



INDIAN EXPORT CONTROL SYSTEM

Overview and Challenges

Government of India

Ministry of External Affairs
Disarmament and International Security Affairs Division



23rd Asian Export Control Seminar
Tokyo , Japan



India's Experience with Export Control

- Overview
- Policy Provisions
- Licensing
- Enforcement
- Outreach and capacity building
- Challenges

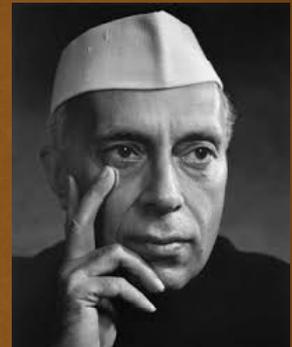


OVERVIEW



High Level Commitment

“ This 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.....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.”



**A minute by Prime
Minister Nehru in 1947**



India's engagement with Global Non-Proliferation Order

- **BWC 1972:** State Party since 1974 and active participant in BWC meetings in Geneva;
- **CWC 1993:** State Party since 1996, active participant, member of Executive Council of OPCW since inception; we met the destruction deadline and eliminated our CW stockpile in April 2009
- **IAEA:** Founding member; safeguards since 1971; India-specific Safeguards Agreement (INFCIRC/754); Additional Protocol (in force since July 2014).



Evolution Of The Indian Export Control System



- **1947-** First control over sensitive materials –Monazite and Thorium Nitrate
- **1995-** First Small group of Strategic Export controls institutionalised and notified SMET list in EXIM policy
- **2000-** SCOMET list notified; CWC chemicals, biological agents added; separate categories for space/missile items

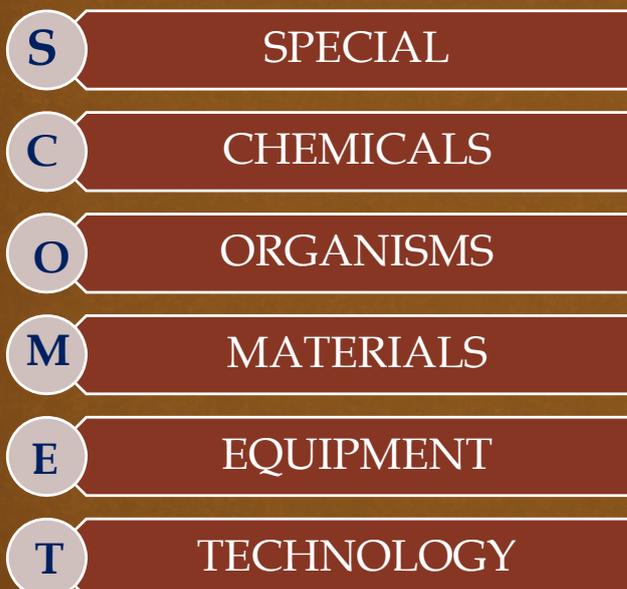


.....Evolution

- **2005**- India announced adherence to MTCR and NSG; Further addition of MTCR items in SCOMET
- **2009**- Intangible control strengthened; prior permission for any foreign person to visit an Indian entity manufacturing/ exporting SCOMET item
- **2011**- SCOMET list re-issued to account for FTDR Act Amendment in 2010.
- **2013**- Harmonization with 2012 MTCR Annex completed.
- **2015**- Harmonization with 2014 MTCR Annex completed; Updating of SCOMET list; **Notification of Military Stores**



Overview Dual Use Items-- SCOMET



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



POLICY PROVISIONS



Legal Framework

- Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005
- Foreign Trade (Development and Regulation) Act, 1992 (amended in 2010) and Foreign Trade Policy
- UNSC Act, 1947
- Atomic Energy Act, 1962
- Chemical Weapons Convention Act, 2000
- Environment Protection Act, 1986
- Customs Act, 1962
- Explosive Substances Act, 1884
- Rules/regulations issued under these Acts**



Policy Provisions- Foreign Trade Policy (FTP)

- Policy : **Para 2.09 of Foreign Trade Policy (2015-2020).**
- **Detailed Procedures: Para 2.73-2.82 of Handbook Of Procedures**
- Restrictions under SCOMET list



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
- **Updating of SCOMET List on 13 March 2015**
- Harmonized with 2014 MTCR Annex
- 33 Australia Group controlled bio-agents added



