



Standard Operating Procedure/ Guidelines for Voluntary Disclosure of Non Compliance/ Violations related to Export

The Directorate General of Foreign Trade (DGFT) has issued guidelines under the Foreign Trade Policy (2023) for voluntary disclosure of non-compliance or violations related to SCOMET (Special Chemicals, Organisms, Materials, Equipment, and Technologies) exports. These procedures, detailed in Para 10.19 of the Handbook of Procedures (HBP), aim to ensure compliance with SCOMET regulations.

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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 10M) 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).