

Government of India
Ministry of Commerce and Industry
Department of Commerce
Directorate General of Foreign Trade
Vanijya Bhawan, New Delhi- 110011

Public Notice No. 40/2024-2025
Dated: 15th January, 2025

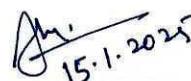
Subject: Standard Operating Procedure/ Guidelines for Voluntary Disclosure of Non Compliance/ Violations related to Export of SCOMET Items and SCOMET Regulations.

In exercise of the powers conferred under Para 1.03 and 2.04 of the Foreign Trade Policy (2023), the Directorate General of Foreign Trade hereby notifies the Standard Operating Procedure/ Guidelines for Voluntary Disclosure of Non Compliance/ Violations related to Export of SCOMET Items and SCOMET Regulations as under Para 10.19 of HBP enclosed in the Annexure to this Public Notice.

2. This shall come into force with immediate effect.

3. Effect of this Public Notice:

Standard Operating Procedure/ Guidelines for Voluntary Disclosure of Non Compliance/ Violations related to Export of SCOMET Items and SCOMET Regulations is hereby notified.



(Santosh Kumar Sarangi)

Directorate General of Foreign Trade
Ex-officio Additional Secretary, Government of India
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Standard Operating Procedure/ Guidelines for Voluntary Disclosure of Non-Compliance/ Violations related to Export of SCOMET Items and SCOMET Regulations

Scope:

The Directorate General of Foreign Trade (DGFT) recognizes that there may be occasions where responsible exporters, did not comply with the export control provisions of the Foreign Trade (Development and Regulation) Act, the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, the Customs Act, or any other relevant law, regulation, order, etc. or license/authorization on export controls issued by DGFT. The DGFT encourages voluntary disclosures of failure to comply with the export control provisions and supports raising awareness among the exporters to avoid any non-compliance incidents. Voluntary disclosures do not involve cases where the exporter applies for regularization of authorization / post-facto export authorization, on the basis of communication from the relevant Government of India agencies such as DGFT, and Customs.

The Inter-Ministerial Working Group (IMWG) in DGFT constituted for considering the applications for export of SCOMET items may consider a voluntary disclosure as a mitigating factor in determining the administrative penalties, if any, that should be imposed.

The IMWG would consider each case on its merit in accordance with the provisions of the Export and Import Policy determined by the Central Government from time to time, under the Foreign Trade (Development and Regulation) Act, and the Orders issued there under.

Voluntary Disclosure for non-compliance shall not cover the cases for non-compliance or violations for items falling under SCOMET Category 0 and under CWC Schedules (SCOMET Categories 1A, 1B, & 1C).

Types of Violations:

- i. Export of goods/software/technology listed under SCOMET and undertaken without prior authorization
- ii. Export to UNSC-sanctioned entities and individuals without knowledge
- iii. Export of items not controlled under SCOMET and used/diverted for or manufacture of weapons of mass destruction or their delivery systems
- iv. Use of an Export authorization issued in the name of an entity, by a new entity(s) after name change, merger, de-merger etc. without prior approval/amendment from the licensing authority
- v. Failure to obtain permission from the licensing authority by the company/entity registered or operating in India, which is involved in the manufacture, processing and use of SCOMET items, for facilitating or undertaking site visits, on-site verification or access to records/documentation by foreign organizations either directly or through an Indian party
- vi. Failure to comply with reporting, record-keeping requirements, etc.
- vii. Unauthorized access to technical data
- viii. Unauthorized provision of technical assistance

- ix. Any other violation relating to SCOMET items not listed above in terms of FTDR/FTP/HBP

The violation(s) in question, despite the voluntary nature of the disclosure, may merit penalties, administrative actions, and sanctions to consider criminal prosecution. The IMWG will consider whether 'voluntary disclosure,' in the context of other relevant information in a particular case, should be a mitigating factor in determining, if any, administrative action will be imposed. Some of the other factors the IMWG may consider in case of voluntary disclosure include:

- i. Whether the export would have been authorized in the normal course, and under what conditions (voluntary / forced disclosure) the request for export authorization has been made by the exporter before DGFT;
- ii. Whether the violation was intentional or inadvertent, systematic or not;
- iii. Why the violation occurred;
- iv. The degree of cooperation with the ensuing verification/investigation;
- v. Whether the firm has instituted or improved an internal trade compliance mechanism/process/program, including training of employees to reduce the likelihood of future export violation(s);
- vi. Whether the export violation was in the knowledge of senior management of the organization;
- vii. The degree to which the firm / authorized person responsible for the violation was familiar with the export control laws and regulations;
- viii. Whether the firm has violated export control laws and regulations in the past;

B. Procedure for Voluntary Disclosure:

- i. Any individual/firm should initially notify the Directorate General of Foreign Trade (DGFT) immediately after an export violation is discovered and confirmed internally, and then conduct a thorough review of all such trade activities where a violation is suspected. The Indian exporter must submit all the relevant details of such violation (in Appendix 10O) to SCOMET Division, DGFT (Hqrs), Vanjiya Bhawan, New Delhi, via E-mail at scomet-dgft@nic.in
- ii. If there is confirmation from the relevant enforcement agencies such as Customs or through other sources regarding such violation by the exporting entity or individual, a show cause notice shall be issued by SCOMET Cell, DGFT to the applicant firm. A full disclosure along with all the necessary documents must be submitted within 30 days or the extended time as may be specified.
- iii. Failure to provide a full disclosure within a reasonable time may result in a recommendation by the IMWG, not to consider the Voluntary Disclosure as a mitigating factor in determining the appropriate disposition of the violation. In addition, DGFT may direct the firm to furnish all the relevant information surrounding the violation in terms of the relevant Indian laws and regulations.
- iv. The IMWG would consider each such application on merit within the scope of applicable laws and regulations.

C. Documents required while filing for Voluntary Disclosure:

The IMWG may consider the following documents for the regularization of exports made under Voluntary Disclosure. The written disclosure by the firm should be accompanied by a covering letter (on the letterhead) signed by a senior officer(not below the rank of export compliance manager or equivalent designation) with the following documents:

- a. Disclosure Proforma (Appendix attached)
- b. Application in ANF 10A proforma
- c. Licensing documents (e.g., license applications, export licenses, end-user certificates/statements, Purchase Order, Contract Agreement, etc.)
- d. Shipping documents (e.g., Shipping Bills, Commercial Invoices, Airway Bills and Bills of Lading and any other related Trade documents)
- e. Any other relevant documents as may be required

D. Action by the DGFT:

All voluntary disclosure cases shall be placed by DGFT before the IMWG, in its subsequent meeting for discussion after submission of all complete and supporting documentation by the exporter. The IMWG would consider each case on merit in accordance with the provisions of the Export and Import Policy determined by the Central Government from time to time, and the relevant Indian laws and regulations. The IMWG would consider and make recommendations to DGFT on the following:

- i. To inform the exporter that no further action is warranted, based on the facts disclosed, supporting documentation and upon satisfactory review;
- ii. To issue a Show Cause Notice;
- iii. To issue an Adjudication Order on submission of an adverse report on proliferation concerns/information, violation of relevant export control laws and regulations, etc. or for non-submission of mandatory documents within the prescribed timelines or for non-compliance with the conditions of SCOMET policy. The firm shall be liable for action in accordance with the FT(D&R) Act, the Rules and Orders made there under, the Foreign Trade Policy (FTP), and any other applicable laws and regulations.
- iv. DGFT would subsequently apprise the IMWG of the action taken by them in these cases (Regularizing the previous export or suitable action taken pursuant to (i)/(ii)/(iii) above, as the case may be).

