

Navigating the newly introduced GAEIS Policy in SCOMET Licensing- Part - II

APRIL 01, 2024

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IN our [previous](#) article, we embarked on a comprehensive exploration of the SCOMET policy, unravelling its intricate workings concerning dual-use items. In SCOMET policy, the licenses are required with respect to every purchase order in which the details of the buyer and everyone in the supply chain is required to be given along with many other details. Recognising the difficulty in getting the SCOMET license every time, the government framed the General Licensing policies which are given for a longer duration subject to strict post license compliances. In the general licensing policy, the exporter is not required to obtain the license frequently. However, the general licensing is not applicable to all the category of goods prescribed under SCOMET. Till now, the government has framed general licensing policies for Repair (GAER), for Intra Company transfers (GAICT), and for Chemicals and related equipment (GAEC). Recently, the government has introduced two new general licensing policies, one for information security items and the other for telecommunication items.

In this article, we will be dealing with the newly introduced **General Authorisation for Export of Information Security items (GAEIS) Policy on 27th March 2024** which has been introduced for goods covered under category 8A5 Part 2. This category consists of goods like items having information security as a primary function, digital communication or networking systems, equipment or components, computers, items having cryptography for data confidentiality, Communications cable systems designed or modified to use mechanical, electrical or electronic means to detect surreptitious intrusion, Systems, equipment and components for defeating, weakening or bypassing information security such as cryptanalytic functions, Software" having the characteristics of a '*cryptographic activation token*', Equipment specially designed for the "*development*" or "*production*" of equipment mentioned in category 8A5 Part 2 etc. and many more.

This policy covers export and re-export both. This policy cannot be applied to the technology covered under this category as it has been kept out. This means that for export of technology, routine SCOMET licensing will apply, and general license cannot be taken.

Key tenets of GAEIS policy which deserves mention are:

- a. If the exports are meant to be used for military use or has potential risk of diversion to weapons of mass destruction (WMD) or in delivery of missile system, then the general licensing shall not be issued. In such cases, regular SCOMET policy shall apply. **This typically means that the general licensing would be required for items exported for civilian use/application only.**
- b. There should be an Approved Internal Compliance Programme (ACP) set up in place by the exporter.
- c. The exporter should possess AEO T2 certificate from CBIC.
- d. General licenses under the GAEIS scheme are issued for a stipulated period of three years, ensuring operational continuity and business certainty for exporters navigating the global marketplace.

Further, there are some strict mandatory compliances to be complied with after the general license has been issued. The compliances are required to be done **before export and after export**. Before the actual exports take place, the exporter is required to notify the details along with relevant documentation to the government authorities. Similarly, there are compliances required to be done post export on quarterly basis. There are many other compliances required. We are not going into the intricacies of compliances required in this article.

Thus, the licensing process of the SCOMET-listed items/technologies has been liberalized for certain categories of items depending on their end use and sensitivity as well as destination/end users. Bulk

licensing (General Authorisation/OGEL) has been introduced by the Licensing authorities to streamline the process of SCOMET application filing and reduce the transaction cost involved in taking the license every time the export is to be made. General authorization with a validity of 2-5 years ensures business certainty while also reducing the compliance burden in certain categories of SCOMET items. The Industry has been taking benefit of the various General Authorizations.

The government is constantly enlarging the categories of goods which can be covered under general licensing. It is important to note that in general licenses, the export of technologies and software are generally not covered except when the exports are made between parent and subsidiary companies. However, for GAEIS, only technology has been excluded and not 'software'. Hence, software for the goods mentioned in category 8A5 Part 2 are covered under general licensing.

As a word of caution, it is important to note that Cryptographic hardware and software is used in everything from smartphones to smart TVs to card readers to smart cards, smart home devices, IoT devices etc. Network hardware cryptographic devices include devices capable of accelerating and decrypting Secure Sockets Layer (SSL), as well as hardware devices that ensure that the information stored in the hardware is protected from external software attacks. However, not all is covered under the SCOMET licensing. There are a lot of exclusions, definitions, inclusions specifically given in the huge SCOMET list running in to 250 pages. Therefore, it is important to analyse in detail whether the goods sought to be exported are covered under the SCOMET licensing or not. If yes, then whether the same can be covered under the general licensing or not without getting into the hassle of getting the license everytime and save costs and efforts.

Not complying with SCOMET licensing requirements entails the penalties under the Foreign Trade Development and Regulation Act, 1992. The penalty under this Act can be as high as five times the value of goods in respect of which the contravention is made or attempted to be made.

Thus, it's imperative for exporters to exercise due diligence in delineating SCOMET coverage and eligibility for general licensing. Leveraging general authorizations within the ambit of the GAEIS policy facilitates streamlined export operations, fostering operational efficiency and regulatory compliance. In navigating the complex export regulatory landscape, exporters must remain vigilant, ensuring adherence to regulatory protocols to navigate the global marketplace seamlessly.

[The views expressed are strictly personal.]

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