Export and Import of Security Technologies in India: Q&A

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Does India have standards regulating the export of technologies that can be used for surveillance purposes?

Not specifically. Though India has export controls in place for technologies that qualify as 'dual use', and could include technologies with surveillance capabilities, India does not explicitly regulate the export of technologies with surveillance capabilities. Though lacking such regulations, India has applied to become a member of the Wassenaar Arrangement, but has yet to be accepted.[1]

Though India does not specifically regulate surveillance technologies, they do have in place a number of strong export and import regulations for items such as nuclear weapons and India has signed the Safeguard Agreement with the International Atomic Energy Agency and also has civil cooperation agreements with a number of countries.[2]

If India were to become a signatory and member of the Wassenaar Arrangement, they would be committing to implement policies at the national level that would restrict the sale of arms and sensitive dual use items to countries that have been identified for potential abuse, align the Indian export regime fully with international non-proliferation norms and guidelines, and ensure the effective implementation of export controls over restricted items.

Which department and legislation governs exports and imports of security technologies in India?

The procedure for the import and export of security equipment in and out of India is defined, implemented, and regulated by the Directorate General of Foreign Trade (DFGT) which is located within the Department of Commerce and Industry. In India, exports and imports are legislatively regulated by the Foreign Trade (Development and Regulation) Act. No. 22 of 1992. This Act empowers the DFGT to define the items on the Indian Tariff Classification (ITC) list and license the import and export of items on the same. The ITC list is divided into two sections - one listing items for import – and one listing items for export. Additionally, there is separate list for the export of dual use technologies. This list is known as the Special Chemicals, Organisms, Materials, Equipment, and Technologies (SCOMET) list. Depending

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[1]

http://www.idsa.in/idsacomments/UpdateonIndiasMembershipofMultilateralExportControlsRegimes_rnayan_191212.html

[2] http://www.thehindu.com/news/national/india-cant-be-target-of-regime-restrictions-mathai/article3332934.ece

on the technology, security technologies can be listed in the normal ITC list or can fall under category 7 of the SCOMET list: "Electronics, computers, and information technology including information security."[3] The list of SCOMET items was amended and updated in 2013.[4]

Though category 7 of the SCOMET list defines a number of different types of equipment, these are not specified to the same degree as restricted items in the Wassenaar Arrangement. Examples of restricted items under the Wassenaar Arrangement include *'systems, equipment, and components therefore, specially designed or modified for the generation, operation or delivery of, or communication with, "intrusion software"* and *"Mobile telecommunications interception or jamming equipment, and monitoring equipment, therefore, as follows, and specially designed components therefor: 1. Interception equipment designed for the extraction of voice or data, transmitted over the air interface; 2. Interception equipment not specified in 5.A.1.f.1 designed for the extraction of client device or subscriber identifiers (e.. IMSI, TIMSI, or IMEI), signalling or other metadata transmitted over the air interface…"* and *"IP network communications surveillance systems or equipment, and specially designed components therefor, having all of the following: 1. Performing all of the following on a carrier class IP network (e.g. national grade IP backbone): A. Analysis at the application layer b. Extraction of selected metadata and application content (e.g. voice, video, messages, attachments9, and c. indexing of extracted data; and 2. Being specifically designed to carry out all of the following; a. Execution of searches on the basis of 'hard selectors' and b. Mapping of the relational network of an individual or of a group of people"[5]*

India's SCOMET policy includes none of the above.

What is the procedure for obtaining an export licence for the export of SCOMET items?

To obtain a license for export of SCOMET items, an exporter must apply in the prescribed Aayat Niryat Form ([ANF 2E](#) and [ANF 1](#)) along with submitting the necessary documents to Director General of Foreign Trade (Headquarters).

Guidelines and requirements for filing the application form for obtaining a license of the export of SCOMET items include.

1. To qualify for a license for exporting SCOMET items, an organization must have an Importer Exporter Code (IEC), a code issued by the Director General of Foreign Trade, of the organization cannot be on the Denied Entity List.[6] As a note there are 14 circumstances under which an organization can have their Export Import license revoked or suspended and be placed on the Denied Entity List.[7]
2. To apply for an export license of SCOMET items the organization must submit an application in the prescribed format along with the required documentation including:

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[3] http://dgft.gov.in/exim/2000/scomet/scomet2011.pdf
[4] http://dgft.gov.in/exim/2000/not/not12/not_annex3712.pdf
[55] http://www.wassenaar.org/controllists/2014/WA-LIST%20%2814%29%201/WA-LIST%20%2814%29%201.pdf
[6] Denied Entity List, http://dgft.gov.in/exim/2000/cir/Enfor.htm
[7] http://www.cbec.gov.in/customs/cs-act/formatted-htmls/forgntrade-rules.htm

       a. *Purchase Order* from the Foreign Buyer, Consignee and End –User in respect of items mentioned in the form
       b. *End User Certificate(s)*
       c. *Technical Specifications* for the items to be exported.
       d. *Bills of Entry* into the destination country for items exported during the last one year.
       e. *Contract details* if a third party or contractor is involved along with a copy of contract or agreement.

3. While filling the form, the following must be included:-
       a. Category of the items proposed to be exported as per [Appendix 3 of ITC (HS)](#)
       b. Classifications of Export and Import Items should be clearly mentioned.
       c. Port of discharge and route must be clearly defined. Route/mode of transport cannot be changed after export licence has been issued.

Applications for licenses to export equipment on the SCOMET list are evaluated on a case to case basis, but some aspects that the committee takes into consideration include:

a. Credentials of end-user, credibility of declarations of end-use of the item or technology, integrity of chain of transmission of item from supplier to enduser, and the potential of item or technology, including 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, objectives of global non-proliferation, or its obligations under treaties to which it is a State party.
b. Assessed risk that exported items will fall into hands of terrorists, terrorist groups, and non-State actors;
c. Export control measures instituted by recipient State;
d. The capabilities and objectives of programmes of recipient State relating to weapons and their delivery;
e. Assessment of end-uses of item(s);
f. Applicability to an export licence application of relevant bilateral or multilateral agreements to which India is a party.[8]

What is ITC (HS) and why is it important?
 ITC (HS) is a system of classification that India uses to identify and track all trade related transactions. It is an eight digit code that is assigned to each category of imports and exports. All countries have similar classification systems, and the six first digits of the code are for the same commodities across jurisdictions, while each country can add additional details with more numbers. Typically, the ITC codes for imports and exports are not the same.[9] If an individual knows the ITC code of the product or type of commodity that they are searching for, they can easily search for information relating to the export or import of that product.

What are examples of ITC codes for the technologies that can facilitate security or surveillance?

It can be difficult to identify what ITC codes software and technology that can facilitate security and surveillance are exported and imported under as they often are comprised of multiple 'tags' and can fall under different ITC codes depending on the technologies

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[8] http://dgft.gov.in/exim/2000/scomet/scomet2011.pdf
[9] https://usatrade.census.gov/usatrade.nsf/vwRef/TradeClass

specifications. The Centre for Internet and Society was able to understand the ITC code for some security equipment. For example, the importation of interception equipment can be categorized under the ITC code 'specifications. The Centre for Internet and Society was able to understand the ITC code for some security equipment. For example, the importation of interception equipment can be categorized under the ITC code '85176290' and the ITC code '85176990', and are tagged as *"machines for the reception, conversion, and transmission or regeneration of voice, images, or other data, including switching and routing apparatus"*. On the other hand the ITC code "84715000" categorizes internet monitoring equipment as does the ITC code 85177090. All of the above ITC codes are listed on the general importation list and do not require a license. If the ITC code '85176290' is searched for on an import/export portal such as ZAUBA.com – it will show that India has imported telecommunication interception equipment from China (15), the United States (13), and Israel (12) in the past three months.[10]

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[10] https://www.zauba.com/import-interception/hs-code-85176290-hs-code.html