Booklet on

SCOMET List Category 8
And
Intangible Technology Transfers

Category 8

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Last, but not the least, we acknowledge the vital contribution of the members of the information technology (hardware and software) industry in finalising this booklet.
Export controls applicable to India’s information technology industry is of significant importance for the industry and the government. As the representative of the Indian IT industry, NASSCOM has been playing a significant role in enhancing industry awareness and creating a dialogue between the industry and the government on matters related to export control. Towards this, the Booklet on SCOMET Category 8 and Intangible Technology Transfers touches upon important aspects of the export control regime in India especially from the perspective of the IT industry where exports of controlled goods/software/technology take place through an intangible medium.

This booklet aims to address the commonly faced issues by the industry with respect to the export control regime generally and more specifically on intangible technology transfers. The booklet also provides a much-needed comparison of SCOMET classification of most traded items with the United States Export Control Classification Number. Moreover, the section on Global Authorisation for Intra-Company Transfer policy aims to sensitise the industry on the ongoing developments on this front.

We hope that this booklet will be useful in sensitising the industry on the compliance obligations under SCOMET, making use of GAICT policy and ensuring effective implementation of export controls. This Booklet is intended for a wide range of IT, electronics, engineering, and other technology companies.

Ashish Aggarwal
Vice President and Head of Public Policy
NASSCOM
Foreword

India is committed towards accountable and responsible use of dual-use goods and technology. India has become member of three major multilateral export control regimes namely, MTCR, Wassenaar Arrangement (WA) and Australia Group during the past five years and also signatory party to the UNSC Resolution 1540, Chemical Weapons Convention (CWC) and Biological & Toxin Weapons Convention(B&TWC).

India’s membership to these export control regimes has established the credibility of our export control systems and, has opened up opportunities for the Indian strategic goods and technology industry to the global supply chain with more opportunities than ever before. The membership to the WA brought upon an important development in India’s export control regime by way of inclusion of export controls on specified technology, computer systems, information security items etc. These are comprehensively covered under SCOMET Category 8.

This booklet aims at bringing out comprehensive information regarding export of specific category 8 items. This booklet also covers the policies and procedures for obtaining an export authorization from the DGFT for export of dual-use items in the context of our international obligations on export of controlled items/ software/ technology from India.

It is the belief of DGFT that an aware, informed and compliant industry is the first line of defence against proliferation. The information shared in this booklet is a resource material for the exporters, specifically the new exporters as well as the start-ups, academicians, or individuals for enhancing their knowledge on this subject as it comprehensively covers policy, procedures, documentation and other relevant issues.

This booklet by NASSCOM is for reference purposes only. For updated policy/procedure on SCOMET and other items for export /import, the DGFT website may be referred to (https://www.dgft.gov.in/CP/).

I appreciate the efforts of NASSCOM and congratulate them for bringing out such a nice reference handbook on SCOMET within a limited time frame which would be very helpful for the industry members.

(Vijay Kumar)
I. Introduction to SCOMET

India’s Foreign Trade Policy (FTP) governs the export and import of goods and services. Under the FTP, a list of items has been identified whose export is to be controlled. This is because of the dual-use character of these items. Dual-use refers to the nature of an item to be used in military applications or in weapons of mass destruction, along with its civilian/industrial applications. The list of these items is called the Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) List. The SCOMET list is notified under Appendix 3 to Schedule 2 of the Indian Trade Clarification.

SCOMET focuses on regulating the export of dual-use items and munitions, as given under the control lists of multilateral export control regimes and international conventions. Export of SCOMET items is either prohibited from export, or restricted (thus requiring prior export authorisation), or exempted from such authorisation for export to certain destinations with certain post-reporting requirements etc.

Presently, SCOMET authorisations are granted by three agencies, i.e., Directorate General of Foreign Trade (DGFT), Department of Defence Production (DDP) and Department of Atomic Energy (DAE).

SCOMET items are classified under nine categories. The SCOMET categories and licences respective licensing authorities are as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>SCOMET Items</th>
<th>Licensing Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Nuclear materials, nuclear-related other materials, equipment and technology</td>
<td>DAE</td>
</tr>
<tr>
<td>1</td>
<td>Toxic chemical agents and other chemicals</td>
<td>DGFT</td>
</tr>
<tr>
<td>2</td>
<td>Micro-organisms, Toxins</td>
<td>DGFT</td>
</tr>
<tr>
<td>3</td>
<td>Materials, Materials Processing Equipment and related Technologies</td>
<td>DGFT</td>
</tr>
<tr>
<td>4</td>
<td>Nuclear-related other equipment, assemblies and components; test production equipment; and related technology, not controlled under Category 0</td>
<td>DGFT</td>
</tr>
<tr>
<td>5</td>
<td>Aerospace systems, equipment including production and test equipment, related technology and specially designed components and accessories thereof</td>
<td>DGFT</td>
</tr>
<tr>
<td>6</td>
<td>Munitions List (except Cat. 6A007 and 6A008)</td>
<td>DDP*</td>
</tr>
<tr>
<td>7</td>
<td>Reserved</td>
<td>DGFT</td>
</tr>
</tbody>
</table>

*For Category 6A007 and 6A008, licence to be obtained from DGFT
Each SCOMET category contains an exhaustive list of items covered under that category, as well as conditions applicable to items under different categories.

For issuance of a SCOMET authorisation by DGFT, an online application needs to be filed which is considered on a case-by-case basis by an Inter-Ministerial Working Group (IMWG) as per guidelines and criteria laid down in the Handbook of Procedures of DGFT, issued under the FTP.