APPENDIX No. 10O

Voluntary Disclosure Proforma

**Voluntary Disclosure Proforma for reporting of Non-
Compliance/Violation related to export of SCOMET
goods/software/technology listed in Appendix 3 to Schedule 2 of
ITC(HS) Classification**

[Please refer to Standard Operating Procedure/Guidelines for Voluntary
Disclosure of Non-Compliance / Violations related to Export of SCOMET
Items and SCOMET Regulations]

1. Applicant Details:

i. Name													
ii. Designation in the organization													
ii. Address													
iii. Mobile No.	Country Code	Area Code											
Tele No. with STD code													
iv. Date of Submission of application													

2. Details of the applicant firm

i.	Name of the firm/company/individual	
ii.	Complete official address (including Pin code)	
iii.	A brief profile of the company, including its business activities on a separate sheet	
iv.	Whether Internal Trade Compliance Program (ICP) instituted (Y/N)	
v.	Whether the firm has obtained SCOMET authorisation in the past (Y/N)	
vi.	Previous SCOMET authorisation No. and date/ DGFT reference No. (if any issued during past years)	

3. Details of Non-compliance:

i.	Type of Violation made (refer to SOP) A precise description of the nature and extent of the violation	
ii.	Period of non-compliance (Period between date of violation and date of reporting)	
iii.	Whether Customs or any other enforcement /licensing authority has issued any Show Cause Notice (SCN) or communication - (Y/N)	
iv.	If reply to (iii) is 'Yes', provide a copy of SCN/communication	
v.	Dates of all shipments relating to export violation, mode of export, and port of load/discharge, wherever applicable	
vi.	The circumstances that lead to the violation. Include details of the violation, how the violation was uncovered (a separate sheet may be annexed, if required).	
vii.	For each export shipment in question, a statement as to whether the export took place intentionally	
viii.	Description of steps taken or processes and procedures put in place to ensure that where required, export license will be obtained in future	
ix.	The name and address of the person making the disclosure and a point of contact, if different may be indicated	
x.	SCOMET authorization No. & Date, License exception or description of any other authorization, if applicable; (Past three years)	
xi.	Any other information that the exporter believes is relevant to the purpose of the disclosure	

4. Supporting documents required:

Sl. No.	Name of the document	Attached (Yes/No)
i.	Covering Letter [On the letterhead of the firm signed by a senior officer(not below the rank of export compliance manager) providing brief description of the violation made and stating that all of the representations made in connection with the voluntary disclosure are true and correct to the best of that person's knowledge and belief]	
ii.	Application in ANF 2O proforma through online portal of DGFT, wherever applicable	
iii.	Copy of SCN issued by Customs, wherever applicable or any other communication issued by licensing /enforcement agencies	

iv.	Technical drawings (Information on Product/Technology), where applicable	
v.	Technical Specifications/Data Sheets/Brochures of the product(s), where applicable	
vi.	Relevant Undertakings and Declaration in terms of DGFT's prescribed Public Notices, where applicable	
vii.	Purchase Order/Contract Agreement/Warranty Policy Conditions, where applicable	
viii.	End User Certificate from all the entities in the supply chain, where applicable	
ix.	Export license from country of export, where applicable	
x.	Bill of Entry, wherever applicable	
xi.	Airway Bills, wherever applicable	
xii.	Shipping Bills/ Invoices, wherever applicable	
xiii.	Bills of Lading, where applicable	
xiv.	Export/Re-export Licence(s) from DGFT, where applicable	
xv.	Copy of Master Service Agreement (MSA)/ Contract with the foreign company and the Indian Subsidiary where applicable	
xvi.	A self-certified copy of the ICP of the company or of the parent company being adopted by Indian subsidiary; where applicable	
xvii.	License Exemption/Exception proof & validity, where applicable	
xviii.	Technology Control Plan, wherever applicable	
xix.	Any other documentation that the exporter believes is relevant to the purpose of the disclosure	

5. Contact details of signatory:

Signature of Authorized signatory:

Name (in full):

Designation:

Contact Details (Tele No. / Mobile No.):

Email (also provide alternate email, if any):

Company Stamp/Official seal:

Date:

Place: