



# Indian Export Controls and Recent Developments and Trends

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# Introduction

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Export control regimes: Laws and regulations that may restrict, prohibit, and require reporting of transactions involving the *movement of tangible and intangible items across borders*, or in some cases, amongst *individuals of different citizenship*.



In recent years, the purpose of maintaining such export control regimes has expanded beyond the traditional purposes of controlling, Nuclear Proliferation, Chemicals, and Biological weapons, etc, either at the multilateral level or at national levels.



Reasons for a rapid expansion globally beyond such traditional purposes are:

Emerging and foundational technologies

US-China trade war

National and economic security

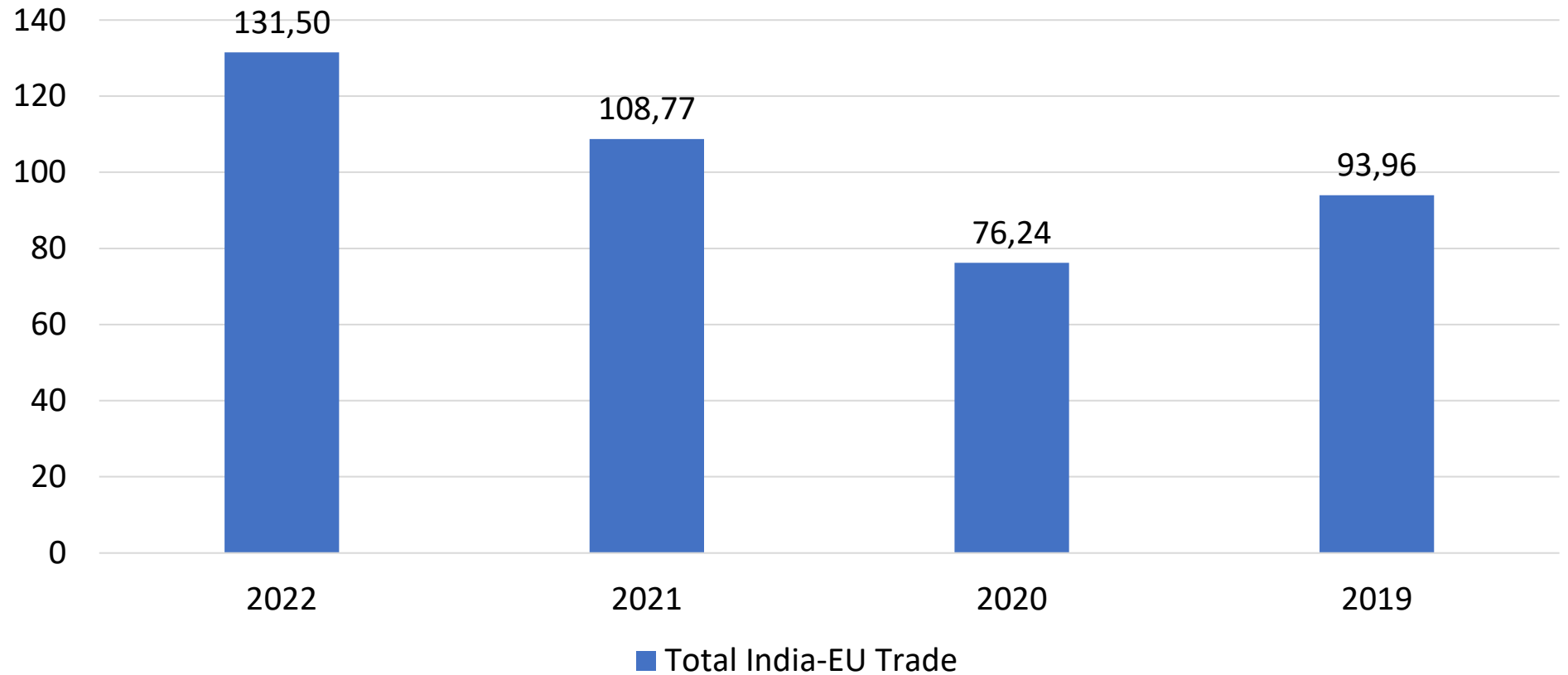
Human rights concerns

Sanctions

# Bilateral Trade – India & EU

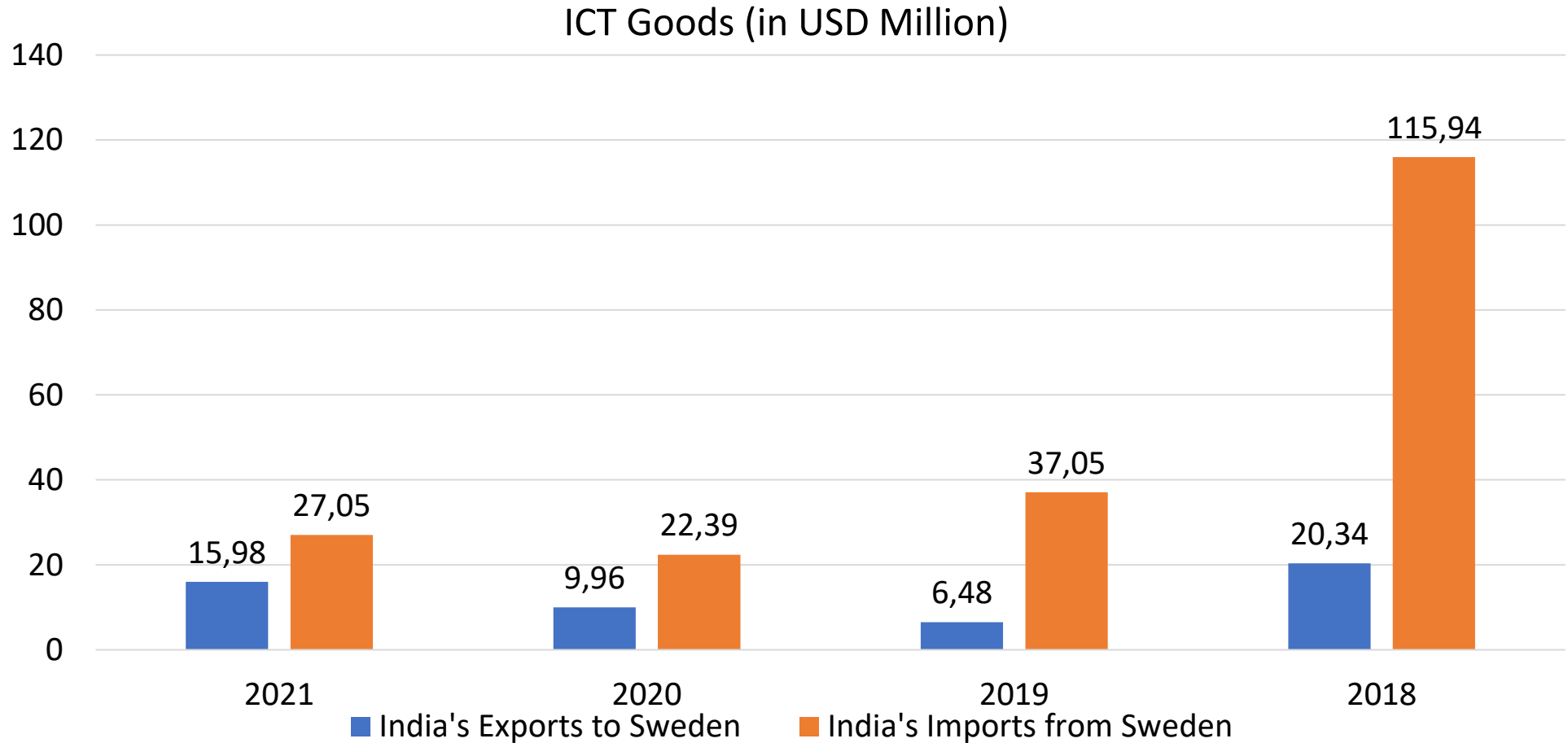
# India's Trade with EU

India-EU Trade (in billion USD)