Exporting SCOMET items without proper authorisation can result in civil and/or criminal penalties, as per the Foreign Trade (Development and Regulation) Act, 1992, the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005, the Customs Act 1962, etc.

**Procedure for SCOMET Authorisation**

1. **Exporter**
   - If export of item is controlled by SCOMET, application for export authorization to be submitted.

2. **Directorate General of Foreign Trade (DGFT)**
   - Licensing authority
   - Online Application for license
   - Application shared with IMWG for approval
   - Acceptance or rejection communicated to DGFT
   - If license granted
   - If license not granted

3. **Inter Ministerial Working Group (IMWG)**
   - Approving authority
   - Permission to Export
   - Post-export obligations
     - Maintenance of records
     - Reporting etc.
   - Expiry of License
     - (Validity period = 24 months)

4. **Members:**
   - Ministry of External Affairs
   - Department of Defence Production
   - Department of Space (through ISRO)
   - Defence Research and Development Organization
   - Department of Chemicals and Petrochemicals
   - National Authority of Chemical Weapon Convention and Cabinet Secretariat
   - Department of Biotechnology
   - Department of Atomic Energy
   - Department of Telecommunications
   - Ministry of Electronics and Information Technology
   - Cabinet Secretariat and Customs

5. **Criteria:**
   - Assessment of end-use, end user credentials, supply chain etc.
   - Assessed risk that exported items will not fall into hands of terrorists and non-State actors
   - Export control measures instituted by the recipient State

6. **Online Application for revalidation of license**
II. Introduction to WA

India is a member of the major multilateral export control regimes, viz. the Wassenaar Arrangement (WA), Australia Group (AG), Missile Technology Control Regime (MTCR); and has harmonised its guidelines and control lists with that of the Nuclear Suppliers Group (NSG). India is also a signatory to international conventions on non-proliferation, viz. the Chemical Weapons Convention (CWC) and Biological and Toxic Weapons Convention (BWC). Accordingly, India's SCOMET list is aligned to the control lists of these multilateral export control regimes and conventions.

The WA is a multilateral export control regime with 42 Participating States, currently. India joined the WA in December 2017, becoming the 42nd Member. The WA was established on July 12, 1996, in Wassenaar, the Netherlands by 33 founding members to contribute to international security and stability. The list of the WA members is given below in Table 1.

Table 1

| Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States. |

The WA promotes transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies. It aims at harmonising the export control regimes of Participating States. The WA List of Dual-Use Goods and Technologies contains several categories of items that can have both, military and civilian use, including electronics, computers, telecommunications, and information security equipment.

WA Participating States have agreed to maintain national export controls on all items set forth in the WA List of Dual-Use Goods and Technologies and in the Munitions List, with the objective of preventing unauthorised transfers or re-transfers of those items. National export regimes of Participating States reflect the WA List of Dual-Use Goods and Technology, but the manner of implementation may vary from country to country. For example, countries exercise the discretion to allow for bulk licences, licence exceptions, record keeping and reporting requirements etc.

The List of Dual-Use Goods and Technologies is updated annually and published on the website of the WA (https://www.wassenaar.org/), which is followed by implementation of the new controls at the national level. Most recently, India amended the SCOMET List in June 2020, incorporating the amendments notified in the 2019 WA Plenary Meeting.
III. Overview of SCOMET Category 8

A new Category 8 was added to the India’s SCOMET List in 2017, to align the SCOMET list with the WA List of Dual-Use Goods and Technologies, in the run-up to India becoming a member of the WA. It includes goods, software and technology related to electronics, computers, telecommunications, information security, sensors, lasers, navigation, avionics, aerospace, propulsion and certain special materials and related equipment.

This is the category that is most relevant for the Indian IT/ITeS industry. The SCOMET List defines technology as information (including information embodied in software) that is capable of being used in:

- the development, production or use of any goods or software,
- the development or the carrying out of an industrial or commercial activity,
- the provision of a service.

Technology includes services which are provided in the development, production or use of technology or goods. Moreover, technology may take the form of technical data or technical assistance. More information on what constitutes technical data and technical assistance is given in the next section.

Further, the SCOMET list also incorporates a ‘General Technology Note’. The General Technology Note provides that technology, which is required for development, production or use of the specified items covered under Category 8, are controlled according to the provisions of this category. Moreover, such technology remains controlled even if it is made applicable to uncontrolled items. For example, an IoT device such as a smart bulb which contains encryption technology to securely store data. This smart bulb may not be a controlled item, however, the incorporated encryption technology for data confidentiality and secure digital communication may be controlled.

The General Technology Note also clarifies which type of technology is not controlled, i.e.:

- Technology necessary for the installation, operation, maintenance or repair of uncontrolled items or items whose export has been authorised.
- Technology in the public domain, basic scientific research or the minimum necessary information for patent applications.

“Basic scientific research” has been defined under the Glossary of SCOMET list as ‘experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective’.

The SCOMET List defines software as a collection of one or more programs or micro-programs, fixed in any tangible medium of expression. Further, the SCOMET list incorporates a ‘General Software Note’. The General Software Note provides the type of software that is excluded from control, i.e.:

- Software that is generally available to the public by being sold at retail points via over-the-counter transactions, mail order transactions, electronic transactions, or telephone call transactions,
- Software that can be installed by the user without substantial support from the supplier,
- Software that is in the public domain,
- Software that is the necessary object code for the installation, operation, maintenance or repair of items whose export has been authorised.

### Examples of controlled items under Category 8

<table>
<thead>
<tr>
<th>Item</th>
<th>SCOMET classification</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Electronic devices and circuits containing components manufactured</strong></td>
<td>8A301 d</td>
<td>These find use in the electronics industry usually for achieving high speed connections in computer chips, quantum computing, magnetic resonance imaging etc.</td>
</tr>
<tr>
<td><strong>Semiconductors and software and technology</strong></td>
<td>8A301 a.2 8D301 8E301</td>
<td>Semiconductors are used widely in the electronic industry, for example, in analogue-digital-converters, optical integrated circuits, signal processing devices etc. CAD (Computer-aided-design) software for designing a semiconductor chip.</td>
</tr>
<tr>
<td><strong>Electronic computers and related equipment, specially designed for</strong></td>
<td>8A401</td>
<td>These equipment or computers are used for testing of semiconductor fabricated boards, PCB (printed circuit boards), Electronic Control Unit testing equipment etc. This includes the software (8D401) and technology (8E401) required for the production or use of such computers.</td>
</tr>
<tr>
<td><strong>operation at extremely low or high temperature</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>IP network communications surveillance systems</strong></td>
<td>8A501 j</td>
<td>These are used for surveillance purposes, for example, by retail organisations, hospitals, schools etc.</td>
</tr>
<tr>
<td><strong>Encryption software and technology</strong></td>
<td>8D501</td>
<td>Hard-drive software, communications software (data transfer protocols), intranet used within an organisation, avionics software, missile guiding software</td>
</tr>
</tbody>
</table>
IV. Intangible Technology Transfers

Dual-use items refer to those items which are capable of both civilian/industrial and military/weapons of mass destruction (WMD) applications. The dual-use and conventional arms export controls cover different types of software and technology. Unlike other controlled items, many types of software and technology can take a non-physical, intangible form or be transferred through non-physical or intangible means. This is referred to as ‘Intangible Technology Transfer’ (ITT). This generally includes both ‘technical data’ and ‘technical assistance’, that is specially designed or necessary for the development, production or use of controlled items (goods/software/technology).

Technical data includes blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories. Technical assistance includes instructions, skills, training, working knowledge, consulting services. Generally, technical assistance may involve transfer of technical data.

An intangible technology transfer or export can take various forms such as sending or transmitting technology from one entity to another entity via electronic (for example, e-mail, fax) or oral (for example, phone) means, physical technical assistants or making the technology available for electronic access. Controls on ITT apply to transfer of controlled technology, as per the controlled items and relevant notes under the SCOMET list. There are certain exemptions given under the SCOMET list for controlling technology and software, for example, technology or software that is in the public domain or used for basic scientific research purposes. Transfer of such technology and software via intangible means is also exempt from export controls.

Due to the intangible nature of ITT, and as ITT can take various forms, it is difficult to track and monitor each such transfer. Hence, it becomes challenging to ensure optimal compliance in ITT.
**Internal Compliance Programme**

An important step in ensuring optimal compliance in transfer or export of technology and software, is for the industry to set in place an Internal Compliance Programme (ICP). ICP is a technical term for measures taken internally within an organisation, with the aim to ensure that activities related to exports of controlled dual-use goods, software and technologies, occur within the ambit of national export regulations.

‘Internal compliance’ is an internal mechanism comprising of best practices, guidelines, and policies to minimise risk of legal and national/international policy violations. An ICP typically includes a set of procedures that company officials must satisfy before an item leaves the company or export/transfer of goods, software or technology take place. The procedures are aimed at thoroughly investigating the buyer and end-user prior to the transfer of a controlled item, software or technology; compliance regarding a controlled item, etc. More specifically, an ICP typically has rules for the following:

- Classification of an item under the appropriate SCOMET category
- Verification of end-use and end-user
- Risk assessment, export licensing, post-shipment tracking
- Internal audits, training and education of staff

A company’s responsibility and duty towards internal compliance is independent of its size or nature of operations, as long as it is exporting controlled dual-use items (goods, software and technologies). A micro, small or medium sized company or a start-up may not have the resources to have an exclusive export/trade control department. However, it is expected that these companies have an export/trade control officer who may be responsible for all export compliance related processes within the firm.
V. Comparing Most Traded Items with US - ECCN

The Export Control Classification Number (ECCN) is an alpha-numeric designation used in the United States (US) Commerce Control List to identify items for export control purposes. The US Commerce Control List lays down the list of controlled items (goods, software and technology) as per the US export control regime. Many IT/ITeS companies in India have significant operations in the US and are involved in export or re-export of controlled items from India to the US. In this context, below is a list of most traded items under Category 8 and their corresponding SCOMET classification as well as the US - ECCN.

### Most traded items under SCOMET Category 8

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Item</th>
<th>SCOMET Category</th>
<th>US - ECCN Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Soft and hard body armour and components</td>
<td>8A105</td>
<td>1A005</td>
</tr>
<tr>
<td>2.</td>
<td>Certain charges, devices and components</td>
<td>8A108</td>
<td>1A008</td>
</tr>
<tr>
<td>3.</td>
<td>Electronic items, including integrated circuits, semiconductors, microprocessors, analogue-digital-converters, microwave/milli-meter wave items, acoustic wave items etc.</td>
<td>8A301</td>
<td>3A001</td>
</tr>
<tr>
<td>4.</td>
<td>General purpose electronic assemblies, modules and equipment, such as, digital data recorders, signal and network analysers, signal generators etc.</td>
<td>8A302</td>
<td>3A002</td>
</tr>
<tr>
<td>5.</td>
<td>Telecommunications systems, equipment, components and accessories, such as, radio equipment, optical fibres, mobile telecommunications interception or jamming equipment etc.</td>
<td>8A501</td>
<td>5A001</td>
</tr>
<tr>
<td>6.</td>
<td>Information security systems, equipment and components such as, items with information security as primary function, Digital communication or networking systems etc.</td>
<td>8A502</td>
<td>5A002</td>
</tr>
<tr>
<td>7.</td>
<td>Optical sensors</td>
<td>8A602</td>
<td>6A002</td>
</tr>
<tr>
<td>8.</td>
<td>Certain cameras, systems or equipment, and components</td>
<td>8A603</td>
<td>6A003</td>
</tr>
<tr>
<td>9.</td>
<td>Unmanned aerial vehicles, unmanned airships, related equipment and components</td>
<td>8A912</td>
<td>9A012</td>
</tr>
<tr>
<td>10.</td>
<td>Equipment for the production or inspection of composite structures, laminates or fibrous materials</td>
<td>8B101</td>
<td>1B001</td>
</tr>
<tr>
<td>11.</td>
<td>Filament winding machines</td>
<td>8B101a</td>
<td>1B001a</td>
</tr>
<tr>
<td>12.</td>
<td>Robots and their controllers and end-effectors</td>
<td>8B207</td>
<td>2B007</td>
</tr>
<tr>
<td>13.</td>
<td>Information security test, inspection, and production equipment</td>
<td>8B502</td>
<td>5B002</td>
</tr>
<tr>
<td>14.</td>
<td>Materials pertaining to telecommunication, software, information security, electronics etc.</td>
<td>8C</td>
<td>Sub-category ‘C’ corresponding to categories 1 to 9</td>
</tr>
<tr>
<td>15.</td>
<td>Metal alloys, metal alloy powder and alloyed materials, such as, aluminides, nickel alloys, niobium etc.</td>
<td>8C102</td>
<td>1C002</td>
</tr>
<tr>
<td>16.</td>
<td>Software designed for the use of electronics equipment</td>
<td>8D302</td>
<td>3D201</td>
</tr>
<tr>
<td>17.</td>
<td>Software designed for the use or development of computers</td>
<td>8D401</td>
<td>4D001</td>
</tr>
<tr>
<td>18.</td>
<td>Software designed for the development, production or use of telecommunication equipment</td>
<td>8D501</td>
<td>5D001</td>
</tr>
<tr>
<td>19.</td>
<td>Software designed for the development, production or use of information security equipment</td>
<td>8D502</td>
<td>5D002</td>
</tr>
<tr>
<td>20.</td>
<td>Software designed for the development or production of optics, lasers, magnetic and electric field sensors, radar equipment etc.</td>
<td>8D601</td>
<td>6D002</td>
</tr>
<tr>
<td>No.</td>
<td>Description</td>
<td>Code 1</td>
<td>Code 2</td>
</tr>
<tr>
<td>-----</td>
<td>------------------------------------------------------------------------------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>21.</td>
<td>Software designed for the development or production of navigation and avionics equipment</td>
<td>8D701</td>
<td>7D001</td>
</tr>
<tr>
<td>22.</td>
<td>Source code for the operation or maintenance of inertial navigation equipment</td>
<td>8D702</td>
<td>7D002</td>
</tr>
<tr>
<td>23.</td>
<td>Source code incorporating development technology for certain air data systems, three dimensional displays for aircraft, electric actuators, flight control optical sensor array and active flight control systems</td>
<td>8D704</td>
<td>7D004</td>
</tr>
<tr>
<td>24.</td>
<td>Software designed or modified for the development of aerospace and propulsion equipment or technology</td>
<td>8D901</td>
<td>9D001</td>
</tr>
<tr>
<td>25.</td>
<td>Software incorporating gas turbine engine FADEC systems technology</td>
<td>8D903</td>
<td>9D003</td>
</tr>
<tr>
<td>26.</td>
<td>Technology for the development or production of electronics equipment or materials</td>
<td>8E301</td>
<td>3E001</td>
</tr>
<tr>
<td>27.</td>
<td>Technology for the development, production or use of computer equipment, software or intrusion software</td>
<td>8E401</td>
<td>4E001</td>
</tr>
<tr>
<td>28.</td>
<td>Technology for the development, production or use of telecommunication equipment and software</td>
<td>8E501</td>
<td>5E001</td>
</tr>
<tr>
<td>29.</td>
<td>Technology for the development, production or use of information security equipment and software</td>
<td>8E502</td>
<td>5E002</td>
</tr>
<tr>
<td>30.</td>
<td>Technology for the development or production of certain navigation and avionics systems and equipment</td>
<td>8E704</td>
<td>7E004</td>
</tr>
<tr>
<td>31.</td>
<td>Technology for the development of aerospace and propulsion equipment or software</td>
<td>8E901</td>
<td>9E001</td>
</tr>
<tr>
<td>32.</td>
<td>Technology required for the development or production of certain aerospace and propulsion systems such as, gas turbine engine, wind tunnel aero-models, helicopter power transfer systems etc.</td>
<td>8E903</td>
<td>9E003</td>
</tr>
</tbody>
</table>
VI. Global Authorisation for Intra-Company Transfers

The policy on Global Authorisation for Intra-Company Transfers (GAICT) was introduced under the Indian export control regime with the objective of granting an advance bulk licence for re-export of certain SCOMET items/software/technology to overseas group companies availing licence exception for original exports of such items to India. GAICT policy along with the applicable forms have been notified by the DGFT via Public Notice No. 20/2015-20 dated July 24, 2019, and Public Notice No. 65/2015-20 dated March 17, 2020. These notices can be found here: https://www.dgft.gov.in/CP/?opt=public-notice.

The salient features of this policy include:

- The scheme applies to re-export of all SCOMET items other than Categories 0 (Nuclear materials), 1B, 1C (Toxic chemicals, to the extent reexports to States not party to CWC), 3A401 (Prescribed high explosives, etc.), 5 (aerospace systems, etc.) and 6 (Munitions List).
- GAICT will be granted only for re-exports by an Indian subsidiary to a foreign parent company and/or subsidiaries of the foreign parent company, under a Master Services Agreement (MSA) between the two entities.
- GAICT is eligible to be granted for carrying out certain services (design, encryption, research, development, delivery, validation, testing), where the overseas company is availing a licence exception for original exports to India.
- The SCOMET items intended to be re-exported should not have undergone change in functionality and classification pursuant to services carried out by the Indian exporter.
- Indian exporter is required to furnish its own certified/approved ICP or demonstrate compliance to ICP of the foreign parent company.
- On-site inspection of the Indian exporter, if required, should be allowed.
- GAICT is valid for a period of three years from issuance or up to the validity of licence exception in the country of export or up to the validity of MSA, whichever is earlier.
- Compliance for GAICT includes submission of quarterly details of exports, submission of copy of End-User Certification (EUC) for such exports and maintenance of records of all such export documents for a period of 5 years.

Taking into consideration the industry’s requests for further revision in the GAICT policy, the DGFT has proposed changes. Key proposed amendments include:

- GAICT policy to be applicable for export and/or re-export of SCOMET items including software and technology under SCOMET Category 8 (except certain items under Annexure I, such as, materials that absorb electromagnetic radiation, certain microwave transistors, certain radio equipment, certain sonars/sensors, certain unmanned submersible vehicles, certain robots, along with software and technology used for producing such items etc.)
- For intra-company transfers from an Indian parent company to its foreign subsidiary or from the Indian subsidiary of foreign company to its foreign parent/another
subsidiary of foreign parent company. A third-party may also be involvement in the supply chain and included in the GAICT authorisation if the end-user is a foreign parent/subsidiary of foreign parent company or a subsidiary of Indian company.

- GAICT is eligible to be granted for carrying out services, such as, design, encryption, research, development, delivery, validation, testing. This is only an indicative list of services, subject to final approval on a case-to-case basis.
- Transfers under GAICT are eligible only to certain notified countries, these include all WA Participating States.
- In case of re-exports, GAICT is eligible to be granted where the item may have been imported under a licence exception or a temporary licence.
- Undertaking to be submitted by a company allowing for on-site inspection by government of India, if needed.
- Applicant will not be eligible for GAICT if he knows or has reason to believe that an item may be intended for military end use, even if the GAICT authorisation has already been granted.
- Revised forms for making the GAICT application and post-shipment reporting will be notified by DGFT separately.

NASSCOM has made extensive submissions on behalf of the industry for the revision of the GAICT policy. Most of our recommendations have been accepted in the revised draft. Industry may send any further suggestions for the revision of the GAICT policy by writing to NASSCOM or to the DGFT directly, latest by August 1, 2021.
VII. Frequently Asked Questions

1. Where can I find the list of SCOMET items?
Appendix 3 of Schedule 2 - Export Policy of ITC (HS) Classification contains the SCOMET list. This list is updated periodically. The latest SCOMET list (as on 11.06.2020) can be found at: tinyurl.com/2426rtcp.

2. Is software classified under SCOMET Category 8?
Software may be classified under different categories of SCOMET, depending on the subject matter to which the software applies to. For example, aerospace system related software and technology is categorised under Category 5, 6 and 8. Some other types of software, for example, relating to electronics, computers, telecommunications and information security, are classified under Category 8. Kindly also refer to the ‘Commodity Identification Note to SCOMET’ (Note 1) for understanding how the classification under SCOMET should be determined. For classification queries under SCOMET category 8, assistance can be sought from the DGFT.

3. Does SCOMET cover only technology transfer from India or does it also cover imports of restricted software/technology from outside of India?
The SCOMET List is part of the Schedule 2 - Export Policy of the Foreign Trade Policy. Therefore, only exports are regulated under SCOMET. Imports of dual-use items are not regulated under SCOMET. These are generally regulated by the export control laws of the exporting country. For example, the Commerce Control List in the US. However, some of the items could be regulated for import, under ITC(HS) based Import Policy available on the DGFT website under ‘Regulatory Updates’, which can be found at tinyurl.com/he2jduak.

4. Is an export authorisation needed for subsequently revised versions of a software?
As per the Indian export control regime, an export authorisation is required for every export if it is controlled under the SCOMET list. Exception is if the export is under GAICT procedure, in which case an authorisation may be issued for a period of 3 years with post export reporting and other requirements.

