

**Webinar for Cybersecurity Companies & Start-ups on Export Control Framework Related to Intangible Technology Transfer**

*[Date: 6<sup>th</sup> May, 2020]*

<b>Time</b>	<b>Sessions</b>
<b>15:00-15:30</b>	<p><b>Introduction to Export Control Framework Related to Intangible Technology Transfer &amp; Basic Concepts</b></p> <p><i>[Speakers: Vinayak Godse (Vice President, DSCI) and Devika Agarwal (Policy Analyst, NASSCOM)]</i></p> <ul style="list-style-type: none"> <li>• What are dual-use items/technology- e.g. information security products?</li> <li>• What is commonly not regulated- fundamental research, dual use items available in public domain?</li> <li>• Why is export dual use items regulated? Why are export control laws important for cybersecurity companies &amp; start-ups?</li> <li>• Introduction to concepts such as deemed export and intangible technology transfer (ITT)</li> <li>• The Indian Export Control Regime/Legal Instruments in India- Introduction to SCOMET List, Foreign Trade (Development and Regulation) Act, 1992 and WMD Act, 2005</li> </ul>
<b>15:30-16:00</b>	<p><b>Specific Licensing &amp; Compliance Requirements under Indian Export Control Laws</b></p> <p><i>[Speaker: Sonia Gupta (Partner, Ashok Dhingra Associates)]</i></p> <ul style="list-style-type: none"> <li>• Applying for a licence- Procedure laid down in Foreign Trade Policy (FTP) &amp; Handbook of Procedures (HBP), Identification of the correct SCOMET category of the export item, End use cum end user certificate requirement</li> <li>• Record-keeping &amp; reporting requirements imposed by DGFT</li> <li>• Relevant exceptions in the SCOMET List and the Foreign Trade Policy- General Software Note, GAICT</li> <li>• Compliance requirements- Internal Compliance Programme (General elements- training of company staff, screening of end use cum end user, identifying red flags, maintenance of records</li> </ul>
<b>16:00-16:15</b>	<p><b>Introduction to Wassenaar Arrangement</b></p> <p><i>[Speaker: Devika Agarwal]</i></p> <ul style="list-style-type: none"> <li>• <i>What is the Wassenaar Arrangement &amp; its Objectives</i></li> <li>• <i>India became the 42<sup>nd</sup> member of the WA in 2017; SCOMET List is based on the WA Dual-Use List; any changes to the WA List will directly impact national export control regimes</i></li> <li>• <i>Experts Group meeting periodically to review the WA, especially the control lists- countries also submit proposals and non-papers to influence international policy-making; proposals are aimed at controlling new technologies, decontrolling existing technologies or making other changes to the existing controls.</i></li> <li>• <i>Objectives behind WA List revision- controlling proliferation, and more strategically, protecting innovation through control or decontrol of specific technologies</i></li> </ul>

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**16:15-16:30 Policy Engagement with the Government on Export Control Laws**

*[Speaker: Devika Agarwal]*

- *MeitY's Draft Approach Paper on ITT*
- *Inputs on Expert Group Meetings*
- *Raising member concerns, for instance, notification of GAICT forms*
- *Inputs on ITT Handbook and ICP Guide*
- *Most recently, a non-paper to MEA on WA List revision- India's objective is to promote innovation in cybersecurity in the country*

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**Background of Export Control Framework in India**

The [Foreign Trade Policy](#) (FTP) 2015-20 provides that export and import of goods and services are freely permitted unless specifically regulated, prohibited or subject to exclusive trading through the State Trading Enterprises authorised under the policy.

The Special Chemicals, Organisms, Materials, Equipment and Technologies ([SCOMET](#)) List regulates items that are dual-use items having potential for both civilian and weapons of mass destruction (WMD) applications. Export of such items is either restricted, requiring an authorisation for their export, or prohibited. This list was revamped in April 2017. In December 2017, India was admitted to the Wassenaar Arrangement, one of the four multilateral non-proliferation and export control regimes that govern and regulate the international transfer of conventional arms and dual-use goods and technologies. The 'category 8' addition to the SCOMET List harmonised India's export control list with the Wassenaar Arrangement. This added to the list -- Special Materials and Related Equipment, Material Processing, Electronics, Computers, Telecommunications, Information Security, Sensors and Lasers, Navigation and Avionics, Marine, Aerospace and Propulsion. The General Technology Note, General Information Security Note and General Software Note were added to the list to provide guidance in deciphering the categories.

The authorisation for export of items under the SCOMET List is generally issued by the Directorate General of Foreign Trade (DGFT). The DGFT is responsible for formulating and implementing the FTP with the main objective of promoting India's exports.

As part of its outreach efforts, Nasscom in 2017 had organised a workshop on the implications of the SCOMET List for the IT industry. This was attended by representatives from the industry, DGFT and the Ministry of External Affairs. In July 2019, NASSCOM provided [inputs](#) to MeitY as part of MeitY's inputs to DGFT on export controls related to intangible technology transfer (ITT). The revision to FTP for 2020-2025 is currently underway and export control related to ITT is a significant issue both for the industry and the government.

NASSCOM and DSCI have been working closely with different Ministries such as DGFT, MEA and MeitY to voice industry concerns related to export control laws, with the objective that export control laws in the country facilitate the industry in being compliant with their export obligations without impeding ease of doing business.

The proposed webinar on export control laws related to intangible technology transfers is aimed at making cyber-security companies and start-ups (dealing in dual-use items/software/technology) aware about their export control obligations. We also hope that the webinar will generate interest

among such companies and start-ups to contribute to policy discussions on promoting cybersecurity innovation in India through export control regime.

### Reading Material

1. Updated SCOMET List (w.e.f. 24.07.2019) and India's Export Control System- SCOMET; available at: <http://dgft.gov.in/sites/default/files/SCOMEThelp24042019-converted.pdf>
  2. Nasscom's Comments to MeitY on MeitY's draft Approach Paper on ITT Control Mechanism; available at: <https://community.nasscom.in/communities/policy-advocacy/nasscoms-comments-on-the-draft-approach-paper-on-itt-control-mechanism.html>
  3. Text of Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies; available at: <https://www.wassenaar.org/app/uploads/2019/consolidated/WA-DOC-17-PUB-001-Public-Docs-Vol-I-Founding-Documents.pdf>
  4. US Bureau of Industry and Security, Encryption and Export Administration Regulations; available at: <https://www.bis.doc.gov/index.php/policy-guidance/encryption>
  5. US Bureau of Industry and Security, Guidelines for Preparing Export License Applications Involving Foreign Nationals; available at: <https://www.bis.doc.gov/index.php/documents/deemed-exports/709-guidelines-for-foreign-national-license-applications/file>
  6. BDI, 'For a Balanced Reform of the EU Regulation on Dual-Use Export Controls', 10<sup>th</sup> July 2019; available at: <https://english.bdi.eu/article/news/for-a-balanced-reform-of-the-eu-regulation-on-dual-use-export-controls/>
  7. Mark Bromley and Giovanna Maletta, 'The Challenge of Software and Technology Transfers to Non-Proliferation Efforts', Stockholm International Peace Research Institute, April 2018; available at: [https://www.sipri.org/sites/default/files/2018-04/sipri1804\\_itt\\_software\\_bromley\\_et\\_al.pdf](https://www.sipri.org/sites/default/files/2018-04/sipri1804_itt_software_bromley_et_al.pdf)
  8. Wassenaar Arrangement, Best Practices for Implementing Intangible Transfer of Technology Controls (Agreed at 2006 Plenary); available at: [https://www.wassenaar.org/app/uploads/2019/consolidated/ITT\\_Best\\_Practices\\_for\\_public\\_statement\\_2006.pdf](https://www.wassenaar.org/app/uploads/2019/consolidated/ITT_Best_Practices_for_public_statement_2006.pdf)
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