

( TO BE PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY PART-I SECTION -1 )

GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
DEPARTMENT OF COMMERCE

PUBLIC NOTICE NO. 29 ( RE-05)/ 2004-2009  
NEW DELHI ; DATED 15th JULY, 2005

S.O.(E)- In exercise of powers conferred under Paragraph 2.4 of the Foreign Trade Policy, 2004-09 and Paragraph 1.1 of the Handbook of Procedures (Vol.I) , the Director General of Foreign Trade hereby makes the following amendments and additions in the Handbook of Procedures (Vol.I).

2. The second sub-para under paragraph 2.50 of the Handbook of Procedures (Vol.I).stands amended to read as follows:-

“ An Inter-Ministerial Working Group in DGFT shall consider applications for export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) as specified in Appendix-3 to Schedule 2 of ITC(HS) on the basis of guidelines given below.

Applications for licences to export items or technology on the SCOMET List are considered case-by-case , based *inter alia* on the following general criteria :-

- I. The following factors, among others, are taken into account in the evaluation of applications for export of items on the SCOMET List:
  - a. Credentials of the end-user, credibility of declarations of end-use of the item or technology, the integrity of the chain of transmission of the item from the supplier to the end-user, and on the potential of the item or technology, including the timing of its export, to contribute to end-uses that are not in conformity with India's national security or foreign policy goals and objectives, the objectives of global non-proliferation, or its obligations under treaties to which it is a State party.
  - b. The assessed risk that the exported items will fall into the hands of terrorists, terrorist groups, and non-State actors;
  - c. Export control measures instituted by the recipient State;
  - d. The capabilities and objectives of the programmes of the recipient State relating to weapons and their delivery;
  - e. The assessment of the end-uses of the item(s);

f. The applicability to an export licence application of relevant bilateral or multilateral agreements to which India is a party.

II. A condition for the consideration of an application for an export licence is the submission of stipulated certifications to the effect, *inter alia*, that:

- a. The item will be used only for the purpose stated and that such use will not be changed, nor the items modified or replicated without the consent of the Government of India;
- b. Neither the items nor replicas nor derivatives thereof will be re-transferred without the consent of the Government of India;
- c. The end-user shall facilitate such verifications as are required by the Government of India.

The Government of India may also require additional formal assurances, as appropriate, including on end-use and non-retransfer, from the State of the recipient.

III. The Licensing Authority for items in Category 0 below is the Department of Atomic Energy. The applicable guidelines are notified by that Department under the Atomic Energy Act, 1962. For certain items in Category 0, formal assurances from the recipient State will include non-use in any nuclear explosive device. Licences for export of certain items in Category 0 will not be granted unless the transfer is additionally under adequate physical protection and is covered by appropriate International Atomic Energy Agency (IAEA) safeguards, or any other mutually agreed controls on transferred items.

IV. Additional end-use conditions may be stipulated in licences for the export of items or technology that bear the possibility of diversion to or use in the development or manufacture of, or use as, systems capable of delivery of weapons of mass destruction.

V. Applications for the transfer of “Technology” for any item on the List will be considered as an application for the export of the item itself.

VI. Licences for the export of items in this List (other than those under Category 0, 1 and 2) solely for the purposes of display or exhibition shall not require any end-use or end-user certifications. (*No export licence for display or exhibition shall be issued for ‘Technology’ in any category. No licence for display or exhibition shall be issued for items under Categories 0, 1, and 2.*)

VII. Export of items not on the SCOMET List may also be regulated under the provisions of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.

*Note 1:* Export or attempt to export in violation of any of the conditions of licence shall invite civil and/or criminal prosecution.

*Note 2:* Licences for export of items in this List for display or exhibition abroad are subject to a condition of re-import within a period not exceeding six months. Exporters are entitled to apply for an export licence for such items exhibited abroad if the exhibitor intends to offer that item for sale during the exhibition abroad. Such sale shall not take place without a valid licence.

-

*Note 3:* The export of items in Category 2 of this list may also be controlled by other applicable guidelines issued from time-to-time. Exporters of items in this category are advised to seek guidance from the DGFT.

*Note 4:* Exporters are entitled to apply for a 'destination licence' for countries and/or groupings of countries for export to which only re-transfer conditions need be imposed.

*Note 5:* Exporters are entitled to request that only such conditions need be imposed as are the subject of government-to-government instruments of accord over export of items on the SCOMET List.

*Note 6:* 'Technology' (see also entry 'Technology' in the glossary in Appendix-3 to Schedule 2 of ITC(HS) ). The approval of export of an item on the SCOMET List also authorises the export to the same end-user of the minimum 'technology' required for the installation, operation, maintenance and repair of the item.

3. This issues in Public interest.

(K.T.CHACKO)  
DIRECTOR GENERAL OF FOREIGN TRADE  
AND EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVT. OF INDIA

(Issued from File No. 01/91/171/14/AM06/PC.III)

File No. 01/91/171/14/AM06/PC.III

Copy by order etc., to all concerned

( S.K.SHRIVASTAVA)  
DEPUTY DIRECTOR GENERAL OF FOREIGN TRADE