5. Does the Indian export control law differentiate between ‘updates’ and ‘upgrades’ of a software?
As per Indian export control regime, there is no differentiation between an upgrade of a software or an update. An export authorisation is required for every export if it is controlled under the SCOMET list.
6. **Is authorisation needed if the same software product is sold to another customer in the same geography?**

Yes, as the end-user will be different when the product is sold to a different customer, a separate export authorisation is required for exporting the product to different customers.

7. **Does re-export of controlled items that were originally exported subject to a foreign country ECCN, require an export authorisation when re-exported from India with or without value addition?**

Yes, an export authorisation is needed for any SCOMET item irrespective of value addition in India, even when the item was originally imported. Unlike the US, India does not have a *de minimis* rule. Under the *de minimis* rule adopted in the US export control laws, dual-use items are excluded from the purview of export control regulation if the indigenous (domestic) content incorporated in the item is below a certain percentage of the value of the item.

8. **What should be done if a company has classification queries?**

All classification related queries can be made to the DGFT, by providing the complete facts/information related to the case and listing the specific queries.

9. **Are there any post-export record keeping obligations?**

Every SCOMET authorisation holder is required to maintain records in manual or electronic form for a period of 5 years from the date of export or import, as applicable. There is no specific format for record keeping prescribed under the Indian export control laws.

10. **When is a SCOMET authorisation needed for ITT?**

Export of controlled technology via intangible means requires a SCOMET authorisation. Some examples where a SCOMET authorisation will be required for ITT are listed below:

- Electronically transmit controlled technology, such as blueprints, diagrams, models and formulae, from India to another entity in a foreign country
- Upload or store controlled technology onto a server, located outside India, or if located in India, such that the controlled technology is accessible to another entity in a foreign country;
- Conduct virtual meetings, via means such as Skype, Zoom, Whatsapp video calls etc. relating to controlled technology with people located in a foreign country;
- Modify controlled technology in India stored on a collaborative software, such as Google Drive, which is accessible to an entity in foreign country;
- Export (via device/document carrying laptop) controlled technology out of India;
- Upload or store export-controlled technology onto an IT server located in a foreign country, including e-mail servers and other such service providers.
- Giving visual access to foreign nationals of export-controlled data/processes.
• Allowing foreign nationals or users from foreign countries to virtually access your computers and systems in India that contain export-controlled data.

11. Are there any exemptions for obtaining a SCOMET authorisation for ITT?
Not all transfers of controlled technology require a SCOMET authorisation. Examples of when a SCOMET authorisation may not be required for ITT include:

• Technology in the public domain
• Transfer for basic scientific research
• Minimum necessary information for patent applications

12. Do intangible technology transfers cover transfer of controlled technology to foreign nationals employed by a company in India? Is a SCOMET authorisation required in this case?
Yes, if the transfer of controlled technology is to a foreign national in India, it would be considered as an intangible technology transfer. Therefore, a SCOMET authorisation will be required in addition to the applicable visa requirements.

13. If a SCOMET authorisation is required for a foreign national employed by an Indian company, in whose name will the authorisation be applied/issued?
The export authorisation will be issued in favor of Indian company, however details of the foreign national will be mentioned in the authorisation.

14. Do intangible technology transfers cover transfer of controlled technology which may not be of Indian-origin? Is a SCOMET authorisation required in the case of export of US-origin technology by an Indian company operating in India?
Any transfer of intangible technology (or software) will require prior SCOMET authorisation under the following circumstances:

i. Export/re-export of indigenous SCOMET item from Indian company to Indian company abroad.
ii. Export/re-export of indigenous SCOMET item from Indian company to foreign company abroad.
iii. Export/re-export of indigenous SCOMET item from foreign company in India to Indian company abroad.
iv. Export/re-export of indigenous SCOMET item from foreign company in India to foreign company abroad.
v. Export/re-export of imported SCOMET item from Indian company to Indian company abroad.
vi. Export/re-export of imported SCOMET item from Indian company to foreign company abroad.
vii. Export/re-export of imported SCOMET item from foreign company to Indian company abroad.

viii. Export/re-export of imported SCOMET item from foreign company to foreign company abroad.

15. **Does accessing a controlled software application on a cloud-based storefront require a SCOMET authorisation?**

If a controlled software is accessed by users outside of India (includes both Indian or foreign nationals and/or company abroad), it will require a SCOMET authorisation.

16. **Whether moving controlled technology, data or software to a server located outside India requires a SCOMET authorisation?**

Yes, any export/transfer of controlled ITT, data/information or software by any means will require SCOMET authorisation.

17. **Whether granting access to a controlled technology, software or data to users outside of India requires a SCOMET authorisation?**

Yes, granting access to controlled technology, software or data to users outside of India (includes both Indian or foreign nationals and/or company abroad) will require a SCOMET authorisation.

18. **Does providing IT solutions online attract export control laws?**

Export control laws of India cover intangible technology transfers of items controlled under SCOMET through any mode. Therefore, for any software which is downloaded online (involving an Indian seller and a foreign end-user), export control laws will continue to apply.

19. **Is cyber security software a controlled item?**

Answer: Category 8A5 (Part 2) of the SCOMET List deals with “Information Security” (Systems, Equipment and Components), which could be referred to determine whether a particular cyber security software is a controlled item.

20. **Does SCOMET cover encryption software products only or any software product which includes/bundles encryption functionality/technology?**

The SCOMET List includes controls on software, which is designed for the development, production or use of an item having information security as the primary function or where the cryptography for data confidentiality supports a non-primary function of the item, etc. Category 8D502 for Information Security (Software) of SCOMET list may also be referred.
21. Do all items, software or technology that incorporate encryption functionality require a SCOMET authorisation?

According to the Cryptography Note given under SCOMET List, the following types of items, software and technology do not require a SCOMET authorisation (provided it satisfies all of the following conditions):

**Items:**
- That are generally available to the public by being sold over the counter, via mail order transactions, electronic transactions or telephone call transactions;
- Where the cryptographic functionality cannot easily be changed by the user;
- That are designed for installation by the user without further substantial support by the supplier;
- That are of potential interest to a wide range of individuals and businesses; and
- The price and information about the main functionality of the item are generally available before purchase.

**Hardware components or executable software:**
- That do not have information security as the primary function;
- That do not change any or add new cryptographic functionality to the existing items; and
- That are fixed and not designed/modified for a particular customer.

Category 8A502 Note 3 (Cryptography Note) of SCOMET list may also be referred. In addition to this, specific exclusions can be found in Technical Notes to Category 8A502 a. under SCOMET List.

22. Does a software that incorporates encryption functionality for information security, for the purpose of complying with EU’s General Data Protection Regulation require a SCOMET authorisation?

It depends on the encryption functionality. A SCOMET authorisation will not be required if the encryption functionality falls under the exclusion cases given under Technical Notes to Category 8A502.a of SCOMET list, for example, authentication. However, an authorisation will be required if encryption functionality is used for a function which has not been excluded under the SCOMET list, for example, digital communications, computing, etc.

23. Does providing consulting services to US based entity from India require SCOMET authorisation?

Yes, if the consulting services involve a controlled technology. The definition of ‘technology’ under the SCOMET list includes ‘technical assistance’ such as consulting services.

24. A training workshop being conducted in India on cyber security or information security is being attended by foreign nationals via virtual means. Does this require a SCOMET authorisation?


Technical assistance in the form of a training is covered under the meaning of intangible transfer of technology. Therefore, any technical assistance on topics that are subject to export controls, including trainings to any foreign national requires a SCOMET authorisation.

25. How are export control laws as applicable to ITT regulated by the Indian government?

The government agency responsible for licensing of ITT is the DGFT. Given the challenges in ensuring optimal compliance in ITT, the government encourages voluntary compliance by the industry and for them to have a strong ICP in place. NASSCOM and Ministry of Electronics and Information Technology (MeitY) would be releasing a Best Practices Handbook on ITT as well as Guidelines for ICP / Technology Control Plan (TCP) to aid the industry in complying with export control obligations.

26. What is the format for post-shipment record keeping and submission to DGFT?

Quarterly reports must be submitted to DGFT containing details of the exports made under the GAICT authorisation, as per the format given in ANF 2O(c).

27. Who is responsible for maintaining and implementing an ICP?

An ICP is individually designed by each company according to their specific requirements and nature of activities that may require export controls. Each company may designate an appropriate entity or authority responsible for the maintenance and implementation of that company’s ICP.

28. An Indian exporter has an agreement with a holding company in the US for billing, but the exports of controlled software and technology are made to one of the group companies in France. In this scenario, how should the SCOMET authorisation be applied for?

Indian Exporter can apply for SCOMET Authorisation by mentioning the US holding company as “Buyer” and the French company as “Consignee” and “end-user” in the application as well as in the EUC.

29. If the End-User company is located in country ‘A’, can EUC be signed by a person having a nationality other than that of country ‘A’?

Yes. This is acceptable if the same person is the authorised signatory in both the companies located in different countries. However, it is preferable that the signatory of EUCs is from the same country in which the end-user company is located, as the end-user verification process of the Government of India would be relatively faster. If the EUC signatory is not from the same country, details of alternate person need to be provided in the EUC to facilitate pre-licence verification by the Indian agency(ies).
30. What are the typical queries sent by the DGFT to the signatory of EUC while processing a SCOMET Application?

The Government of India reaches out to the signatory of EUC (all the entities involved in the supply chain, buyer, consignee, end user or intermediary), for verification of details provided in the SCOMET application and EUC. The details sought include the following:

- Authentication of the EUC by the signatory.
- Details of the manufacturing capacity and whether the end user has the ability to utilise the exported item in their unit and at the address mentioned in the EUC.

31. What are the documents to be provided by the foreign end-user?

Taking into account the company profile and items being exported from India, the foreign end-user company may have to provide the following documents:

- Proof of Incorporation of Company - as proof of the address and other details mentioned in the SCOMET application and EUC.
- EUC duly signed and stamped by the authorised signatory containing all the clauses of EUC as per prescribed proforma of DGFT.
- Proof of holding or shareholding details, to establish the relationship with Indian exporter company and foreign end user company, if any.
- Proof of Registration in the local / national Chambers of Commerce and Industry, if possible.
- Write-up or brochure of the company explaining the manufacturing or R&D capabilities / business dealing of the companies.
- Operational Capacity / Manufacturing capacity of the end user company
- ICP of the company (in case of GAICT)

32. What is the catch-all provision under India’s export control regime? What is its significance?

In addition to the list of items that are covered under the SCOMET list, any other items/software or technology may also be covered under export control obligations if the exporter has been notified in writing by DGFT or any other Government agency(ies) or the exporter knows or has reason to believe that the item being exported has a potential risk of use in or diversion to WMD or in missile system or military use (including by terrorists and non-state actors). In this case, the exporter shall apply for a SCOMET authorisation. The export of such an item(s) may be denied or permitted as per the procedure provided for SCOMET items in terms of India’s export control laws and regulations.

