
 - Indian participants also expressed confusion about and frustration with the U.S. export licensing processes, and requested greater clarity on the implications of being a “friendly foreign country,” one-time vetting of Indian buyers of U.S. equipment, and a clear negative list of items requiring a license. Several participants indicated that because of the U.S. export licensing regime and delays, they avoid the U.S. as a supplier if they can.
 - There is a disconnect, most notably in terms of timing, between the Indian request for proposal (RFP) and U.S. export licensing processes.

Data Privacy Roundtable

The Data Privacy Roundtable was approximately 2.5 hours in length. What follows is a list of the issues raised during the discussion, without any attempt to reconstruct the entire session or to attribute remarks to individual participants. The final recommendations of the Data Privacy Roundtable are summarized later in this document.

- The U.S. and Indian private sectors have been engaged for nearly two years in an information sharing exercises on data privacy.

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- The U.S. and Indian governments have not previously raised privacy regulation as a major topic for bilateral discussion, so the privacy forum at the HTCG broke new ground.
 - Along with cyber security, data privacy is one of the key legal underpinnings for the development of a vibrant IT-enabled services market.
 - U.S. and Indian participants agreed that both sides had an equal stake in the issue of data privacy regulation since 80%+ of India's IT-enabled service exports go to the U.S.
 - Both sides acknowledged that much of the legislation in the United States that attempts to control cross-border services now focuses on questions of data privacy and cyber security legal regimes abroad.
 - American participants opined that India's current data privacy legal regime is more than sufficient to ensure the integrity of data sent to India.
 - American participants reiterated their desire that India not attempt to adopt European Union-style privacy legislation, as its restrictive nature would cause many American companies to send data service work to other markets instead.
 - Indian participants requested that U.S. participants become more active in relaying their satisfaction with India's privacy laws to U.S. legislators.
 - American participants express an interest in greater Government of India and Indian industry involvement in privacy and other information technology discussions at the OECD, APEC and other multilateral forums.
 - Indian participants indicated that the Government of India, in consultation with the private sector, was reviewing some targeted amendments to the IT Act, in order to better define privacy crimes and strengthen penalties for such crimes.
 - American participants asked to be consulted in the process of amending the IT Act, since many experts are working with model language in other international forums and can provide valuable insights.
 - Indian participants expressed an interest in learning more about their compliance obligations under Gramm Leach Bliley, HIPPA, and other U.S. laws.
 - American participants promised to deliver a more substantive briefing to their Indian counterparts on U.S. privacy law as well as the privacy laws

being written in the OECD, APEC and other multilateral forums, at a program to be organized in India in 2005.

Export Licensing Session

The Export Licensing Session was approximately 1.5 hours in length. What follows is a list of the issues raised during the discussion, without any attempt to reconstruct the entire session or to attribute remarks to individual participants. The bulk of the session was taken up by presentations by Ann Ganzer, Director, Office of Defence Trade Controls Policy, Bureau of Political-Military Affairs, U.S. Department of State, and Steven Goldman, Director, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce. These presentations are being made available to the public. Given the information sharing nature of the session (with government disseminating information to and taking questions from industry), there was no development of private sector recommendations.

- The U.S. Department of State licenses military technologies while the U.S. Department of Commerce handles dual use technologies.
- The definition of an “export” includes shipments out of the U.S., disclosing/transferring of technology in the U.S. or abroad, the provision of defence services in the U.S. or abroad, and intangibles such as emails, phone calls, or faxes.

U.S. Department of State

- The U.S. Department of State’s goals and responsibilities derive from the President’s National Security Policy. The mission of Defence Trade Controls (DTC) within the U.S. Department of State is to “advance national strategic objectives and national security.”
- The DTC works under the Arms Export Act, the International Traffic in Arms Regulation (ITAR), and the Munitions List (enumerates what is controlled)—and is subject to significant Congressional oversight. DTC is required to notify Congress of all sales of greater than \$50 million, as well as all sales of “major defence equipment” greater than \$14 million. The only exceptions are for NATO and some close allies. If Congress does not pass a Joint Resolution objecting to a sale within 30 days, then it is approved. DTC cannot notify when Congress is not in session and this can cause delays.

