



# INDIA'S EXPORT CONTROL SYSTEM Overview & Challenges

Government of India

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# Outline of Presentation

- Overview
- Policy Provisions
- Licensing
- Enforcement
- Inter Agency Process
- Outreach and capacity building
- Challenges

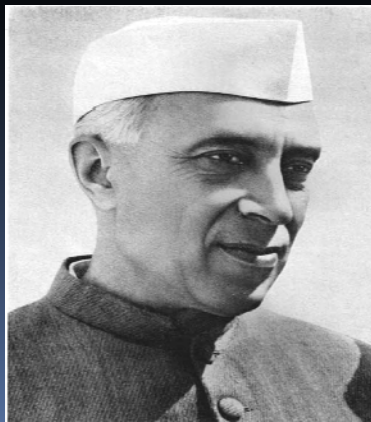


# OVERVIEW



## BRIEF HISTORY OF INDIA'S EXPORT CONTROL

*"Export is not merely a financial matter. It has international implications.....It is desirable for the Government of India to prohibit the export of Monazite and Thorium Nitrate from India (and) this would mean that any export would be in accordance with the explicit permission of the Government of India and subject to the conditions laid down".*



Pt. Jawaharlal Nehru  
(in 1947, while laying down the basis for future controls over strategic exports)



## TIMELINE OF INDIA'S EXPORT CONTROL

- **1989-** Rules for *manufacture, use, import, export and storage of hazardous micro-organisms/ genetically engineered organisms or cells* notified .
- **1993-** List of dual use chemicals export of which was either prohibited or permitted under license issued.
- **1995-** First Control List described as “ Special Materials, Equipment and Technology (SMET) “, notified in EXIM Policy.
- **2001-** Special Chemicals, Organisms , Materials, Equipment and Technologies(SCOMET) list notified. Last updated in 2013.



# OVERVIEW

## DUAL-USE ITEMS -- SCOMET

<b>S</b>	<b>SPECIAL</b>
<b>C</b>	<b>CHEMICALS</b>
<b>O</b>	<b>ORGANISMS</b>
<b>M</b>	<b>MATERIALS</b>
<b>E</b>	<b>EQUIPMENT</b>
<b>T</b>	<b>TECHNOLOGY</b>

SCOMET List –  
Appendix 3 of  
Schedule 2 of  
ITC(HS)  
Classification of  
Export & Import  
Items



# POLICY PROVISIONS



# Strategic Trade Control - Legal Framework

- *The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005*
- *Foreign Trade (Development & Regulation) Act, 1992 as amended in 2010*
- *Atomic Energy Act, 1962*
- *Customs Act, 1962*
- *Chemicals Weapon Convention Act, 2000*
- *Others*





## **POLICY PROVISIONS – Foreign Trade Policy (FTP)**

- Detailed Procedure in Para 2.49 A of Handbook of Procedures Vol. 1
- Restrictions under **SCOMET** List



# SCOMET List – Export regulated

ITC(HS) Classification of Export & Import Items

Appendix 3, Schedule 2

**Notification No. 38 dated 31.03.2011 [Revised SCOMET list]**

**Notification No. 111 dated 18.04.2012 [ITC(HS) Classification ]**

**Notification No. 37 dated 14.03.2013 [Amendment in list notified on 18.04.2012]**

**Notification No. 14 dated 31.05.2013 [DPRK related amendment]**

**Notification No. 26 dated 03.07.2013 [Cat. 3D001 substituted]**



## **EXPORT POLICY – SCOMET Items**

- Export of SCOMET items prohibited/restricted/regulated
- Export permitted against an authorization only
- Items in the SCOMET list classified in eight(8) categories
- List consistent with NSG & MTCR Control list
- Similar to EU Dual Use list



# SCOMET List

## Items classified in **Eight** categories

Category	Items
0	Nuclear materials, nuclear-related other materials, equipment and technology
1	Toxic chemical agents and other chemicals
2	Micro-organisms, Toxins
3	Materials, Materials Processing Equipment, and related Technologies
4	Nuclear-related other equipment and technology, not controlled under Category 0
5	Aerospace systems, equipment, including production and test equipment, and related technology
6	(Reserved)
7	Electronics, computers, and information technology including information security



