

**Study Report**  
**on**  
**Export Control System**  
**in India**  
**and**  
**Role of Customs Officers**

**Prepared by**  
**NACEN, Kanpur**

# Export Control System in India and Role of Customs officers

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## Introduction:

This write up aims at imparting basic knowledge of Export controls or Strategic Trade Controls in India to the Indian Customs officers so as to enable them to be effective and efficient in carrying out their responsibility of enforcing export controls. It also highlights legislative and procedural aspects of Export controls in India.

With an intention to outreach and build capacity of all customs officers, many of them located at land custom stations at border or far flung areas of the country, in newly emerging area of their responsibility in relatively short period of time, this write up has been prepared. These officers may learn about the topic at leisure with no dislocation or need for travelling to NACEN.

While this write up is basically meant for field Officers, but it has been designed in such a way that it could also help the Industry dealing with dual use specific goods, service and technology, in learning about their responsibility and to be compliant with national laws.

The objectives of this write up can be summarized as under:-

- (i) To inform in brief about basics of Export Controls, India's National export control list i.e SCOMAT list, four multilateral export control regimes, namely nuclear Supplier group ( NSG), Missile Technology Control Regime (MTCR), Wassenaar Arrangement (WA) and Australia Group (AG);
- (ii) To make the readers aware about the provisions of the WMD Act, 2005, International conventions dealing with non-proliferation of WMD, UN Security Council resolution Number 1540 mandating member countries to have effective export control regime, need for effective export control measures etc.
- (iii) To assist readers in understanding various Indian Laws dealing with subject of WMD and their delivery system;
- (iv) To help the reader in understanding about their role in enforcement of export controls at the time of import or export of SCOMET items at the points of entry into or exit from India including at the time of transit, transshipment etc.;

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- (v) To explain the legal provisions under Customs Act and various Indian Laws dealing with effective implementation of export control measures at the time of import or export;

To achieve better understanding of the subject matter, this write up has been divided into several parts- each part dealing with specific aspect of the topic. The details of various parts and aspects dealt by it are as under:-

- Part I: Brief details of Export controls in India, need for such controls, Multinational export control regimes and their significance, India's National Export control list and its expansion since Introduction in 1995.
- Part II: International Conventions, UN Security Council Resolution No.1540 dealing with the subject of weapons of mass destruction;
- Part III: India's legislation dealing with Export controls, role of different Ministry's/ Department in enforcing export controls;
- Part IV: Procedures for authorization for exports of goods, services and technologies falling under SCOMAT List;
- Part V: Customs Role in enforcing Export Controls.

### **Part I: Basics of Export Controls, India's National export control list, four multilateral export control regimes**

As we are aware, today's world faces the problem of terrorism and its increasing visible ugly face. The problem of terrorism is all pervasive and we see its manifestation now and then, all over the world. No country of the world is safe today. It is therefore, responsibility of the all the countries of the world to fight it unitedly and effectively.

There are two sides of the modern technology. On one hand, if used intelligently and for the right purpose, this can be used to make the world safer and better place to live and may significantly improve our well-being and comfort. On other hand, if used for wrong purpose, it may be catastrophic results for the world and mankind safety. Examples

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could be many. Nuclear energy, on one side, can be used for large scale generation of electric power, on other side, it may be used for production of nuclear weapons, which are capable of killing millions of human being in very short time. We can imagine a scenario if such nuclear bombs falls into the hands of terrorist organizations, which are increasing becoming global in dimensions.

Similarly, there are many chemicals, which are used by the chemical industries for civilian purposes such as pharmaceutical, agriculture, medical or research purposes, but at the same time, these chemicals could be used for making chemical weapons. The same is the scenario in respect of satellite launching technology, which can also be used for missile development and launching.

Therefore, controls are necessary to ensure that while legitimate trade in the dual-use goods, services and technology continues and gets facilitated, the illegitimate trade is prevented to eliminate any possibility of such items falling in the hands of terrorist and other non-state actors.

This is the basic objective of export controls or strategic Trade Controls.