SCOMET Items

CATEGORY • ITEM

Coverage

- 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

➤ Materials

➤ Material Production

➤ Equipment

➤ Technology

➤ Software

➤ Akin to EU dual-use list



LICENSING



Licensing Jurisdiction

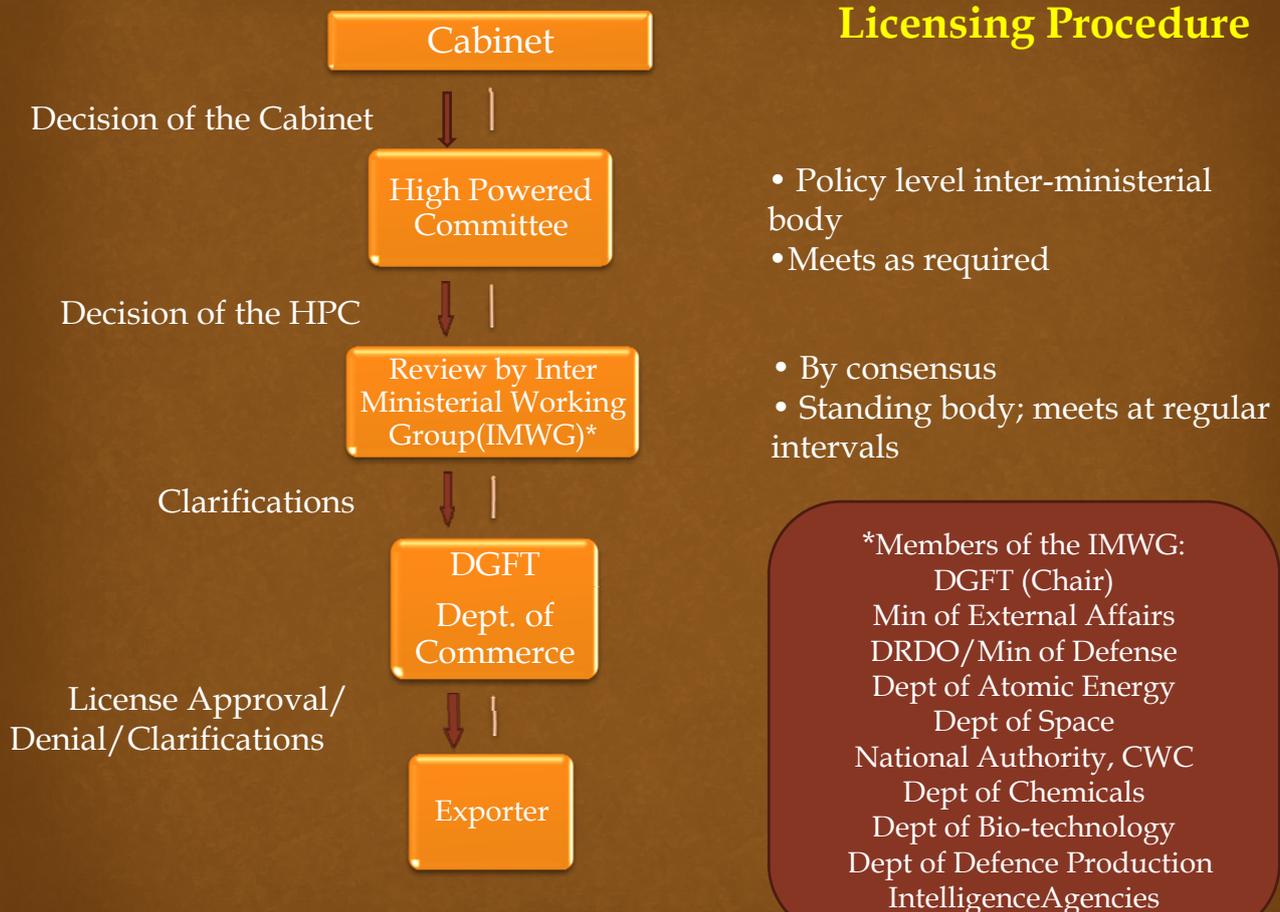
➤ Nuclear and nuclear related
Department of Atomic Energy

➤ Dual-use items
Directorate General of Foreign Trade, DoC

➤ Military stores (conventional arms)
Department of Defense Production, MoD

(consultation with Ministry of External Affairs)

Licensing Procedure





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 2O(for license)

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

[Online filing introduced on 29th March, 2012]

- Comprehensive Guidelines provided
- Required documents
 - ❑ List given at the end of ANF-2O
 - ❑ End User Certificate - Appendix 2S
- Application to be submitted to DGFT(HQ), New Delhi

SCOMET Guidelines on DGFT website (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 (Para 2.74I)



Export of Military Stores

(To be published in the Gazette of India Extraordinary Part-II, Section - 3, Sub-Section (ii))
Government of India
Ministry of Commerce & Industry
Department of Commerce
Udyog Bhawan

Notification No 115 (RE – 2013)/2009-2014
New Delhi, Dated: 13 March, 2015

Subject: Export of Military Stores.

S.O.(E) In exercise of the powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992) read with Para 1.3 of the Foreign Trade Policy, 2009-2014, as amended, the Central Government, with immediate effect, hereby makes the following amendments in Table A of Schedule 2 of ITC(HS) Classification of Export and Import Items.