***Source: Tradestat, Department of Commerce, Government of India***

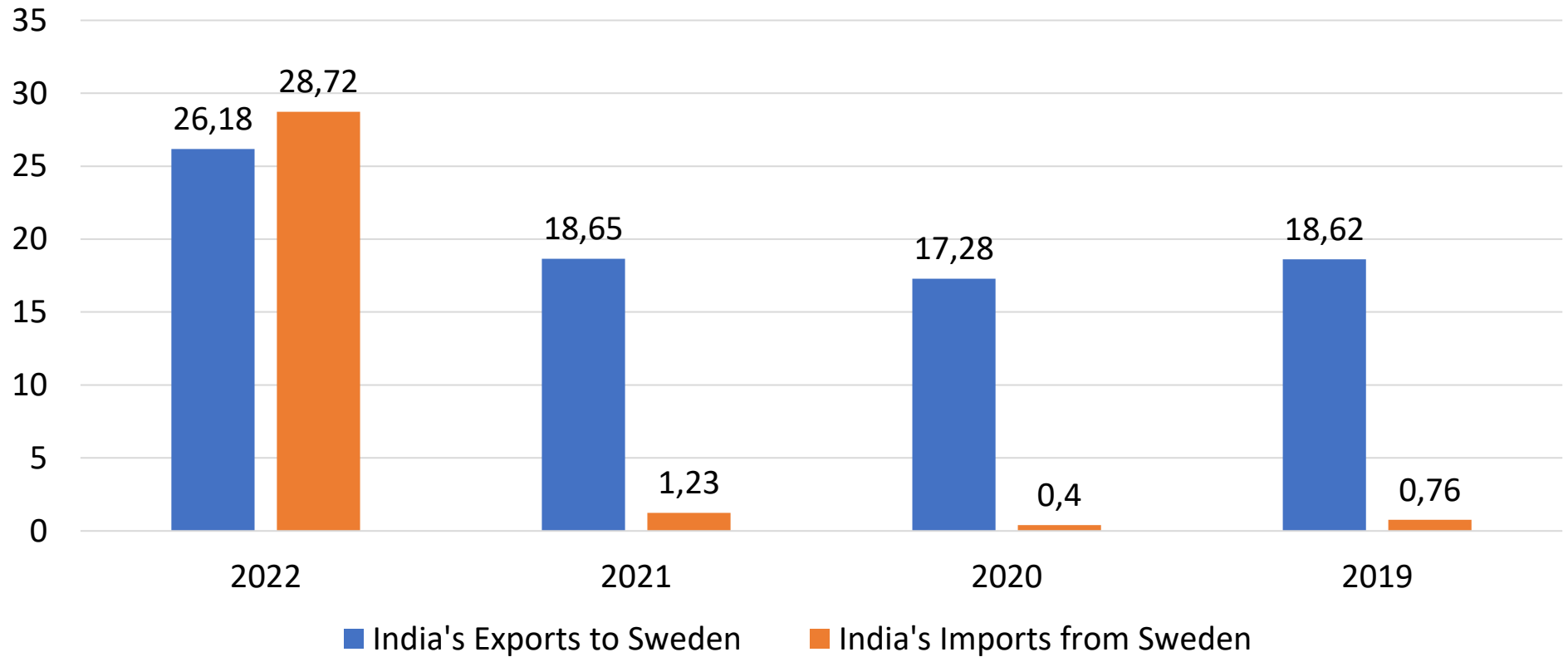
# India's Trade with Sweden



**Source:** UNCTATStat

# India's Trade with Sweden

Aerospace and Defence (in USD million)