### **Export controls or Strategic Trade controls (STC). What is it?**

The term “**Export controls**” or “**Strategic Trade Controls**” basically refers to controls on export of specified goods, services and technologies, which not only has civilian application, but can also be used for manufacture of weapons of mass destruction such as nuclear weapons, chemical weapons, biological weapons, missiles and conventional arms. It also covers in its ambit the specified goods, services and technology, used for the purpose of delivery systems of the weapons of mass destruction. These controls, inter alia, include regulating export of such goods, services and technology by subjecting such exports to prior authorization/ licensing, pre-license checks as well as post-shipment verification of end-user and end use of such goods, services and technologies.

The rationale behind such controls is to prevent any illegitimate trade in such dual use goods, services and technology, which has potential applications to development, production of weapons of mass destruction, missiles and conventional arms, and prevent it

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from falling into the hands of terrorists or terrorist organization, while allowing legitimate trade in these strategic items.

The Indian export control list contains specified chemicals, engineering goods, high technology goods, software etc. The industrial or service sectors, which are affected by our export control lists, are aerospace sector, chemical and bio-technology sector, nuclear sector, engineering goods sector, software sector, high technology research institutions, pharmaceutical sector etc.

### **India's national export control list and Legal Provisions under which such list has been notified?**

India has single unified export control list which has been notified *vide* notification No. 37 (RE-2012)/2009-2014, dated 14.03.2013, issued under the Foreign Trade (Development and Regulation) Act, 1992. It is contained in the Appendix 3 to Schedule -2 of ITC (HS) Classification of Export and Import Items, 2009-14. It is also known as SCOMET list. The term SCOMET stands for Special Chemicals, Organisms, Materials, equipments and Technologies.

First time, Indian export control list was notified in the year 1995 and since then it has been amended several times so as to align our national export control list with the control lists under four multilateral Export control regimes. Latest changes in the SCOMET list have been brought to align it fully with export control list specified under MTCR and NSG.

The SCOMET list has been notified under Section 5 and Section 14 A of the Foreign Trade (Development and Regulation) Act, 1992. In 2010, the Foreign Trade (D&R) Act, 1992 was amended and a new Chapter IV A was introduced in the FT(D&R) Act,1992. This newly inserted Chapter IVA deals with controls on export of specified goods, services and technologies and empowers the Central Government to notify list of such goods, services and technologies.

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Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) listed below are permitted to be exported only against an export licence issued in this behalf unless export is prohibited or is permitted without licence subject to fulfillment of conditions, if any, as indicated under/against any specific category or item.

The list of SCOMET items consists of 8 broad categories of items and the same are as under:-

### SCOMET ITEMS

Category 0: Nuclear materials, nuclear-related other materials, equipment and technology

Category 1: Toxic chemical agents and other chemicals

Category 2: Micro-organisms, Toxins

Category 3: Materials, Materials Processing Equipment, and Related Technologies

Category 4: Nuclear-related other equipment and technology, not controlled under Category 0

Category 5: Aerospace systems, equipment, including production and test equipment, and related technology

Category 6: Reserved

Category 7: Electronics, computers, and information technology including information security

Items on the SCOMET List are organized in the following categories

**Category 0:** Nuclear materials, nuclear-related other materials, equipment and technology

- 0A Prescribed Substances
- 0A1 Source Material
- 0A2 Special Fissionable Material
- 0A3 Other Materials
- 0B Prescribed Equipment
- 0C Technology

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*Note:* Export of these items is regulated under the Atomic Energy Act, 1962 and rules framed, and notifications/orders issued thereunder from time-to-time by the Department of Atomic Energy. The licensing authority for items in this category is the Department of Atomic Energy. An application for licences to export prescribed equipment or/an prescribed substances is required to be made in writing to the Joint Secretary, Department of Atomic Energy, Anushakti Bhavan, CSM Marg, Mumbai 400 001.

### **Category 1:** Toxic chemical agents and other chemicals

- 1A Prohibited chemicals
- 1B Chemicals permitted only to States party to the Chemical Weapons Convention
- 1C Chemicals permitted also to States not party to the Chemical Weapons Convention

### **Category 2:** Micro-organisms, toxins

- 2A Bacteria
- 2B Fungi
- 2C Parasites
- 2D Viruses
- 2E Rickettsials
- 2F Toxins
- 2G Plant pathogens
- 2H Genetically Modified Organisms

### **Category 3:** Materials, Materials Processing Equipment and related technologies

- 3A Materials
  - 3A1 Special materials
  - 3A2 Structural materials
  - 3A3 Rocket propellants and constituent chemicals
  - 3A4 High explosives
  - 3A5 Stealth materials
- 3B Materials processing and production equipment, related technology and specially designed components and accessories therefor.
- 3C [Reserved]

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3D Chemical and biomaterial manufacturing and handling equipment and facilities

**Category 4:** Nuclear-related other equipment and technology, not controlled under Category 0

4A Equipment, assemblies, components including test and production equipment

4B Equipment, assemblies, components including test and measurement equipment usable in development of nuclear explosive devices

4C Technology

**Category 5:** Aerospace systems, equipment, including production and test equipment, related technology and specially designed components and accessories therefor.

5A Rocket systems

5A1 Systems

5A2 Production and test equipment

5A3 Technology

5B Unmanned aerial vehicles

5C Avionics and navigation systems

5D Manned-aircraft, aero-engines, related equipment and components

5E Micro-light aircraft and powered 'hang-gliders'

**Category 6:** [Reserved]

**Category 7:** Electronics, computers, and information technology including information security

7A Electronics

7B Electronic test equipment

7C Computers

7D Information technology including information security

7E [Reserved]

Each of the sub-category mentioned above is further sub-divided into five digit code.

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**Factors, which govern inclusion of any item, services and technologies under SCOMET list?**

Decision to include any particular item, services and technologies under SCOMET list is taken on the basis of their relevancy, -

- (i) to India as a Nuclear weapon state;
- (ii) to the national security of India;
- (iii) to its international obligations under any bilateral, multilateral or international treaty, covenant, convention or arrangements relating to weapons of mass destruction or their means of delivery to which India is a party or its agreement with a foreign country;
- (iv) to the furtherance of its foreign policy objectives.

### **Multilateral Export Control Regimes?**

There are four multilateral export control regimes, namely, the Nuclear Suppliers Group (NSG), the Australia Group (AG), the Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement (WA). These regimes are informal and voluntary association of countries that share the goals of non-proliferation of weapons of mass destruction and their delivery system.

- (a) **Nuclear Supplier Group (NSG) :-** At present, it has 39 member state and it is export control arrangement aimed at non-proliferation of nuclear weapons through implementation of guidelines for control of nuclear and nuclear-related exports. For further details, website of nuclear supplier group at address [www.nsg-online.org](http://www.nsg-online.org) may be referred to.
- (b) **Australia Group (AG):** At present, Australia Group has 42 participating countries. It is aimed at preventing the spread of chemical and biological weapons (CBW). The Common Control List of this group consist of – (i) chemical weapon precursors; (ii) dual use chemical manufacturing facilities, equipment, related technology and software; (iii) dual use biological equipments, related technology and software; (iv)

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human and animal pathogens and toxins; and (v) plant pathogens. For further details, official website of Australia Group at address [www.australiagroup.net](http://www.australiagroup.net) may be referred to.

(c) **The Wassenaar Arrangement:-** The WA, established in 1996, has 41 participating countries. It is an export control regime for the purpose of regulating the export of conventional arms and dual-use goods and technologies. For details, official website of Wassenaar Arrangement at address [www.wassenaar.org](http://www.wassenaar.org) may be referred to.

(d) **The Missile Technology Control Regime (MTCR):-** It is aimed at limiting the spread of nuclear missiles and their technology throughout the world. Lists of goods under control include all types of missile technologies and auxiliary equipment for their delivery. For details, official website of MTCR at address [www.mtcr.org](http://www.mtcr.org) may be referred to.

**India is not a member of any of the above said multilateral export control regimes, but it is seeking membership of all of these four export control regimes so as to have greater access to hi-technology products and defense items and to facilitate high technology trade between Indian and foreign suppliers.**

The main hurdle for India's membership to four export control regime is the fact that India has not acceded to nuclear non-proliferation treaty (NPT), which is requisite for becoming part of Nuclear Supplier Group.

India is not a signatory of Comprehensive Test Ban Treaty (CTBT). India has recently signed Civil nuclear agreement with USA. Consequent to this, in September 2008, the Nuclear Supplier Group has granted waiver to India allowing it to access civilian nuclear technology and fuel from other countries. After this waiver by NSG, India has become the only country in spite of having nuclear weapons and without signing NPT, which has been allowed to carry out nuclear commerce with the rest of the world.

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After the implementation of NSG waiver to India, India has signed nuclear deals with several NSG member countries including France, USA, Mongolia, Namibia and Kazakhstan.

India is a member of the International Atomic Energy Agency (IAEA) and has signed agreement with IAEA, which will allow access to IAEA to India's civilian nuclear reactors.

### **Part II : International Convention dealing with non-proliferation of Weapons of Mass Destruction?**

International convention and UN resolution dealing with non-proliferation of weapons of mass destruction are as under:

- (i) Biological and Toxin Weapon convention :-
- (ii) Chemical Weapon Convention
- (iii) UN security Council Resolution No. 1540

### **Biological and Toxins Convention**

The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction— more commonly known as the Biological and Toxin Weapons Convention (BTWC) entered into force on 26.03.1975.

The Convention bans the development, production, stockpiling, acquisition and retention of microbial or other biological agents or toxins, in types and in quantities that have no justification for prophylactic, protective or other peaceful purposes. It also bans weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

India is a state party to this convention. For latest details on this convention, the website: [www.opbw.org](http://www.opbw.org) may be referred to.

### **Chemical Weapon Convention ?**

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The Chemical Weapon Convention (CWC) is an international treaty which bans the development, production, stockpiling, transfer and use of the Chemical Weapons, and also stipulates their timely destruction. The Convention entered into force in 1997 and mandated the Organization for the prohibition of Chemical Weapons (OPCW) to eliminate the stocks of chemical weapons forever and to verify the destruction of the declared chemical weapons stockpiles within stipulated deadlines. As on date, 182 nations have joined the Organization for the prohibition of Chemical Weapons (OPCW). India is a state Party to this Convention.

To fulfill its obligation under this convention, India has enacted the **Chemical Weapon Convention (CWC) Act, 2000**, which has come into effect from **1.7.2005**. The CWC Act prohibits the manufacture, development, production, acquisition, transfer, use and storage of Chemical Weapons. The Act identifies toxic chemicals into three Schedules. The Chemicals included in the Schedules 1, 2 & 3 of the Chemical Weapons Convention are presently notified against Categories 1A, 1B and 1C of Appendix 3 to Schedule 2 of ITC (HS).

Under the Chemical Weapon Convention, each State Party is required to make annual declaration of the production, import and export of Schedule Chemicals and their production facilities. Also the licensing aspects and storage of these Scheduled Chemicals are required to be verified from the time to time.

For detailed study in the matter, the website of organization for prohibition of Chemical Weapons i.e. [www.opcw.org](http://www.opcw.org). The Indian Government has set up National Authority for Chemical Weapon Convention i.e. NACWC and website of NACWC i.e. [www.nacwc.nic.in](http://www.nacwc.nic.in) may be referred to.

### UN Security Council Resolution No. 1540 on WMD

On 28 April 2004, the United Nations Security Council unanimously adopted **Resolution 1540 (2004)** which affirms that the proliferation of nuclear, chemical and biological weapons and their means of delivery constitutes a threat to international

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peace and security. The resolution obliges States, *inter alia*, to refrain from supporting by any means non-State actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their delivery systems.

Resolution 1540 (2004) imposes binding obligations on all States to adopt legislation to prevent the proliferation of nuclear, chemical and biological weapons, and their means of delivery, and establish appropriate domestic controls over related materials to prevent their illicit trafficking. It also encourages enhanced international cooperation on such efforts.

The resolution affirms support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of WMDs and the importance for all States to implement them fully. It also reiterates that none of the obligations in resolution 1540 (2004) shall conflict with or alter the rights and obligations of States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, the Chemical Weapons Convention, or the Biological Weapons Convention or alter the responsibilities of the IAEA and OPCW.

[ Source: [www.un.org](http://www.un.org)]

**Part III:** The various laws dealing with export controls in India are as under:-

- (i) Atomic Energy Act, 1962;
- (ii) The Chemical Weapon Convention Act, 2000
- (iii) The Environment Protection Act, 1986
- (iv) The Custom Act, 1962;
- (v) The foreign Trade (Development & Regulation) Act, 1992
- (vi) The Explosive Act, 1908
- (vii) The unlawful Activities ( Prevention) Act, 1967
- (viii) Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Microorganisms, Genetically Engineered Organisms or Cells, 1989

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In fulfillment of its obligation under the United Nations Security Council resolution No. 1540, India has passed the Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 and Weapons of Mass Destruction and their Delivery Systems, Appointment of Advisory Committees and their Powers and Duties Rules, 2006.

### Salient Features:

- National commitment not to transfer WMD or their means of delivery to any person (including non-state actors)
- Overarching legislation covering controls on transfers of material, equipment and technologies that could find use in a NW, CW, BW or their means of delivery
- Prohibition on manufacture, acquisition, possession, development, transport, transfer, of WMD or their means of delivery.
- Covers brokering, transit, transshipment controls
- Catch-all provision

### Important Section of WMD Act, 2006

- Section 11 – No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a Biological Weapon, Chemical Weapon, Nuclear Weapon or other Nuclear Explosive Devices, or in their Missile Delivery Systems.
- Section 13 (1) – No item notified under this Act shall be exported, transferred, re-transferred, brought in transit... except in accordance with the provisions of this Act or any other relevant Act.
- Section 13 (2) – Any transfer of technology of an item whose export is prohibited under this Act or any other relevant Act relating to relevant activity shall be prohibited.

### **Part IV: Procedures for authorization for exports of goods, services and technologies falling under SCOMET List**

#### **Application for Grant of Export Authorisation for Export of SCOMET Items**

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An application for grant of Export Authorisation in respect of SCOMET items mentioned in Appendix 3 to Schedule 2 of ITC (HS) Classifications of Export and Import Items is required to be made in specified format known as ANF 2E to DGFT (Hqrs) along with documents prescribed therein.

### **Guidelines for consideration of Application**

The guidelines for exports of SCOMAT goods, services and Technologies are contained in Paragraph 2.49 of the Handbook of Procedures, Vol. I, issued by the DGFT under Foreign Trade Policy. These guidelines provides as under:-

I. An Inter-Ministerial Working Group (IMWG) in DGFT is required to consider applications for export of SCOMET items or technology as specified in Appendix-3 to Schedule 2 of ITC (HS) Classifications of Export and Import Items on the basis of following general criteria:

- (a). Credential of end-user, credibility of declaration of end-use of the item or technology, integrity of chain of transmission of item from supplier to end-user, and on potential of the item or technology, including timing of its export, to contribute to end-uses that are not in conformity with India's national security or foreign policy goals and objectives, goals and objectives of global non-proliferation, or India's obligations under International treaties/Agreements to which it is a State party.
- (b). Assessed risk that exported items will fall into hands of terrorists, terrorist groups, and non-State actors;
- (c). Export control measures instituted by the recipient State;
- (d). Capabilities and objectives of programmes of the recipient State relating to weapons and their delivery;
- (e). Assessment of end-use(s) of item(s);
- (f). Applicability of provisions of relevant bilateral or multilateral agreements, to which India is a party, to the case under consideration.

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### About IMWG (Inter-Ministerial Working Group)

- Standing body
- Meets every month
- Works by consensus
- NOC is required from all members of IMWG.

II. Application is required to be accompanied by an end user certificate as per Appendix-36 to HOP, Vol.I, certifying that:

- (i) The item will be used only for stated purpose and that such use will not be changed, nor items modified or replicated without consent of Government of India;
- (ii) Neither the items nor replicas nor derivatives thereof will be re-transferred without consent of Government of India;
- (iii) End-user shall facilitate such verifications as are required by Government of India.

III. The end-user certificate is required to indicate the name of the item to be exported, the name of the importer, the specific end-use of the subject goods and details of Purchase Order/Contract.

IV. Government of India may also require additional formal assurances, as deemed appropriate, including those on end-use and non-retransfer, from the State of the recipient.

V. Licensing authority for items in Category 0 in Appendix 3 to Schedule 2 of ITC (HS) is Department of Atomic Energy. Applicable guidelines are notified by the Department of Atomic Energy under Atomic Energy Act, 1962. For certain items in Category 0, formal assurances from the recipient State will include non-use in any nuclear explosive device. Authorisations for export of certain items in Category '0' will not be granted unless transfer is additionally under adequate physical protection and is covered by appropriate International Atomic Energy Agency (IAEA) safeguards, or any other mutually agreed controls on transferred items.

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VI. Additional end-use conditions may be stipulated in Authorisations for export of items or technology that bear possibility of diversion to or use in development or manufacture of, or use as, systems capable of delivery of weapons of mass destruction.