33. How can assistance be sought from the DGFT in case of any query related to SCOMET?

The SCOMET Cell in DGFT (Headquarters) is the focal point for all purposes of implementation of SCOMET policy, procedures, and licensing. In case of any
query/clarifications, the industry may contact SCOMET Cell, DGFT (Headquarters) as per the following details:

- Telephone No. 011-23061562/Ext-271, 011 -23063918
- Email id: scomet-dgft@nic.in and sanjay.kt@nic.in.

### 34. Where can I find a list of all public notices issued by the DGFT till date?

<table>
<thead>
<tr>
<th>DGFT Public Notice(PN) No. &amp; date</th>
<th>Relevance of document for SCOMET policy / procedure</th>
<th>Weblink/URL</th>
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<tbody>
<tr>
<td>PN No. 20 dated 12.07.2018</td>
<td>Repeat Order for export of i) Same SCOMET item and ii) Same country/entities</td>
<td>tinyurl.com/3wz6327d</td>
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<tr>
<td>PN No. 46 dated 15.11.2018</td>
<td>For Bulk Export from Indian exporter to 'stockist' abroad for subsequent transfer within the country of stockist or to ultimate end users in ‘pre-approved’ countries.</td>
<td>tinyurl.com/v9pca4dz</td>
</tr>
<tr>
<td>PN No. 59 dated 12.12.2018</td>
<td>Re-export/return of imported SCOMET items due to obsolescence of technology; cancellation of order by the Indian buyer/end user; dead on arrival etc.</td>
<td>tinyurl.com/2t5mbjxs</td>
</tr>
<tr>
<td>PN No. 20 dated 24.07.2019</td>
<td>Global Authorisation for Intra-company transfer (GAICT) policy from an Indian subsidiary (applicant exporter) to its foreign parent company and/or to subsidiaries of the foreign parent company (Refer to PN 65 dated 17.03.2020 for proformae of GAICT application and EUC)</td>
<td>tinyurl.com/twspsxs</td>
</tr>
</tbody>
</table>
| PN No. 36 dated 27.09.2019        | Export of SCOMET items for Repair-replacement purposes  
i. Export of imported SCOMET items for replacement/repair(Export allowed to the same entity or to authorised OEM)  
ii. Export of replacement/repair of indigenous exported SCOMET items (Export allowed to the same entity only)  
iii. Export after repair of imported SCOMET items from third Party | tinyurl.com/mrppbkrf |
<p>| PN No. 50 dated 27.12.2019        | Temporary exports for demo/display/exhibition/tender/RFP/RFQ/NIT of indigenous and imported SCOMET items | tinyurl.com/kd7mh5xu |
| PN No. 63 dated 18.02.2020        | Undertaking in the form of Legal Agreement for grant of permission for export/re-export of items under SCOMET Control List for repair/replacement and display/exhibition/tender purposes. | tinyurl.com/4bdrfkn8 |
| PN No. 10 dated 08.06.2020        | Revalidation of export authorisation for SCOMET items | tinyurl.com/769zynb6 |</p>
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<tr>
<th>Trade Notice No. 26 dated 31.08.2020</th>
<th>Policy on revalidation to export authorisations for technology/software under SCOMET policy</th>
<th>tinyurl.com/47k97bk7</th>
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<tr>
<td></td>
<td>• For SCOMET Category(ies) 2,3,4,5 &amp; 8</td>
<td>Appendix- 2S (i)</td>
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<tr>
<td></td>
<td>• For re-export in case of stocked items other than Category 1(From Stockist to ultimate end user)</td>
<td>Appendix- 2S (ii)</td>
</tr>
<tr>
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<td>Appendix- 2S (ii)</td>
<td>Appendix- 2S (iii)</td>
</tr>
<tr>
<td></td>
<td>• For SCOMET Category 1(Chemicals, related software and technologies).</td>
<td>Appendix- 2S (iv), ANF2O(b) and ANF2O(c)</td>
</tr>
<tr>
<td>PN No. 65 dated 17.03.2020</td>
<td>• For re-export in case of stocked items under SCOMET Category 1</td>
<td>• For SCOMET authorisation under GAICT policy.</td>
</tr>
<tr>
<td></td>
<td>Appendix- 2S (iii)</td>
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<td></td>
<td>• For Stock and Sale (from Exporter to stockiest)</td>
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<td></td>
<td>Appendix- 2S (iv), ANF2O(b) and ANF2O(c)</td>
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<td>• For SCOMET authorisation under GAICT policy.</td>
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<td><a href="https://tinyurl.com/3fst6n28">https://tinyurl.com/3fst6n28</a></td>
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## Change Log

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<th>S. No.</th>
<th>Particulars</th>
<th>Date</th>
</tr>
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<tbody>
<tr>
<td>1.</td>
<td>Change in answer to Q.21 on page 21, to clarify that all of the conditions under Cryptography Note are to be satisfied to be eligible for an exemption from SCOMET authorisation.</td>
<td>July 29, 2021</td>
</tr>
<tr>
<td>2.</td>
<td>Change in answer to Q.22 on page 21, to clarify that the need for SCOMET authorisation depends on the encryption functionality.</td>
<td>July 29, 2021</td>
</tr>
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<td>3.</td>
<td>Change in font color of line item 29 on page 14, for ease of legibility.</td>
<td>July 29, 2021</td>
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