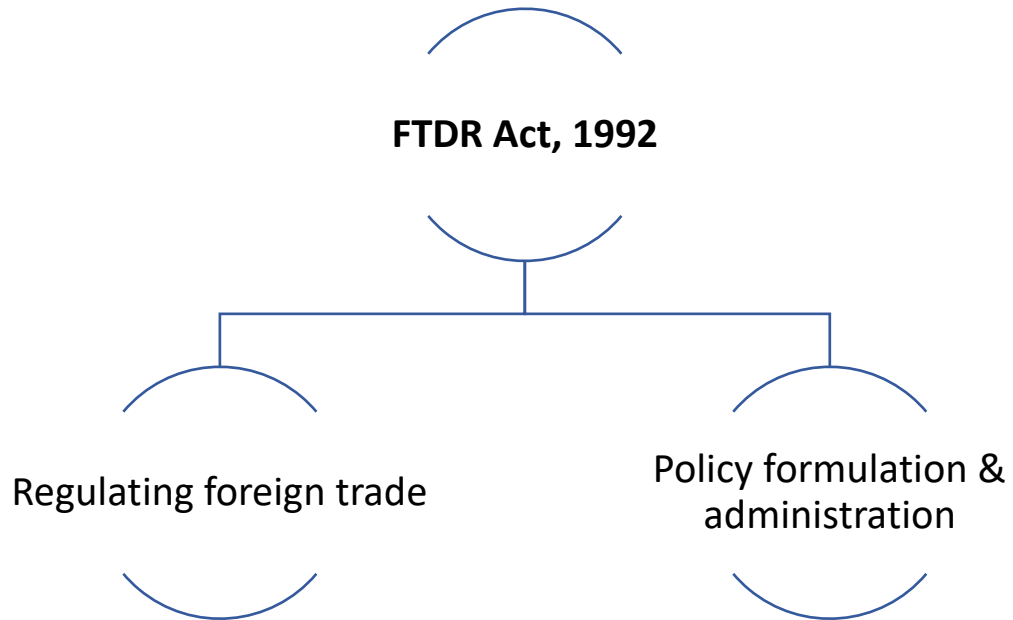


***Source: Tradestat, Department of Commerce, Government of India***

# Background of Regulatory Structure in India

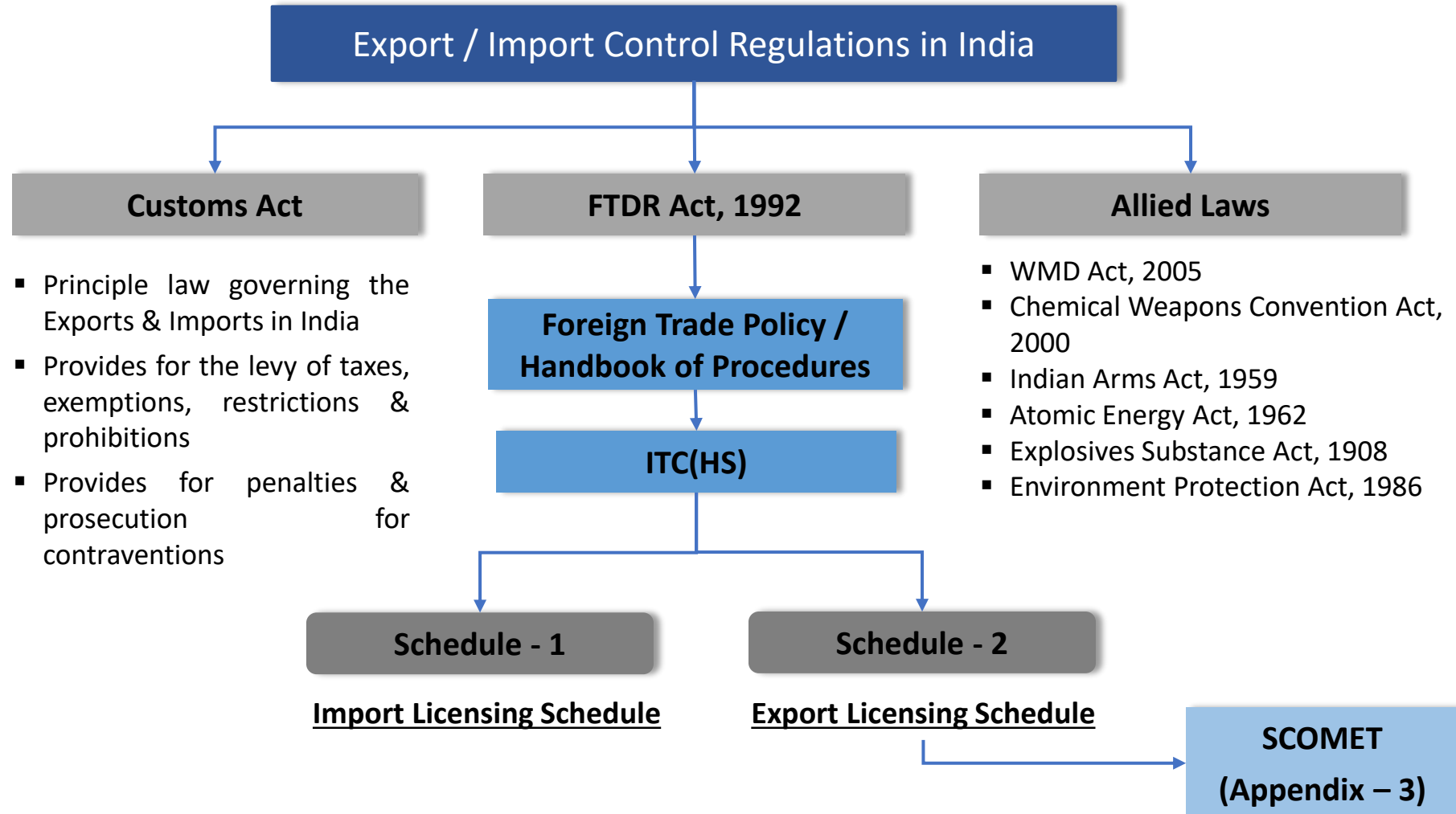


# Enabling Provisions

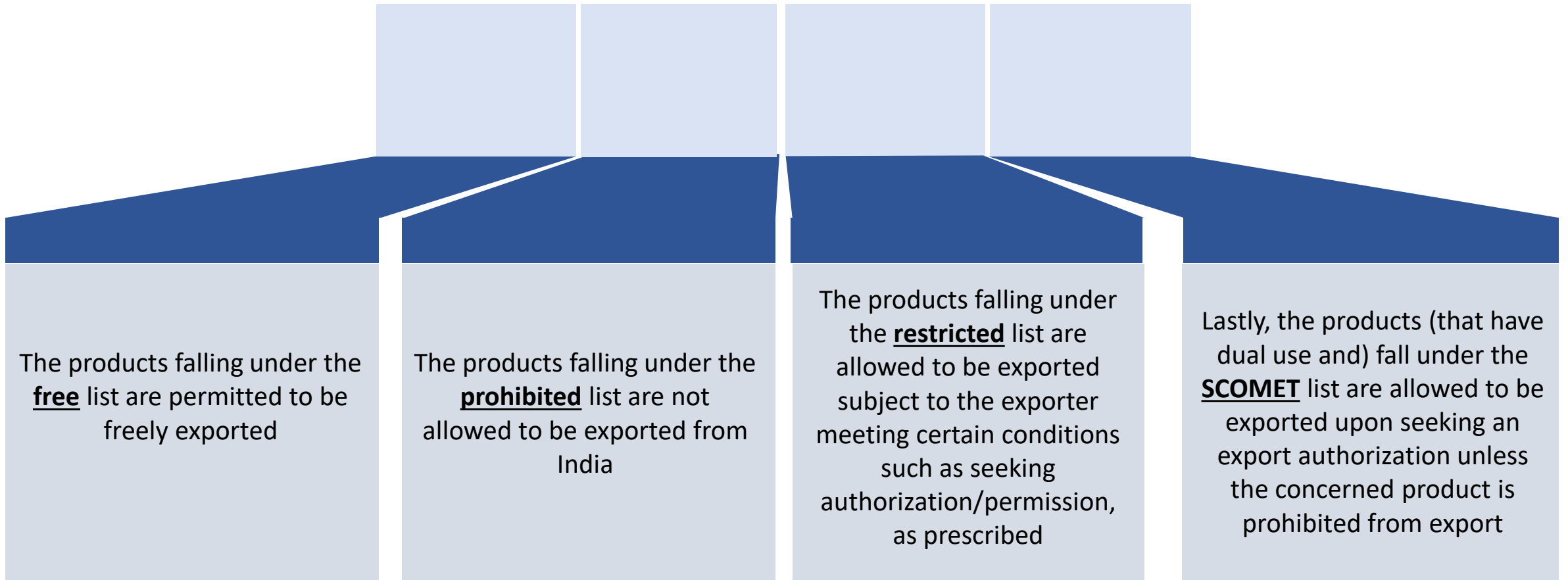


Governing Section	Provisions
Transfer Controls (Section 14B)	No notified goods, services or technology shall be exported, transferred, re-transferred, brought in transit or transhipped except in accordance with the provisions of the FTDR Act, the WMD Act or any other relevant act
Catch-all Controls * (Section 14C)	No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or in their missile delivery systems

# Enabling Provisions



# India's Export Policy



# India's Export Policy

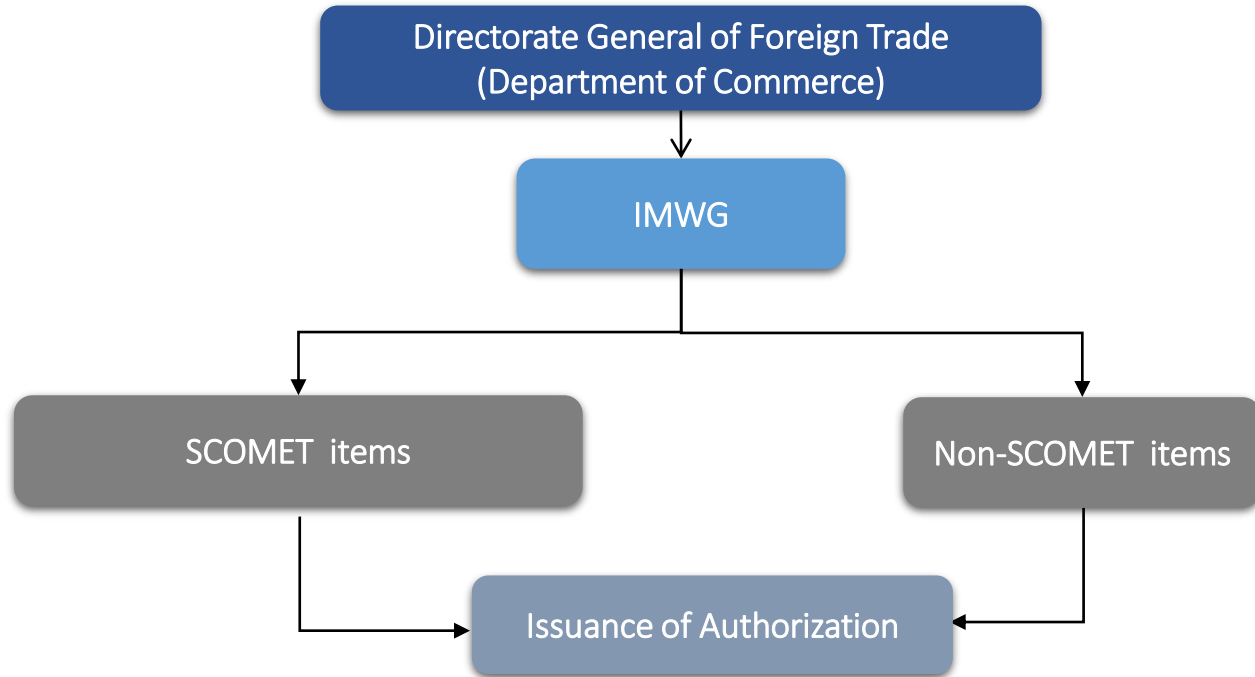


## Country-Specific Prohibitions/Restrictions of Exports

- Prohibition on the export of arms and related material to Iraq
- Restriction on direct or indirect export to Iran of all items, materials, equipment, goods, and technology relating to the proliferation of chemical and biological weapons
- Prohibition on direct or indirect export to the Democratic People's Republic of Korea of certain items

# Administrative Structure (Exports)

# India's Export Policy



**Specific Licensing Authority**

- **Category 0** – Nuclear materials, equipment, and technology:  
Department of Atomic Energy
- **Category 6** – Munitions List:  
Department of Defence Production

The relevant Ministry's support might be needed basis the nature of the export item. Accordingly, IMWG, which is headed by the Additional DGFT, also comprises of representatives of other Ministries / Departments / Organizations of the Government of India

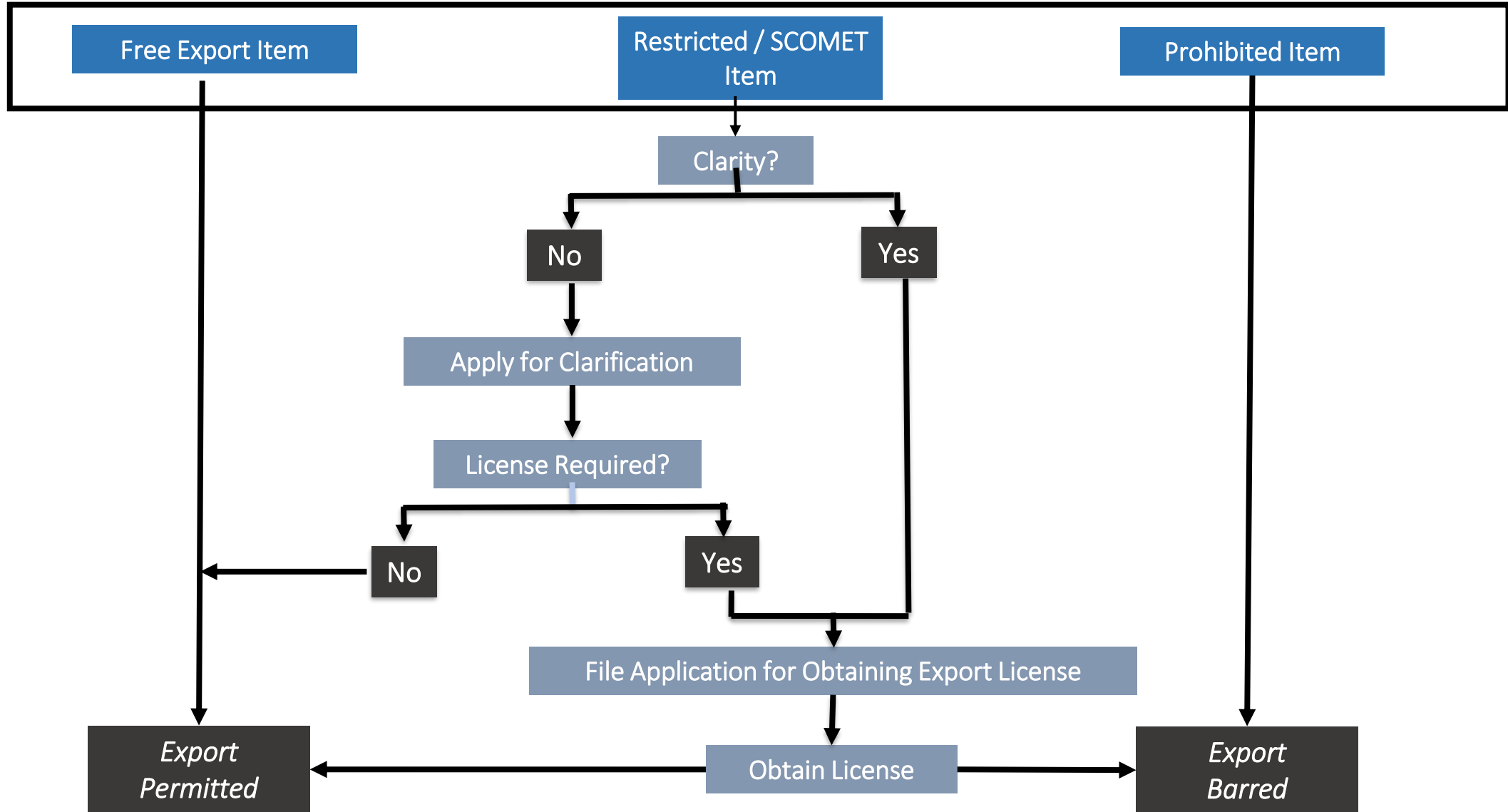
# Process for Obtaining SCOMET License from the DGFT

# SCOMET Categories

Category	Category Description	Licensing Jurisdiction
<b>Category 0</b>	Nuclear materials, nuclear-related other materials, equipment & technology (Including items mentioned in Note 2 of Commodity Identification Number (CIN) of SCOMET List)	Department of Atomic Energy (DAE)
<b>Category 1</b>	Toxic chemicals, agents & other chemicals	DGFT
<b>Category 2</b>	Micro-organisms & toxins	DGFT
<b>Category 3</b>	Materials, materials processing equipment & related technologies	DGFT
<b>Category 4</b>	Nuclear-related other equipment & technology, not controlled by Category 0	DGFT
<b>Category 5</b>	Aerospace systems, equipment, including production and test equipment, related technology, and specially designed components and accessories thereof	DGFT
<b>Category 6</b>	Munitions list (Excluding those covered under Note 2 and 3 of CIN and Subcategory 6A007, 6A008)*	Department of Defence Production (DDP) / Ministry of Defence
<b>Category 7</b>	Reserved	DGFT
<b>Category 8</b>	Special materials and related equipment, material processing, electronics, computers, telecommunications, information security, sensors and lasers, navigation and avionics, marine, aerospace and propulsion	DGFT



# Is Your Product Covered?

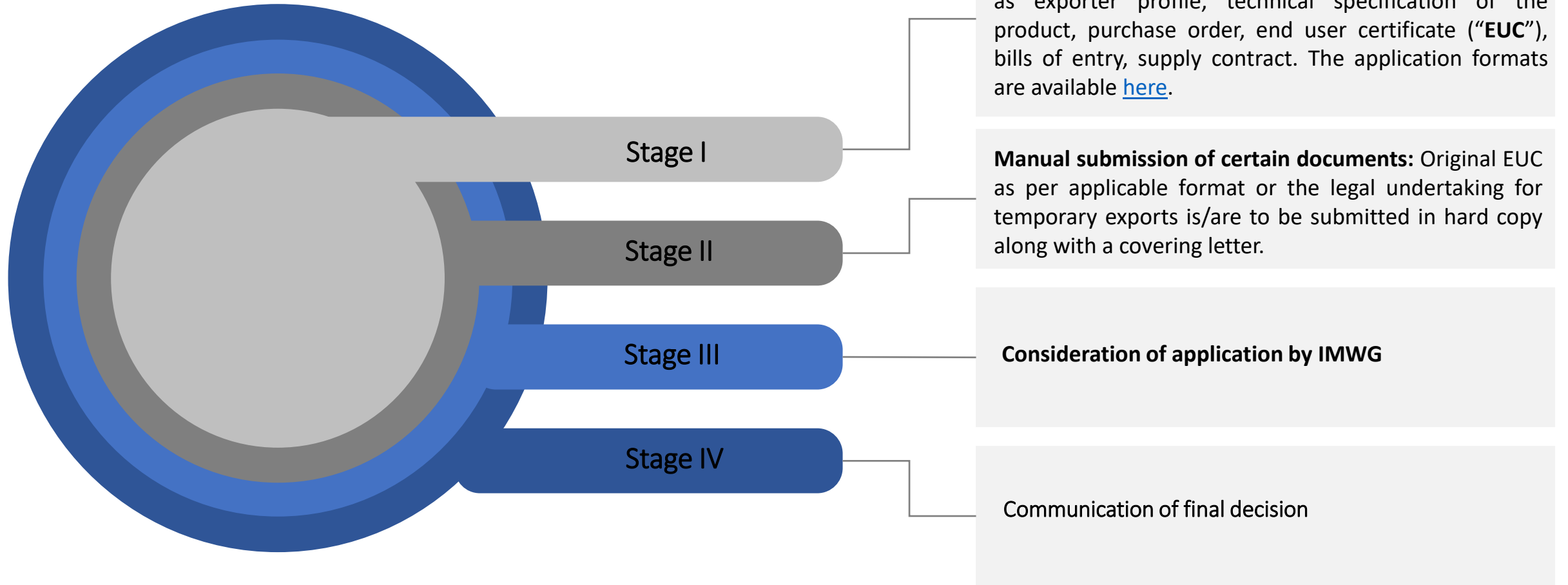


# What is the Classification of Your Product?

## Software

1. SCOMET list (updated as of Aug 2023) contains over **“50” software entries**
2. Software is *inter alia* listed under the following **sub-categories**:
  - i. Category 0: Sub-category 0C
  - ii. Category 3: Sub-categories 3A120, 3B006c, 3B019, 3D004, 3D015
  - iii. Category 4: Sub-categories 4A006b, 4C
  - iv. Category 5: Sub-categories 5A102i, 5A204, 5A217e, 5A302, 5A303, 5B(j), 5B(k), 5C003, 5C004, 5C005, 5C007, 5C010, 5C011, 5C014, 5C023, 5C024
  - v. Category 6: Sub-category 6A021
  - vi. Category 8: Sub-categories 8D101, 8D102, 8D103, 8D201, 8D202, 8D203, 8D301, 8D302, 8D303, 8D304, 8D305, 8D306, 8D401, 8D404, 8D501, 8D502, 8D601, 8D602, 8D603, 8D701, 8D703, 8D705, 8D801, 8D802, 8D901, 8D902, 8D903, 8D904, 8D905 and 8E901

# SCOMET Application Process



# Stage I

## Documents

### Online Filing

**Online filing of an application in prescribed proforma, as applicable (ANF-10A to ANF-10F)**

**Copies of inter alia the following documents are to be submitted with the application:**

1. End user certificate/End use from buyer/consignee/intermediary/end-user entity abroad in the relevant appendix
2. Purchase order/invoice or a document in lieu thereof
3. Technical specification/Technical drawing of the product

# Stage II

## Manual Submission

Original End User Certificates in prescribed format or the legal undertaking for temporary exports is/are to be submitted in hard copy along with a cover letter – to be mandatorily submitted in hard copy to SCOMET Cell of DGFT (HQ)

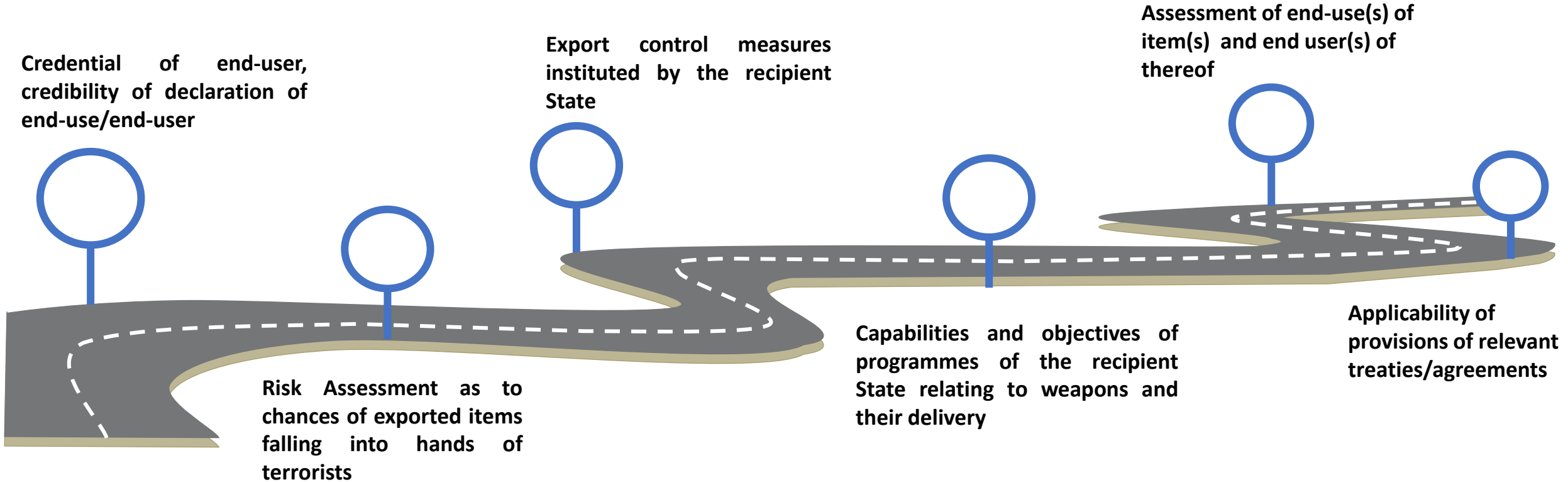
The End User Certificate will indicate the name of the item to be exported, the name of the importer, the specific end-use of the subject goods and details of Purchase Order/Contract