VII. Authorisations for export of items in SCOMET List (other than those under Category 0, 1 and 2) solely for purposes of display or exhibition does not require any end-use or end-user certification. However, no export Authorisation for display or exhibition can be issued for 'Technology' in any category.

### **Other Important Points with regards to export of SCOMET**

- Export of items not on SCOMET List may also be regulated under provisions of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.
- Export or attempt to export in violation of any of conditions of Authorisation shall invite civil and/or criminal prosecution.
- Authorisations for export of items in SCOMET List for display or exhibition abroad are subject to a condition of re-import within a period not exceeding six months. Exporters are entitled to apply for an export authorisation for such items exhibited abroad. If exhibitor intends to offer that item for sale during exhibition abroad, such sale shall not take place without a valid Authorisation.
- Export of items in Category 2 of SCOMET list may also be controlled by other applicable guidelines issued from time-to time.
- Exporters are entitled to request that only such conditions need be imposed as are subject of government-to-government instruments of accord over export of items on SCOMET List.
- 'Technology' (see also entry 'Technology' in glossary in Appendix-3 to Schedule 2 of ITC (HS) Classifications of Export and Import Items): Approval of export of an item on the SCOMET List also authorizes the export to same end-user of minimum 'technology' required for installation, operation, maintenance and repair of the item.

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- No export authorisation is required for supply of SCOMET items from DTA to SEZ. However, all supplies of SCOMET items from DTA to SEZ will be reported to the Development Commissioner of the respective SEZ by the supplier in the prescribed proforma [Annexure 1 to Appendix-3 to Schedule 2 of ITC (HS) Classifications of Export and Import Items] within one week of the supplies getting effected. An annual report of such supplies from DTA to SEZ is required to be sent to SCOMET Cell, DGFT (Hqrs), Department of Commerce, Udyog Bhawan, Maulana Azad Road, New Delhi-110011, by the Development Commissioner (DC), SEZ in the prescribed proforma [Annexure 2 to Appendix-3 to Schedule 2 of ITC (HS) Classifications of Export and Import Items].
- Export Authorisation is required if the SCOMET items are to be physically exported outside the country from SEZ i.e. to another country (Refer Rule 26 of the SEZ Rules, 2006).

### **Procedure/ Guidelines for filing/ Evaluation of Applications for Entering into an Arrangement or Understanding for Site Visits, On-site Verification and Access to Records / Documentation**

It is mandatory for all companies and their subsidiaries registered in India and all other business entities operating in India and involved in the manufacture, processing and use of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) to obtain permission of the Central Government before entering into any arrangement or understanding that involves an obligation to facilitate or undertake site visits, on-site verification or access to records/ documentation, by foreign Governments or foreign third parties, either acting directly or through an Indian party or parties. Requests for such permissions shall be considered in the manner in which requests for export/import licence are considered.

Provided that where obligations involving site visits, on-site verification or access to records/ documentation by foreign governments or foreign third parties are to be

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undertaken pursuant to a bilateral agreement or a multilateral treaty to which India is a party, the provisions of the relevant agreement or treaty should apply.

An application for entering into an arrangement or understanding involving site visit, on-site verification or access to records/documentation by a foreign government or a foreign third party either acting directly or through an Indian party as mentioned in Appendix 3 of Schedule 2 of ITC (HS) Classifications of Export and Import Items is required to be made in ANF 2EE to DGFT (Hqrs.), New Delhi along with documents prescribed therein. These applications are considered by an Inter-Ministerial Working Group (IMWG) in DGFT based on following guidelines/general criteria:

I. Following factors, among others, will be taken into account in the evaluation of applications for entering into an arrangement or understanding for site visits, on-site verification and access to records/ documentation:

- (a) Purpose for which arrangement / understanding is proposed under which site visit or on-site verification or access to records/documentation is to be undertaken.
- (b) Credentials and details of the parties involved.
- (c) Credentials of end-user, credibility of declarations of end-use of the items or technology, the integrity of chain of transmission of the item from the supplier to the end-user, and on the potential of the item or technology, including the timing of its export, to contribute to end-uses that are not in conformity with India's national security or foreign policy goals and objectives, the objectives of global nonproliferation, or its obligations under treaties to which it is a State party.
- (d) The assessed risk that the arrangement / understanding could lead to dual-use items and technology falling into the hands of terrorists, terrorist groups and non-State actors.