2. Serial No. (S. No.) 4 of the Table A of Schedule 2 of ITC (HS) Classification of Export and Import Items is substituted as under:

Table A
Goods falling in more than one Chapter of ITC (HS) Classification



Export of Military Stores

List of Military Stores

The following military stores are freely exportable subject to the conditions mentioned in the "Nature of Restriction" against Serial No. (S. No.) 4:

MS 001. Armoured or protective equipment, constructions and components, as follows:

- a. Metallic or non-metallic armoured plate, manufactured to comply with a military standard or specification; or suitable for military use.
- b. Constructions of metallic or non-metallic materials, or combinations thereof, specially designed to provide ballistic protection for military systems, and specially designed components therefor.
- c. Helmets manufactured according to military standards or specifications, or comparable national standards, and specially designed components therefor (i.e., helmet shell, liner and comfort pads).
- d. Body armour or protective garments and components therefor namely soft body armour or protective garments, manufactured to military standards or specifications, or to their equivalents, and specially designed components therefor.
- e. Body armour or protective garments and components therefor namely hard body armour plates providing ballistic protection equal to or greater than level III (NIJ 0101.06, July 2008) or national equivalents.

MS 002. The following smooth-bore weapons, other arms and automatic weapons, projectors and accessories and specially designed components therefor:

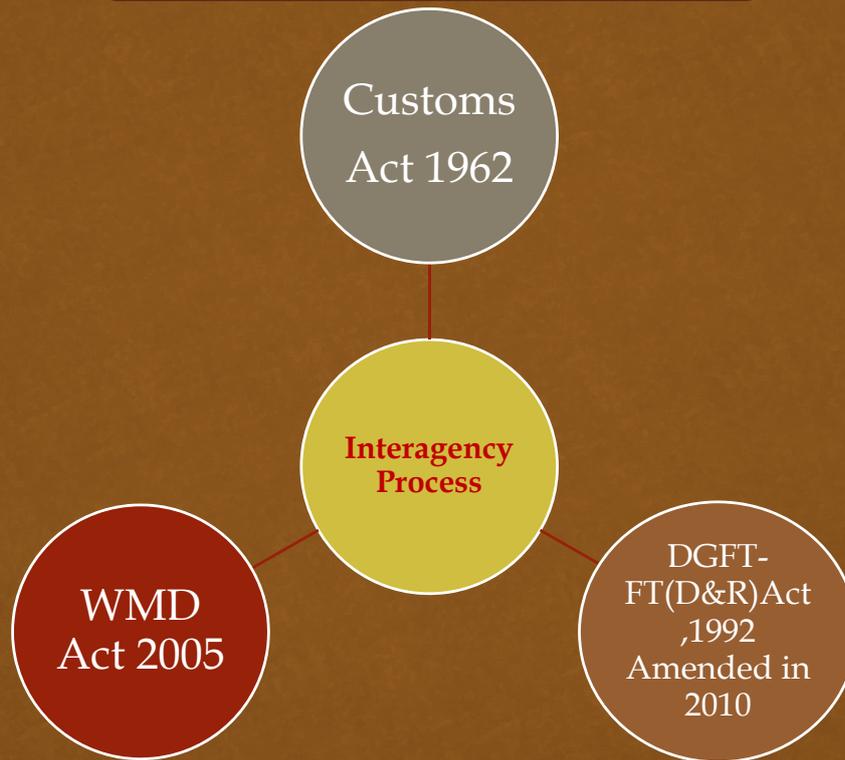


Export Of Military Stores

- List of military stores notified <http://dgft.gov.in/>
- Key items-warships, tanks, armoured vehicles, ammunition, rifles and small arms, military training equipment, electronic warfare devices, software, bombs and torpedoes
- Basis: **Wassenaar Arrangement Munitions List**
- Exports against an authorization (**no-objection certificate**) from DDP



ENFORCEMENT



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



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



Outreach And Capacity Building

- Export Promotion Board/Councils
- DGFT/MEA Open Houses/Seminars
- Personal Interviews/E-mails/Telecons
- ISRO/DRDO /DAE conduct outreach to their labs and vendors
- Public-private partnership in chemical sector
(*National Authority, Dept of Chemicals, Indian Chemical Council*)



Capacity Building

- Training for Customs officers (*WMD commodity identification, interdiction, investigation*);
- Participation in international conferences/ seminars/workshops (*Asian Export control Seminar, Outreach events of the four Export control Regimes*)



CHALLENGES





Identification Challenges

- Use of front companies by Proliferators
- Circumventing by Routing through Third Countries
- Export of Items below Threshold levels of control



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



Policy Challenges

- Increasing capacity to manufacture controlled items- outreach to Industry
- Intangible technology transfer
- Export promotion vs. Export regulation



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