End User Certificate to be in the prescribed format Appendix 10J and to be signed and sealed



# Stage III

*IMWG considers/evaluates the application on the following criteria:*



- The DGFT may also require **additional formal assurances**, as deemed appropriate, including those on end-use and non-transfer, from the State of the recipient
- **Additional end-use conditions** may be stipulated in Authorisations for the export of items including software or technology based on an assessment of proliferation concerns and other factors
- **Inspection/Verification** may be undertaken by the DGFT or authorized representative of the Indian Government

# Timelines

IMWG members to provide comments/views/no objections within 30 days from the date of forwarding of the application by the DGFT; In case of no such comments/views/no objections, cases to be placed before IMWG for decision.

If a case deferred in a meeting and subsequently there is no divergence of views by IMWG members, the authorization to be issued with the approval of the Chairman. Subsequently, the said case has to be placed before IMWG for approval.

In case a decision is not arrived at IMWG, the case may be placed before the Director General for appropriate decision of the granting of authorization.

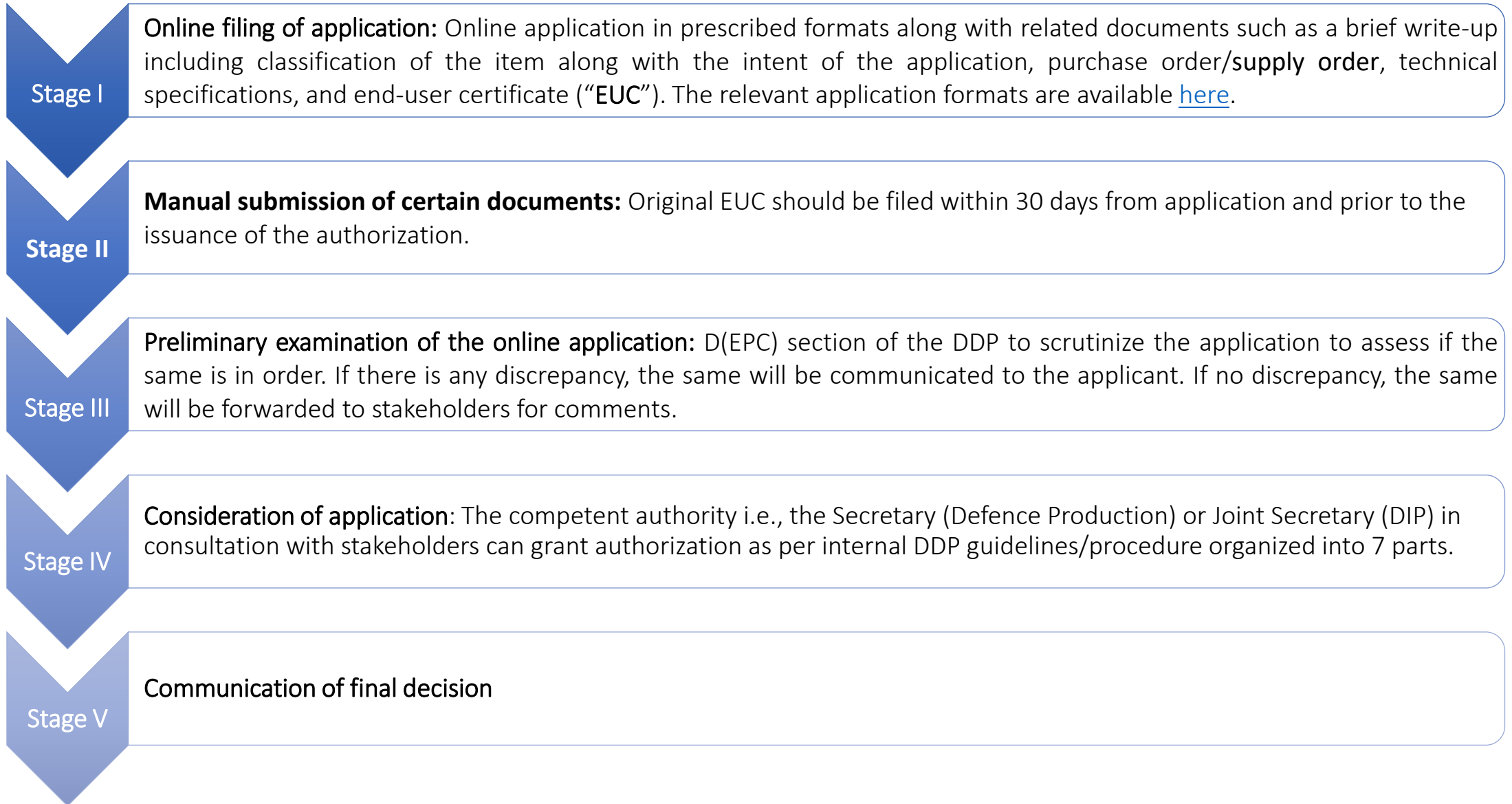
After approval, the authorization to be issued by the SCOMET cell at the DGFT.

The validity of SCOMET export authorisation is for a period of 2 years (3 years in the case of general authorization like GAICT).

# Process for Obtaining SCOMET License from the DDP – Munitions List



# Standard Operating Procedure



# Timelines

4. After approval, the authorization would be communicated online. In the case of denial, DDP shall mark a copy to CBEC/DRI to prevent unauthorized export. An appeal against the denial can be made within 30 days of such denial before the Ministry

1. Preliminary examination of the application to be concluded within 2 working days

3. The validity of authorization is **upto** 2 years from the date of authorization or date of completion of the order/contract, whichever is later depending on the purpose of the export

2. While issuing authorization, the competent authority shall follow the timeframe of (i) 4 weeks for the items under Appendix II and (ii) 2 weeks for the items other than in Appendix II

# Ongoing Compliance



**Keeping records of all the export documents in physical or electronic form for 5 years from the date of export**



**DDP has the discretion to require the exporter to maintain records for a longer duration**



**The Government may verify (for e.g., EUC declarations) before or after the authorization is issued**

# Consequences for Violations

# Consequences for Violations



**Suspension or  
cancellation of IEC and  
export license**



**Penalties up to five times  
the value of the goods or  
services or technology in  
respect of which any  
violation is made or  
attempted**



**Other penalties under  
the Customs Act, 1962  
including fines, seizure,  
confiscation, and arrest**

# Recent Developments

# Recent Developments – SCOMET



New Foreign Trade Policy 2023 (FTP) vide [Notification No. 1/2023 dt. 31 Mar 2023](#) was released in March 2023. It consolidates the **existing laws on export controls in India** under a dedicated chapter i.e., **Chapter 10**



Laws on export controls remain the same under the new FTP – however, the new dedicated chapter now provides exporters with easy access to an overarching framework for export control in India



