Navigating SCOMET Licensing in India: A Comprehensive Overview

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INDIA is a signatory to international conventions on disarmament and non-proliferation, viz. the Chemical Weapons Convention (CWC) and Biological and Toxin Weapons Convention (BWC). The United Nations Security Council Resolution 1540 obliges all member States to prohibit the access of WMD and their delivery systems to non-state actors (in particular for terrorist purposes); and prescribes measures and controls on WMD, their delivery systems and related materials, equipment and technology. India is a member of the major multilateral export control regimes, viz. the Missile Technology Control Regime (MTCR) [on missiles, delivery systems and related dual-use items], Wassenaar Arrangement (WA) [on munitions / military items and Australia Group on Biological and Chemical items. In consonance with the relevant control lists, guidelines and provisions of the international conventions, mechanisms and regimes, India regulates the exports of dual-use items, nuclear-related items, and military items, including software and technology.

India's strategic trade control regime plays a pivotal role in safeguarding national security interests while promoting international cooperation and responsible trade practices. Among its various regulatory frameworks, the Special Chemicals, Organisms, Materials, Equipment, and Technologies (SCOMET) control regime stands out as a crucial mechanism for regulating the export of sensitive goods, technologies including software. Understanding SCOMET licensing is essential for businesses engaged in high-technology sectors to ensure compliance and facilitate smooth operations within India's regulatory framework.

SCOMET Control Regime

Established under the Foreign Trade (Development and Regulation) Act, 1992, the SCOMET control regime encompasses a broad spectrum of items deemed critical for national security, defense, and strategic interests. These items include chemicals, organisms, materials, equipment, and technologies with potential dual-use applications, i.e., civilian applications with military or proliferation implications.

India's SCOMET list is periodically updated by the Directorate General of Foreign Trade (DGFT), aligning with evolving global security concerns and technological advancements.

SCOMET List

The SCOMET list notified in 2001 was last updated in 2023 (Appendix 3 of Schedule 2 of ITCHS Classification of Export and Import). There are total eight categories of such items. Various categories and licensing authorities in SCOMET are as under:

SCOMET Category	SCOMET items	Licensing Jurisdiction
0	Nuclear materials, nuclear-related other materials, equipment and technology	Department of Atomic Energy (DAE)
1	Toxic chemical agents and other chemicals	DGFT
2	Micro-organisms, Toxins	DGFT
3	Materials, Materials Processing Equipment and related Technologies	DGFT
4	Nuclear-related other equipment and technology, not controlled under Category '0'	DGFT
5	Aerospace systems, equipment, including production and test equipment, and related technology	DGFT

6	Munitions List	Department of Defence Production (DDP), Ministry of Defence (DGFT for Category 6A007 and 6A008)
7	Reserved	
8	Special Materials and Related Equipment, Material Processing, Electronics, Computers, Telecommunications, Information Security, Sensors and Lasers, Navigation and Avionics, Marine, Aerospace and Propulsion	DGFT

Key components of List and its dual use implications

1. Special Chemicals

This category encompasses chemicals with applications across diverse industries, while also exhibiting properties conducive to chemical weapons or military applications. Instances might involve chemicals utilized in pharmaceutical or agricultural sectors, which nevertheless harbor potential for utilization in the development of chemical weaponry.

2. Organisms

Within this category, biological agents and organisms are included. It encompasses living entities that could find utility in medical, agricultural, or industrial sectors, yet simultaneously present a potential threat concerning biological weapons or bio-terrorism.

3. Materials

Materials capable of serving in both civilian and military capacities are addressed within the SCOMET framework. This encompasses metals, alloys, composites, and specialized materials possessing attributes conducive to dual-use applications.

4. Equipment

Different categories of equipment that might find utility in strategic domains, including machinery, apparatuses, or systems with the potential for dual-use functionalities.

5. Technologies

The technological dimension of SCOMET pertains to knowledge and information applicable across a wide array of sectors. It encompasses technologies utilized in research, development, and manufacturing processes, yet possessing the potential for military and weapons of mass destruction (WMD) applications.

Therefore, what may be generally thought that the products of any company are merely for agricultural use or containing chips or encryption, or may be used for cosmetics, etc. will be covered under dual use items and will accordingly attract the SCOMET licensing process. The SCOMET list is very large running into approx. 250 pages with many broad definitions and wide variety of products to be included within its ambit.

It's crucial to emphasize that the aforementioned list encompasses not only physical components but also technologies, including software, across various fields, provided they have the potential for dual use.

The SCOMET list categorizes software based on its technical specifications and capabilities, especially if it has encryption features or can be used in sensitive sectors like defense, aerospace, or nuclear technology or any of the 9 categories. Companies dealing with the export of software falling under SCOMET regulations must adhere to the licensing requirements to prevent unauthorized proliferation and safeguard national interests.

Few examples to understand the dual use 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
Category 8	Telecommunication systems and equipment/Encryption Software /Information Security	Telephony, Television and Broadcasting, Satellite Communications, Energy and Utility Monitoring	Command and Control, Secure Communication, Secure Military Networks, Interoperability
	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 Laser Shows, Astronomy and Space Observation.	Laser Targeting and Range finding, Night Vision and Targeting, Laser Weapons, Laser Range Designators

Process

Any individual or entity seeking to export SCOMET items must obtain prior authorization from the relevant authorities. The Department of Commerce, Ministry of Commerce and Industry, is responsible for administering SCOMET licensing through the DGFT. The licensing process involves meticulous scrutiny to assess the potential risks associated with the transfer of controlled items.

Conclusion

Hence, it is imperative to thoroughly comprehend and conduct a detailed examination of the goods manufactured by an entity intended for export, to ascertain whether they fall under the purview of SCOMET licensing. The concept is not as straightforward as it may initially appear. An in-depth study of the SCOMET classification is necessary to determine the applicability of the licensing procedure. Even if exporters who have not obtained SCOMET licenses have been exporting goods without encountering issues thus far, there is a possibility of encountering challenges in the future. This is because the government is enhancing its knowledge base and implementing robust software systems and intelligence mechanisms.

[The views expressed are strictly personal.]