



Background to issuance of Public Notice

63/2017

February 21, 2020

Background:

As far as licensing for SCOMET Items involving repair, replacement and/ or demo items are concerned, the DGFT (SCOMET cell) has had issued two Public Notices viz., **Public Notice No. 36/2015-20** dated 27.09.2019 (**PN 36**) and **50/2015-20** dated 27.12.2019 (**PN 50**) wherein, *inter alia*, special procedures in relation to the export of controlled items, earlier imported for repair and replacement purposes or for demo / display, etc., have been prescribed.

One of the key requirements specified by those Public notices for making exports for such purposes was the submission of an undertaking by the exporter. Although, the Public notices did mention about certain particulars that must form part of the undertaking, yet, no format was prescribed therein. This appears to have led to varied practices *qua* submission of undertakings by exporters.

In order to bring uniformity in the aspect of undertakings to be submitted by exporters of SCOMET items involving repair, replacement, and/ or demo, the DGFT by **Public Notice No. 62/2015-20** dated 18.02.2020 (**PN 63**) has prescribed the format of the Undertaking. In the paragraphs below, discussed briefly are the contents of the format.

Key Takeaways:

- Under the PN 36 and PN 50, the Undertaking was required in the form of a declaration on the letterhead of the exporter company duly signed and stamped by the authorised signatory. However, *vide* PN 63, it has been specifically provided that the undertaking must be in the form of an Agreement between the President of India and the Exporter of the SCOMET Item on a stamp paper of INR 200.
- The Undertaking primarily requires the following details in relation to the exported items:

(i)	Description of the item (including description as per Bill of entry)
(ii)	SCOMET Category
(iii)	ECCN of the foreign country, if applicable
(iv)	Quantity, Bill of Entry and Invoice details

- The Undertaking also includes a declaration by the exporter in relation to the following aspects:

Where the goods are exported for repair/ replacement:

- (i) That they are exported for such purposes;
- (ii) That the goods will be re-imported into India within 90 days (or such period as may be extended by DGFT on application in this regard), if applicable;
- (iii) That the exported goods will not be transferred or disposed off without prior permission of DGFT;
- (iv) That in case defective goods are irreparable, then its evidence of its destruction in the importing country will be submitted within 90 days of such export;
- (v) That there is no change made to the specifications of the SCOMET items after its import into India and such items are exported without any value addition in India (other than such repair/ replacement);

Where indigenous SCOMET items are re-exported after repair/ replacement in India:

- (i) That those items were imported on being found defective and are being re-exported after repair/ replacement;
- (ii) That no change has been made to original characteristics of the SCOMET Items after repair / replacement and items are going back without any value addition;
- (iii) That defective item will be brought back to India within 90 days of its replacement, if applicable;
- (iv) That if defective items cannot be imported into India, then the evidence of its destruction in the importing country will be submitted within 90 days of such replacement;

Where goods are exported for demo/ display/ exhibition/ Tender/ RFP/ RFQ/ NIT purposes:

- (i) That they are exported for such purposes;
- (ii) That there shall be no commercial transaction in the form of buying/ selling/ renting/ leasing, etc. outside India;
- (iii) That the exported item shall be in custody of the party or its authorised person during the period of export;
- (iv) That there shall be no exchange/ disclosure of information which could lead to transfer of technology;
- (v) That exported item will not be re-exported/ transferred to any other destination without prior consent of DGFT;
- (vi) That the items will be brought back to India after completion of the event.

In addition to the above, declaration on the following aspects in all the above three scenarios are also to be provided:

(i)	That the repair/ replacement (in India or abroad) is supported by an underlying purchase order or contractual agreement;
(ii)	That all the terms and conditions prescribed in the PN 36 and PN 50, as the case may be, shall be followed by the exporter;
(iii)	That on return of the repaired/ replaced or damaged/ defective exported item or items sent for demo/ display/ exhibition/ Tender/ RFP/ RFQ/ NIT purposes, DGFT shall be intimated within 30 days of such event along with Bill of entry and export license of such foreign country, if applicable. In this regard, the format of relevant intimation has also been prescribed in this PN 63.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com

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