Likely to simplify the export control law in India and encourage **strategic exports of dual-use items with important trading partners**

# Recent Developments – SCOMET

## Expansion of scope of SCOMET items

*SCOMET list was updated vide [Notification No. 46/2015-2020 dt. 30 Nov 2022](#) and [Notification No. 23/2023 dt. 28 Aug 2023](#) pursuant to changes incorporated under various export control regimes*

**Category 2:  
Micro-organisms, toxins**

**Category 6:  
Munitions List (For e.g., Gun  
mountings designed for arms  
were added)**

**Category 8:  
Special Materials and Related Equipment,  
Material Processing, Electronics, Computers,  
Telecommunications, Information Security,  
Sensors and Lasers, Navigation, and Avionics,  
Marine, Aerospace, and Propulsion. (For e.g.,  
Aircraft" specially designed or modified to be air-  
launch platforms for "suborbital craft" was added)**



# Recent Developments – Voluntary Self Disclosure



**In an important development, upon discovering a violation of export control law, exporters can make a self-disclosure of the same to the DGFT**



**Disclosure allows exporters to protect themselves from stricter penalties, in the event they fail to comply with export control laws**



**Mechanism is place to make disclosure. However, no detailed guidelines on the form of disclosure and the procedure to be adopted by the DGFT**

Recent Developments -  
Providing Further Impetus to Dual-use  
Exports



# General Authorization

Several steps were taken to ease the process of SCOMET licensing

Items other than those under the Munitions list:

- Digitization of filing applications online
- Liberalization of the SCOMET policy for certain goods and technologies through bulk licensing and general authorization provisions
  - General Authorization for Intra Company Transfer **(GAICT)**
  - General Authorization for Export of Chemicals **(GAEC)**
  - General Authorization for Export of Drones **(GAED)**
  - General Authorization for Export after Repair in India **(GAER)**
  - Stock & Sale – Intra Company Transfer
  - Repeat Order Authorization etc.

Items under the Munitions list”

- Open General Export License for [Intra-company Transfer of Technology](#)
- Open General Export License to [Export Parts and Components](#)
- Open General Export License for export of [Major Platforms and Equipments](#)

# GAICT

## Pre-conditions - DGFT

- No export authorization to be granted for UNSC sanctioned destinations or countries
- No export authorization to be granted in case the SCOMET Items are used for activities pertaining to chemical, biological, nuclear weapons, or missiles

## Pre-conditions – Exporter

- Items to be exported/re-exported is under the **Master Services Agreement/Contract (MSA)** between the parties for carrying out certain services (including but not limited to design, encryption, research, development, delivery, validation, calibration, testing, related services, etc)
- The Indian exporter is required to furnish its own certified/approved **Internal Compliance Program (ICP)** or demonstrate compliance to the ICP of the foreign parent company or ICP certified by the compliance manager or certified by any Government agency such as an Authorized Economic Operator
- Exported/re-exported to **certain countries listed in Table 1\***
- The third party i.e., the end user should also be in the countries identified under Table 1
- The Indian exporter is required to declare that the re-exported items would be used for the purposes for which it is intended by the overseas group company.
- **Indian exporters to allow on-site inspection**, if required, by the DGFT



# GAICT – Validity & Ongoing Compliance

## Validity

- Valid for a period of three (3) years from issuance

## Ongoing compliance

- For each export/consignment of export made, the Indian exporter must submit quarterly details of such exports along with a copy of the end user certificate in prescribed formats
- Keeping records of all the export documents in electronic form for 5 years from the issuance of GAICT

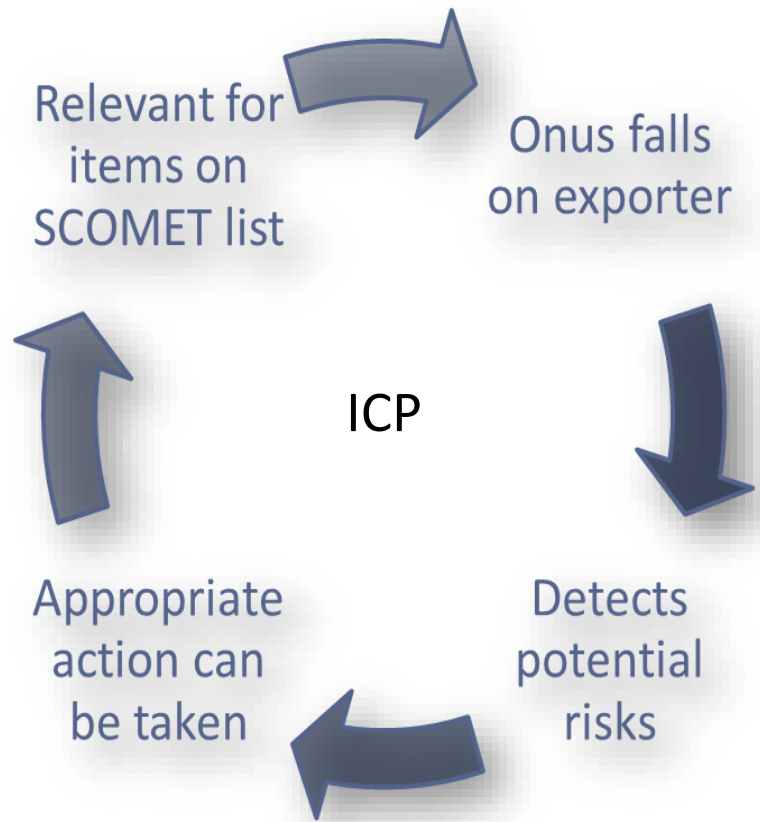
## Suspension/revocation

- Suspended on receipt of merely an issuance or initiation of any inquiry from any of the global regulators including DGFT
- Suspended/revoked on receipt of adverse reports on proliferation concern or non-submission of mandatory reports within prescribed time or non-fulfilment of other conditions
- Suspended/revoked or penalty to be imposed for any failure to submit aforesaid quarterly details

# Internal Compliance Program



# Key Instrument for Ensuring Compliance



## Key Elements of an ICP

- Management Commitment
- Organisation Structure, Responsibilities, and Resources
- Training and Awareness
- Classification and Screening Procedures
- Performance Review and Audit
- Recordkeeping
- Reporting and Corrective Action
- Physical and Technical Security

# Strategic Alignment of Export Controls – Recent Trends



# Strategic Recalibration of Trade and Technology

## India – EU

- **Trade and Technology Council (TTC)**, Feb 2023: TTC was launched to tackle challenges at the nexus of trade, trusted technology, and security and to also strengthen the strategic partnership between India and the EU

## India – US

- **Initiative on Critical and Emerging Technologies (iCET)**, May 2022: iCET was launched with an aim to elevate and expand strategic technology partnerships and defense industrial cooperation between both governments, businesses, and academic institutions of both countries.
- **Memorandum of Understanding (MOU) on semiconductor supply chain and innovation partnership**, Mar 2023: MOU aims to promote cooperation between the two countries in the semiconductor sector and build a more diverse and resilient supply chain for semiconductors.