# LICENSING

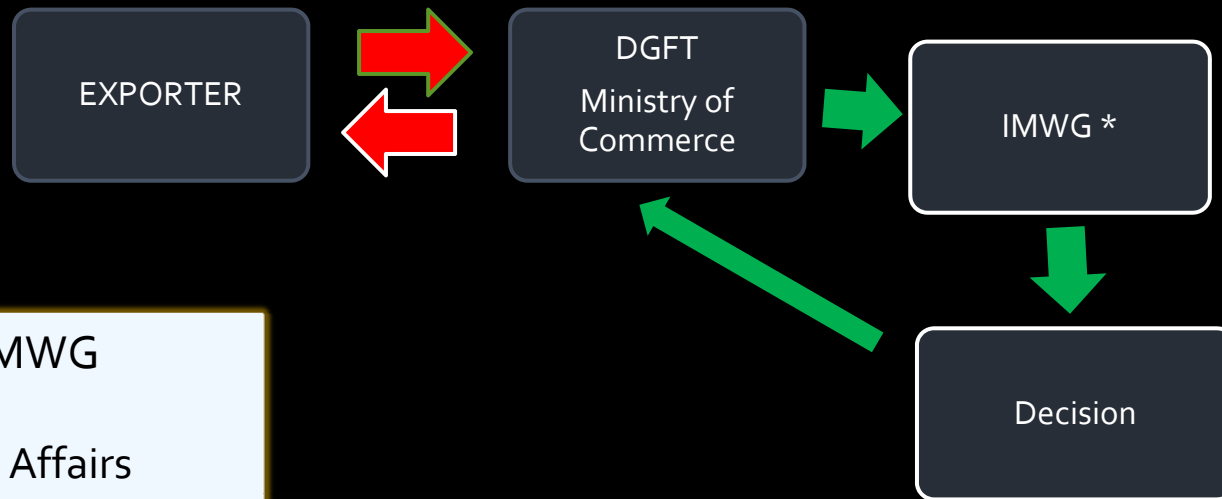


## LICENSING of SCOMET Items

SCOMET Category	Licensing Authority	
0	D/o Atomic Energy	Regulated under Atomic Energy Act 1962 & rules/notifications
1, 2, 3, 4, 5, 7	Directorate General of Foreign Trade (DGFT)	
6 (reserved for future use)	Currently, export permitted with No Objection Certificate from M/O Defence	Reserved for munitions – to be notified



# LICENSING PROCESS



## \* Members of IMWG

- DGFT(Chair)
- M/o External Affairs
- DRDO/M/o Defence
- D/o Atomic Energy
- ISRO/D/o SPACE
- NA, CWC
- D/o Chemicals
- D/o Defence Production
- D/o Bio-Technology
- Intelligence Agencies

## \* IMWG-Inter Ministerial Working Group

- ✓ Standing body
- ✓ Meets every month
- ✓ Works by consensus
- ✓ NOCs required from all members



# Inter Ministerial Working Group (IMWG)

- Standing body
- Meets every month
- Works by consensus;
- Includes technical departments and experts
- Matter can be referred to High Powered Committee if consensus is not established





## LICENSING - Procedure

➤ Prescribed Forms -

ANF 1 + ANF 2E (for license)

ANF 2 EE (for site visit, on site verification & access to records/documentation by foreign entity)

[Online filing introduced on 29<sup>th</sup> March, 2012]

➤ Comprehensive Guidelines provided

➤ Required documents

- List given at the end of ANF-2E
- End User Certificate - Appendix 36

➤ Application to be submitted to DGFT(HQ), New Delhi

SCOMET Guidelines on DGFT website  
([www.dgft.gov.in](http://www.dgft.gov.in))



## LICENSING Procedure - Salient Features

### Evaluation of Applications –Factors before IMWG

- Pre-License Screening
- Credentials of the end user
- Credibility of the stated end-use
  - Whether the items being exported in line with the business activity of the end user
  - **Risk Assessment**
    - ❖ Possibility of diversion for any mala fide use i.e. development/manufacture of WMD etc.
    - ❖ Possibility of the items ending up in wrong hands - non-State actors, terrorists etc.

General criteria - Handbook of Procedure (Vol. I)  
(Para 2.49)



# ENFORCEMENT



## ENFORCEMENT - Agencies

### Customs

- Automated Custom Risk Management System
- Advanced Automated Export Control System
- Assistance from Missions Abroad and Intelligence Agencies
- Prosecution for violation of export policy under Customs Act
- Violation, if any , reported to DGFT



## ENFORCEMENT - Agencies

### DGFT - FT(D&R) Act, 1992 Amended in 2010

Penal provisions for violation of export policy

- Suspension/cancellation of 'IE Code'
- Penalty up to 5 times the value of the goods
- Criminal prosecution – imprisonment
- FT(D&R) amended – to align provisions with those of the WMD Act, 2005



# Inter Agency Process



# Inter Agency Process

## Meeting of various Government Agencies to

- Update/Revise SCOMET list [Inter Agency Exercise carried out in 1995, 2000, 2005, 2007 & 2013]
- **Review existing laws and procedure**
  - Inter Agency exercise led to WMD Act, 2005
  - Advisory Committees under WMD Act
  - Amendment in FT(D&R) Act in 2010



# Inter Agency Process

- Share information about potential export control violation
- Discuss follow up actions in such cases
- Discuss emerging trends in proliferation issues
- Engage with major multilateral export control regimes





## Inter Agency Process-*Outreach & Capacity Building*

- Through outreach seminars/workshops for personnel from various agencies & for industry.
- Through 'Procedure Handbooks' & online assistance and information dissemination.
- Conduct regular awareness programmes for chemical industry (Jointly by Department of Chemicals & NACWC)
- Training of Custom officers and border control agencies.



# Challenges



# Challenges

## Identification Challenges

- Use of front companies by proliferators
- Circumvention by routing through third countries
- Export of items below threshold levels of control



# Challenges

## Customs Challenges

- Resources are geared towards scrutiny of imports
- More than 500 exit points (airports, seaports, land border, dry ports)
- Expertise required in checking such exports
- Difficult to correlate SCOMET with HS codes used by Customs



# Challenges

## Policy Challenges

- Increasing capacity to manufacture controlled items– *outreach to industry*
- Intangible technology transfer
- Export promotion v/s Export regulation



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Thank you