



INDIA'S STRATEGIC TRADE CONTROL SYSTEM

SCOMET LICENSING IN INDIA



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We, RSA Legal Solutions attended the **recent National Conference on Strategic Trade Controls** organised by the **Directorate General of Foreign Trade (DGFT)** inviting various dignitaries from across the globe. The conference was relating to **SCOMET (Special Chemicals, Organisms, Materials Equipment, Technologies) Licensing** in India.

DGFT launched the “**Handbook on India’s Strategic Trade Control Systems**” key features of which are outlined below.

As per the SCOMET regulations, an export license will be required for exporting any SCOMET - listed item including technology. Export of SCOMET items is either prohibited for export (certain items), or restricted (thus requiring prior export license), or exempted from such license (subject to the issuance of a general license) for export of specified items to certain destinations with certain post-reporting, record keeping requirements etc.

The licensing is also applicable for the **technology and software related to items under the SCOMET** list and it is controlled and requires license from the licensing authority. Accordingly, Intangible Technology Transfers (ITT) related to SCOMET items are also required.

Technology means information (including information embodied in software) other than information in the public domain, that is capable of being used;

- in the development , production or use of any goods or software;
- in the development of, or carrying out of, an industrial or commercial activity or the provision of a service of any kind in relation to an item specified under the SCOMET list.

This information may take the form of technical data (blueprints, plans diagrams, models, formulae, algorithms, tables, engineering designs and specifications, manuals, instructions etc., written or recorded on other media or devices) or technical assistance (instructions, skills, training, working knowledge, consulting services).

Companies and other organisations dealing with the dual use items are mandated to comply with export control regulations.

KEY COMPONENTS OF SCOMET LIST

1. Special Chemicals

This category includes chemicals that have applications in various industries but also possess properties that can be used for chemical weapons or military purposes. Examples may include chemicals used in production of pharmaceuticals or agriculture, yet with the potential for use in the development of chemical weapons.

2. Organisms

Biological agents and organisms fall this category. It encompasses living entities that may have applications in medical, agricultural, or industrial fields but may also pose a threat in the context of biological weapons or bioterrorism.

3. Materials

Materials that can be utilised in both civilian and military applications are covered under SCOMET. This may include metals, alloys, composition, and special materials that have properties suitable for dual use purposes.

4. Equipment

Various types of equipment that could have applications in strategic fields. This may encompass machinery devices or systems with potential dual use capabilities.

5. Technologies

The technological aspect of SCOMET involves knowledge and information that can be applied in diverse sectors. Technologies with applications in research development, and manufacturing, but with the potential for military WMD use, are included.

Some examples of SCOMET items from each category are given below:

Category	Products	Civil/Industrial Use	Military/WMD use
Category 1	Triethanolamine	Cosmetics and Personal Care Products, Pharmaceuticals	Ammunition Manufacturing, Chemical Weapons
	Sodium Sulphide	Chemical Manufacturing, Paper and Pulp Industry	Chemical Warfare Agents
Category 2	Clostridium Butyricum	Probiotic, Biotechnology	Biological Warfare
Category 5	UAVs, Drones	Aerial Photography And Videography Search And Rescue Infrastructure Inspection	Surveillance And Reconnaissance, Target Acquisition, Strike Operations, Electronic Warfare, Mine Detection, And Clearance
Category 6	TNT, Explosives, HMX, Propellants	Demolition And Construction, Mining Pyrotechnics	Demolition And Breaching, Landmines Controlled Explosive Devices, Blast Mitigation
	Telecommunication Systems And Equipment / Encryption Software / Information Security	Telephony, Television And Broadcasting, Satellite Communications, Energy And Utility Monitoring	Command And Control, Secure Communication, Military Networks, Interoperability
Category 8	Integrated Circuits	Consumer, Electronics, Smart Home Technology, Industrial Automation	Missiles And Guided Munitions, Communications And Encryption, Military Electronics
	Lasers Components And Optical Equipment	Laser Surgery And Medical Devices, Barcode Scanners And Optical Readers, Entertainment And Leisure Shows, Astronomy And Space Observation	Laser Targeting And Range Finding, Night Vision And Targeting, Laser Weapons, Leisure Range Designators

SCOPE OF SCOMET LIST AND RELATED CONTROLS

- **Items subject to control** - both new and used goods are subjects to SCOMET controls

- **Co-mingling/integration** - The SCOMET list specifies that non controlled goods containing one or more controlled components when the controlled components or components are the principal element of the goods and can feasibly be removed or used for other purposes are still subjects to Indian export controls.
- **Applicable for Goods, Commerce, Software and Technology** - If items are prime aphasia app classifiable under 2 or more headings, the heading that provides the most specific description shall be preferred to the heading providing a more general description. The end use of the item would be relevant criteria and determining the classification.

APPLICABILITY OF SCOMET POLICY

- ✓ Whole of India including sez
- ✓ citizens of India outside India companies are body corporate, registered or incorporated in India or having their associates branches or subsidiaries outside India
- ✓ any ship, aircraft or other means of transport registered in India or outside India, wherever it may be
- ✓ foreigners while in India; And persons in the service of Government of India within and beyond India
- ✓ Even temporary exports outside India are covered

VIOLATION OF SCOMET POLICY

- | | | |
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| 01 | { | • Under section 11 (2) of Chapter 4 under the FTDR Act including cancellation of IEC |
| 02 | { | • Section 14 (E) and 8(c) of FTDR Act |
| 03 | { | • Fiscal penalty up to 5 times the value of goods in terms of section 11 (2) of the FTDR Act |
| 04 | { | • Other criminal actions as per provisions of WMD Act and Section 14 (3) of FTDR Act including imprisonment |

ABOUT THE FIRM

RSA Legal Solutions is a top-tier Tax Law firm committed to providing world-class advisory, litigation, and compliance services to businesses. The firm specializes in GST, Customs, Foreign Trade Policy, SEZ laws, FEMA, Income Tax, Corporate laws, and other allied laws like Waste Management Laws, Legal Metrology, BIS related laws etc. RSA has partners from top law firms and Big 4s.

Our firm has recently been awarded with the “**Highly Recommended Law Firms, 2022**” by the Leaders Globe Magazine. RSA has successfully found a place in the list of Finalist for “**Tax Law Firm of the Year 2021**” by Asian Legal Business (ALB) Awards. RSA recently featured in the Top 20 recommended lawyers in India by Business Connect magazine in 2019-2020. RSA has been chosen in top 5 finalist in the category of “**Best Start up law firm of the year**” award by the prestigious IDEX Legal Awards. Also, the firm was awarded with the “**Top 10 GST Consultants Award**” by the famous Insight Success Magazine.

KEY PERSONS

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