# Unilateral Sanctions

# Unilateral Sanctions



**Country(s) imposing unilateral sanctions or sanctioning country (USA, EU, and UK etc.)**



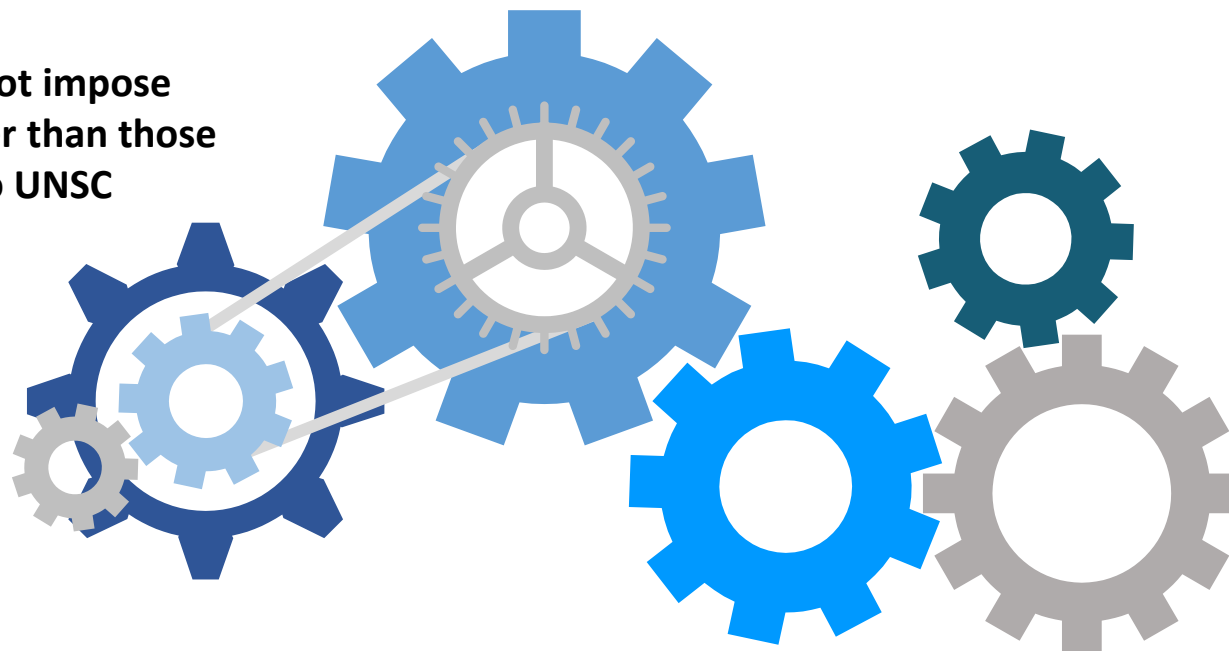
**Country(s) implementing only UNSC sanctions (India, and Middle East, etc.)**



**Sanctioned country(s) and/or entities/organizations/persons from such countries (Russia, Iran, and North Korea, etc.)**

# Businesses to be wary of Export Controls/Sanctions Laws to Ensure Global Compliance

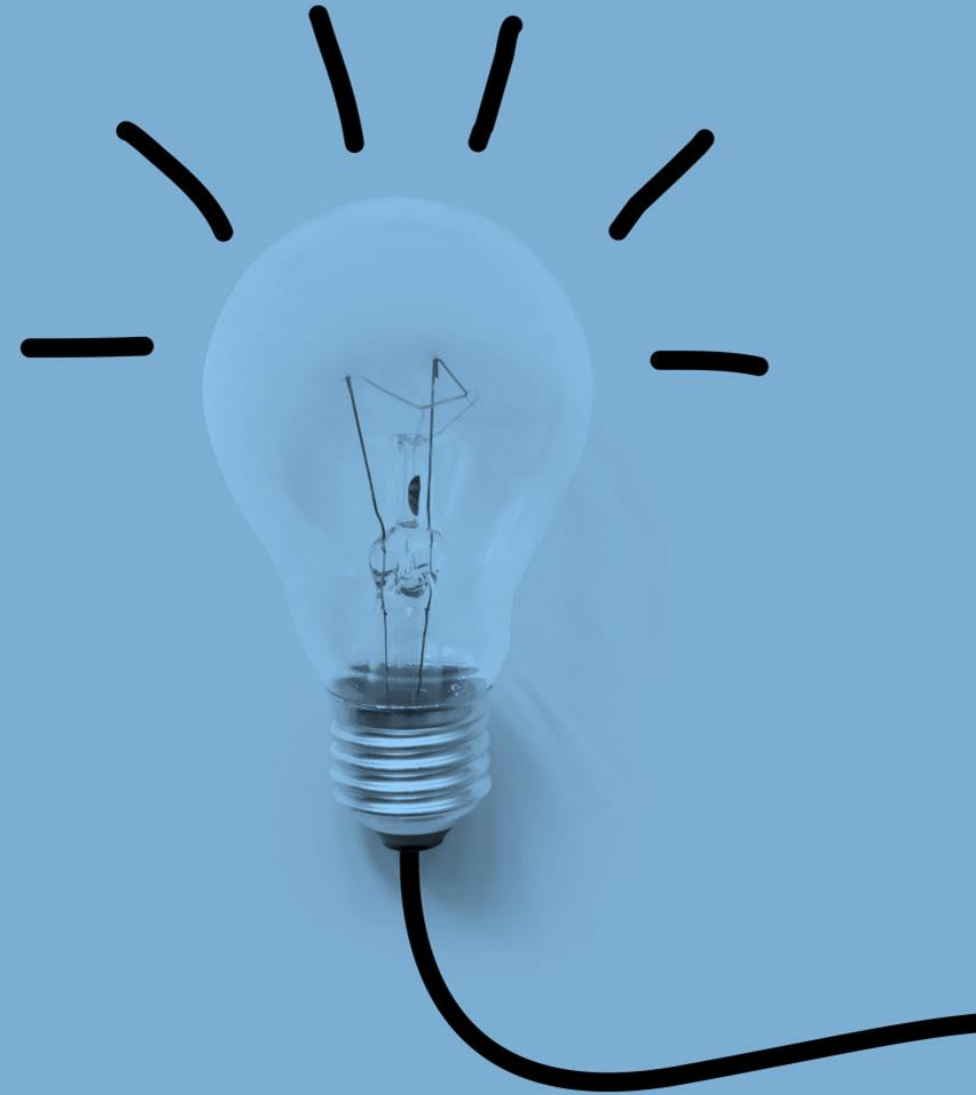
**In summary, India does not impose unilateral sanctions (other than those implemented pursuant to UNSC sanctions).**



**The Indian exporters/re-exporters, though may be in compliance with Indian export control and sanction laws, may still require to take a cautious approach to ensure compliance with export control/sanctions regulations operating in other jurisdictions.**

# Concluding Remarks

- Globally, the evolution and enforcement of export controls (and sanctions) are getting increasingly unpredictable.
- It is not sufficient to conduct basic and essential diligence to ensure compliance.
- Companies looking to utilize global value chains need to adopt evolving processes/systems.
  - Risk and compliance program
  - Know your customer/vendor
  - Tracking flow of exports/imports
  - Internal compliance and auditing system
  - Internal/external training
  - Mitigating strategies
- Such companies also need to evolve anti-fragile strategies.
  - Have contingency plans for contingency plans
  - Plan ahead – look beyond step one, and then look beyond step two
  - Sometimes it is better to overestimate the negative impact from a volatile development and be pleasantly surprised (rather than vice versa)



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