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- In making licensing decisions, the DTC considers eligibility of the U.S. company to export, the end user and the end use, and U.S. national security (including regional stability and multilateral control regimes). In the last respect, the U.S. Department of State consults with the U.S. Department of Defence.
 - Basic DTC licenses include DSP-5 (a permanent export of an item), DSP-73 (a temporary export), and TAA (a technical assistance agreement to disclose technical data, e.g. to permit a U.S. company to work with a foreign company. N.B. This does not include the “export” of manufacturing know how which requires a manufacturing license agreement).
 - License applications can be approved, approved with provisos, denied, or returned without action.
 - Processing times for license applications are available at www.pmdtc.org. Applications related to space technology and those that require consultation with other U.S. agencies require more time to process.
 - DTC tries very hard not to send mixed signals. While in no way a guarantee of approval for final export, the approval of a marketing license or TAA early in the process is a good sign that they intend to approve the ultimate export.
 - Time-limited contracts from Indian firms are problematic as the U.S. company has no control over the U.S. Government licensing process.

U.S. Department of Commerce

- Dual use technologies are defined as those with both: (1) a legitimate civil use; and (2) a potential military use.
- The U.S. Department of Commerce operates under the Export Administration Act (EAA) and the Commerce Control List (CCL).
- Licenses for export from the U.S. Department of Commerce always contain conditions, at minimum the notation that the export license is only for the end use specified.
- In most cases where applications are returned without action, it is because no license is required. Applications returned without action always include an explanation as to why.

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- Dual use technologies are controlled for national security (NS), nuclear proliferation (NP), missile technology (MT), chemical/biological (CB), and anti-terrorism (AT) reasons.
 - Depending on the reason for control of the item and the country of destination, a license may be required for an export.
 - A license exception may be available depending on the nature of the transaction and the country to which the technology is being exported.
 - All dual-use items not specifically listed on the CCL are categorized as EAR99 items, which generally do not require a license for export to most destinations.
 - The “entities list” to which dual use exports are restricted is available at www.bis.doc.gov/entities/default.htm. The number of Indian entities on the list has been significantly reduced.

Private Sector Recommendations

Defence Technology

1. We urge the U.S. and Indian governments to continue with the pace and intensity of their bilateral engagement, both at the broadest strategic levels and in the specific area of high technology trade and cooperation.
2. We will constitute a bilateral defence industry working group to address the following five key areas:
 - a. Identify two to four defence programs of mutual benefit to the Government of India, the U.S. Government, and the Indian and American private sectors. For these specific programs, we will identify the key hurdles to Indo-U.S. cooperation, as well as specific ways to accelerate the required government processes on both sides.
 - b. Provide greater clarity to U.S. industry regarding the Government of India Ministry of Defence procurement processes. Exact formats to achieve this outcome will be formulated by the working group.
 - c. Provide greater clarity to Indian industry regarding the U.S. Government’s export licensing regime. Exact formats to achieve this outcome will be formulated by the working group.

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- d. Create a mechanism to enable Indian industry to better understand U.S. Government defence requirements, to participate in joint research and development, and to access opportunities to supply components, sub-systems and systems to the U.S. military.
 - e. Provide opportunities for industry-to-industry contact, relationship building, and commercial partnering between U.S. and Indian companies.
3. We request the U.S. and Indian governments each to identify a specific point of contact to interface with this bilateral industry working group, and to act as a conduit to other government officials and resources.
 4. We believe that high technology cooperation must be treated not only one or two times per year under the auspices of an official dialogue, but on a more continuous basis. To this end, we would like to consider scheduling related-related high technology cooperation meetings in conjunction with other industry events, and request that the governments make the appropriate officials—including the points of contact for the bilateral industry working group—available to participate in these periodic meetings.

Data Privacy

1. We will organize a full set of briefing materials on India's data privacy and cyber security rules, industry best practices and case notes on successfully prosecuted cyber crimes.
2. We will use this core document to educate relevant state and national governments and consumers in both the U.S. and India about India's existing data privacy.
3. We would like India's foreign partners to have a more formal role in reviewing potential amendments to India's privacy laws prior to their introduction to Parliament. U.S. companies have as much stake in such laws as their Indian partners, and U.S. companies rarely have privacy professionals situated in their India operations.

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4. We urge both government and private sector privacy experts in the U.S. to keep their Indian counterparts better informed and more engaged in privacy discussions in multilateral forums such as APEC, the OECD, the EU, etc.
 5. We will organize a data privacy forum in India in 2005, focusing on international privacy standards, industry best practices, and compliance with U.S. privacy law (HIPAA, Gramm-Leach-Bliley, etc.).
 6. We will begin to develop a media plan to inform U.S. industry, possibly through trade publications, about India's current data privacy regime.
 7. We will share and develop best practices for internal privacy regulation.

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