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- (e) In case site visit, on-site verification or access to records/documentation is to be carried out by a foreign government or its representative(s), the following shall be taken into consideration :-
  - (i) Export control measures instituted by the foreign government;
  - (ii) Capabilities and objectives of programs of the foreign government relating to weapons and their delivery.
- (f) Applicability of relevant bilateral and multilateral agreements to which India is a party.
- (g) Assessment of any threat that such site visit, on-site verification or access to records/ documentation may pose to India's national security, and relations with any other country.
- (h) Assessment of possible links of the foreign parties with terrorist organizations and non-state actors within their own country or in any other country.

II. Permission for arrangement or understanding involving site visit, on-site verification or access to records / documentation is subject to the following conditions:

- (a) Site visit, on-site verification or access to records /documentation will be confined to the purpose, sites and activity for which permission given/which have been mentioned in the authorization.
- (b) Site visit, on-site verification or access to records/documentation will be allowed only to individuals mentioned in the authorization.
- (c) Site visit, on-site verification or access to records/documentation shall be concluded during the period mentioned in the authorization.
- (d) Exporter/Importer will keep a record of site visit, on site verification or access to records/documentation alongwith detail of individuals who visited the premises during this visit and produce the same as and when required to do so by the Government of India.
- (e) No exchange of goods, services and technologies and any documentation including drawings, specification sheets etc. will take place during the visit.

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- (f) Exporter/importer may be required to give any additional assurance that the Government of India may require.
- (g) Any other condition that may be stipulated in the permission.

III. Provisions of Weapons of Mass Destruction Act, 2005 also apply to an arrangement or understanding that involves site visit, on-site verification or access to records/documentation.

IV. Any violation of any condition of the license invite civil/ criminal prosecution as per law.

### **Export of SCOMET Item under Advance Authorisation**

(i) Export of SCOMET items is permitted only against a license, in accordance with the policy contained in Appendix 3 to Schedule 2 of ITC (HS). It is not permitted under an Advance Authorization or any other license issued (under a duty exemption or remission scheme) by the DGFT.

In this connection, attention is drawn to Para 4.1.13 of the Foreign Trade Policy, 2009- 14:

*“.... Prohibited items of exports mentioned in ITC (HS) shall not be exported under Advance Authorization/DFIA scheme. Export of restricted items shall be subject to all conditionalities or requirements of Export Authorization or permission, as may be required, under Schedule II of ITC (HS).”*

It has been clarified by DGFT vide Policy **Circular No. 99(RE-08)/2004-2009 dated 11.08.2009** that in case of applications for Advance Authorization where export item is a SCOMET item, and where the applicant so requests, Advance Authorization may be issued prior to issue of SCOMET license, subject to the following condition: -

*“ In case SCOMET license is not granted within four (4) months of the issue of the Advance Authorization, then the exporter would pay customs duty and applicable interest on the imported goods and thereafter close the Advance Authorization. This condition would be incorporated in the Advance Authorization. The applicant would also give an LUT in this regard.”*

(ii) Exporters are required to submit to the DGFT (SCOMET Division), Udyog Bhawan, New Delhi, copies of Bills of entry into the importing country within 30 days of the shipment of SCOMET items as given in Appendix 3 of Schedule 2 of ITC (HS).

# Export Control System in India and Role of Customs officers

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## Part V: Customs Role in enforcing Export Controls

The Customs Department being present at the exit point of the country is required to enforce export control at Border. Any act or omission, which is aimed at exporting or attempted export of SCOMET items in violation of the provisions of FT (D &R) Act, 1992 or CWC Act, 2000 or WMD Act, 2006 will make such goods liable for confiscation under Section 113 of the Customs Act, 1962. Further, exporter will also be liable for imposition of penalty under Section 114 of the Customs Act, 1962. The provisions of Section 113 and section 114 reads as under:-

### A. Section 113 of Customs Act, 1962

*“ Confiscation of goods attempted to be improperly exported, etc. - The following export goods shall be liable to confiscation:*

.....

*(d) Any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

.....”

### B. Penalty on Importer/Exporter of Infringing Goods

Exporting or attempting to export SCOMET items, the penal action may also be taken against the exporter under **Section 114** of the Customs Act, 1962.

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