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## **SCOMET Update:**

**Liberalization of Export Control Policy: Exports of  
Telecommunication-related items, and Information  
Security items**

## Liberalization of Export Control Policy: Exports of Telecommunication-related items, and Information Security items

### Introduction

In furtherance of the powers conferred under the Foreign Trade (Development and Regulation) Act 1992, on 27 March 2024, the Directorate General of Foreign Trade (**DGFT**) issued an amendment in Paragraph 10.08 of the Foreign Trade Policy and Chapter 10 of the Handbook of Procedures of the FTP concerning bulk-licensing.

Prior to the amendment, an export authorization was required for each export/re-export of Telecommunication-related items, and Information Security items falling under category 8A5 of the Special Chemicals, Organisms, Materials, Equipment, and Technologies List (**SCOMET list**). However, post amendment, an Indian exporter intending to export/re-export certain Telecommunication-related items and Information Security items falling under category 8A5 can apply for General Authorization for the Export of Telecommunication items (**GAET**) and General Authorization for the Export of Information Security items (**GAEIS**) respectively.

The amendment mainly obviates the need for a case-to-case basis pre-export authorization for the export/re-export of certain items falling under category 8A5.

### Scope of GAET/GAEIS

A GAET can be obtained for Telecommunication items under category 8A5 Part 1 excluding technology and software falling thereunder and items as listed in Annexure-I to the GAET. As regards GAEIS, it can be obtained for Information Security items excluding technology under category 8A5 Part 2. While the items covered under both policies differ, the eligibility for applying for the GAET/GAEIS license and the post-reporting requirements prescribed under these policies remain the same. Accordingly, the below analysis takes into account both GAET and GAEIS.

### Eligibility for exporting without pre-export authorization

Any Indian entity (**Indian exporter/exporter**) can export without case-to-case pre-export authorization subject to *inter alia* the following:

- The applicant exporter shall submit an online application in the prescribed format along with certain supporting documents:
  - Detailed description of the items sought to be exported.
  - End-user certificate from all the entities in the supply chain.
  - A list of countries where the exports are sought to be made.
  - An undertaking on the letterhead of the applicant stating the following:
    - On-site inspection will be allowed by the applicant, if required, by the DGFT or the authorized representatives of the Government.
    - Items sought to be exported shall not be used for purposes other than those indicated in the EUC.
    - The use shall not be changed not items modified or replicated without the prior consent of the Indian Government.
    - After the issuance of the GAET/GAEIS, if the licensee has been notified by the DGFT or if the licensee knows or has reason to believe that the item may be intended for military end use or has potential risk of use or diversion to weapons of mass destruction or in delivery of their missile system, the exporter would not be eligible for GAET/GAEIS.
    - Action will be taken against the exporter for any misdeclaration.
  - Certified/approved internal compliance program (**ICP**) by the company's compliance manager.
  - Authorized Economic Operator (**AEO**) T2 certification.
  - In the case of re-export, certain additional documents such as the proof of import should be submitted.

The above application and supporting documents would be assessed by the Inter-Ministerial Working Group (**IMWG**) for the issue of GAET/GAEIS.

### Ongoing compliance – after issuance of the GAET/GAEIS and before the actual export

As part of ongoing compliance, the applicant is required to ensure *inter alia* the following after the issuance of the GAET/GAEIS but before the actual export is made:

- On a quarterly basis, the applicant must provide the details of exports made along with the EUC for each export in prescribed formats. The EUC must be prepared for each entity involved in the supply chain.
- Existence of an agreement or a purchase order among others.

### Ongoing compliance – after exports made under GAET/GAEIS

For the exports made under GAET/GAEIS, the Indian exporter shall be required to submit the following:

- On a quarterly basis, the applicant must submit post-shipment details for each export/re-export under the GAET/GAEIS for a period of three years.
- In the case of re-export, certain additional documents such as the proof of import should be submitted.

Any failure to meet these requirements may result in the imposition of a penalty and/or suspension/revocation of GAET/GAEIS.

In addition, the exporter has to keep records of all the export documents in electronic form for 5 years from the issuance of GAET/GAEIS.

### Validity of GAET/GAEIS

- GAET/GAEIS shall be valid for a period of three (3) years from issuance.
- This is however subject to fulfilling the post reporting requirements on a quarterly basis.
- GAET/GAEIS cannot be revalidated as per the HBP.

### Other relevant points/conditions for the issuance of GAET/GAEIS

- GAET/GAEIS shall not be issued in case the SCOMET items are used to design, develop, acquire, or manufacture, possess, transport, transfer, and or used for military applications, explosives, chemical biological, nuclear weapons, or missiles capable of delivering weapons of mass destruction and their delivery system.
- GAET/GAEIS shall not be granted for the countries/entities covered under the UNSC embargo or sanctions list, or on assessment of proliferation concerns or national security and foreign policy consideration, etc.
- In case of an amendment to the list of countries to the existing list of countries submitted with the application, the applicant must obtain prior permission.
- IMWG has the right to deny the GAET/GAEIS without providing any reasons.

### ELP Comments

Globally recognized for its telecommunications and information security services, India's telecommunication market is the second largest market in the world.<sup>1</sup> The GAET/GAEIS policy serves to bolster this sector, facilitating increased and timely exports while adhering to export control regulations. Notably, unlike the Global Authorization for Intra Company Transfer (**GAICT policy**), the GAET/GAEIS policy does not mandate a pre-condition regarding the relationship between the applicant and the end-user. This progressive approach aligns with the Government of India's (**GOI**) objective of promoting global exports under the "AatmaNirbhar Bharat" initiative.

That said, certain aspects require stakeholders to be vigilant in using the GAET/GAEIS:

- As part of the application process, the applicant is required to provide a list of countries to which the exporter intends to export. After obtaining the GAET/GAEIS, the said list can be amended with the approval of the DGFT. This is a departure from the pre-condition set forth under the GAICT policy (whereunder it requires that the exports should ultimately be made to a specified list of countries under the GAICT policy). While the Indian government has liberalized the number of countries to which exports can be made, it remains to be seen if the

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<sup>1</sup> Indian telecom industry in 2023: Setting on the pathway to global success, December 20, 2023, available at URL: <https://telecom.economictimes.indiatimes.com/blog/indian-telecom-industry-in-2023-setting-on-the-pathway-to-global-success/106138904>

DGFT refrains from granting applications to certain countries on account of national security and foreign policy considerations. Additionally, given that sanctions are in place against certain countries such as Russia, it is critical to note, that while India has no sanctions against Russia, the exporters/re-exporters of direct or indirect exports may be required to take a cautious approach to this behalf to avoid inadvertently violating any of the regulations in the US, European Union, and the UK among others.

- A certified/approved ICP is required to be filed along with the application. Given the heightened geopolitical tensions and the enduring nature of sanctions and export controls, the ICP programs must be automated to adopt best practices – this is considering that nations are seen reinforcing that the sanctions and export controls and their enforcement are here to stay and may continue to evolve owing to the geopolitical landscape. Therefore, it becomes apparent that adherence to international sanctions frameworks is non-negotiable, and businesses and individuals need to adopt strict compliance measures through ICP taking into consideration best practices.
- An AEO T2 Certification issued by the CBIC is another prerequisite for applying for GAET/GAEIS. AEO is a voluntary compliance program and one of the reasons for a company to opt for the same is to be recognized as a safe, secure, and compliant business partner in International trade. That said, given that the process of obtaining an AEO certificate can be time-consuming and that there is a risk that the CBIC may not grant the same, applicants must allocate sufficient time to obtain certification and compile the necessary documentation to seek GAET/GAEIS.
- The powers of the DGFT under the GAET/GAEIS appear to be more constrained compared to other bulk licensing policies in the case of relaxing conditions. While the DGFT previously had broader powers under other policies concerning bulk licensing (e.g. GAICT policy), it appears that the powers have been narrowed down under the GAET/GAEIS - the DGFT under the GAET/GAEIS has to either suspend or revoke the GAET/GAEIS license for non-fulfillment of conditions as set forth under the policy. Accordingly, the applicants are required to adopt stringent processes and allocate necessary personnel to ensure that the pre-license and post-license requirements set forth under the DGFT are met.
- The GAET/GAEIS allows for the suspension or revocation of licenses upon receipt of adverse reports on proliferation concerns or for non-compliance with the conditions set forth thereunder. Yet again, this is a departure from the GAICT policy where the DGFT has the power to suspend the GAICT license if there is merely an issuance or initiation of any inquiry from any of the global regulators including DGFT. It appears that the powers of the DGFT under the GAET/GAEIS are much broader than that which exists under the GAICT, whereby the DGFT can act merely on receipt of an adverse report and decide not to grant GAET/GAEIS. While this may pose immediate risks to businesses, it is expected that Indian exporters would promptly report relevant information to the DGFT, which would assess each case individually before taking action.

In conclusion, the DGFT has been playing an active role in issuing liberalized policies. The GAET/GAEIS is a great and welcome step in the right direction given the geopolitical and economic concerns being felt globally. This policy not only facilitates increased trade opportunities for Indian exporters but also underscores the government's role in supporting businesses during turbulent times.

*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](mailto:insights@elp-in.com) or write to our authors:*

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