

Regulatory Hotline

July 10, 2023

INDIA LIBERALISES DRONES EXPORTS

The Directorate General of Foreign Trade ("DGFT") under the Ministry of Commerce and Industry ("Ministry") has issued a notification¹ ("Notification"), relaxing the norms on the export from India of Drones and Unmanned Aerial Vehicles ("UAVs") for civilian use. This has been accompanied by a public notice ("Public Notice") issued by the DGFT in light of the Notification² amending the DGFT's Hand Book of Procedures 2023.

This is a significant development and an important step towards easing export of drones by domestic players, since previously, UAV exports were categorised under Special Chemicals Organisms Material Equipment and Technology ("SCOMET") list under the ITC(HS) classification of export and import of items.³ With the Notification and Public Notice, export of UAVs of certain categories will be subject to the General Authorisation for Export of Drones ("GAED"). Hence, drone manufacturers and exporters will not be required to apply for a SCOMET license for every similar export shipment. The GAED would be a one-time license valid for three years.

CATEGORY OF DRONES SUBJECT TO GAED

In order to be subject to GAED, the drones / UAVs should qualify for the following:

1. Should not be covered under the categories specified in the Notification;
2. Should have a range equal to or less than 25 km; and
3. Should not deliver a payload of more than 25 kgs.

The amendment is in line with the Foreign Trade Policy, 2023 which aims to facilitate ease of doing business for exporters.

The change has been effected by amending Category 5B (reproduced in the Annexure), which provides for various types of UAVs and UAV systems falling under the SCOMET list such as cruise missiles, drones, remotely piloted air vehicles, autonomous programmable vehicles, and also related equipment, technology or software and specially designed components. The Notification refers to certain categories of UAVs mentioned in Category 5B and provides that these will be exempt from the SCOMET List and instead be subject to GAED. Nevertheless, given the amendments carried out through the Notification, there is a possible contradiction in drafting with respect to the scope of UAVs that come within the purview of the GAED. Category 5B(a)(i), which is within the SCOMET license regime, states "Complete unmanned aerial vehicle systems (including cruise missile systems, target drones, exclusive delivery drones, drones with encrypted/satellite communication, drones with explosive/warhead/electronic warfare payload capability) or any related technology or software." The language is broad enough to cover all kinds of UAV systems, and it is not completely clear which UAVs would remain to be covered in 5B(a)(ii) (the latter would be covered under GAED).

Assuming that this interpretation was not intended, it may need to be clarified that UAVs covered under 5B(a)(i) should be interpreted through the principle of ejusdem generis, or in other words, should be interpreted in line with the illustrations provided. Therefore, UAVs which have do not have military applications should be within the purview of the GAED authorisation. However, once these provisions are seen in practice, the actual scope of this provision should become clear.

PROCEDURE FOR APPLICATION

The applicant exporter would be required to apply for a one-time license under GAED through the SCOMET online portal, and the application will be reviewed by an Inter-Ministerial Working Group ("IMWG"). The application would need to specify inter alia the technical specifications of the UAV, countries where export is proposed, certain undertakings with respect to use of the exported items. Importantly, if the exporter knows, or has reasons to believe, or is notified by DGFT regarding potential military use or use for delivery of weapons of mass destruction, the exporter would not be eligible for GAED.

A GAED would not be issued if the end use is for military applications, explosives, chemical, biological or nuclear weapons or for weapons capable of delivering WMDs. Additionally, IMWG has the authority to reject a request for GAED without assigning any reasons. After authorisation, the applicant will be subject to certain compliance requirements including reporting and record-keeping obligations.

Overall, the amendments reduce compliance requirements for exporters by easing the process of exporting UAVs and drones for civilian use which would no longer require gaining a SCOMET license for every similar export shipment.

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KEY TAKEAWAYS

The Notification and Public Notice should help in streamlining licensing and making UAV exports from India globally competitive. Manufacturers of drones for civilian purposes such as in agriculture, infrastructure surveillance, mapping and surveying, logistics and delivery will get an opportunity to boost their sales turnover. This will also enable Indian manufacturers to compete on the global market. Both existing players and start-ups should benefit as there were reports of businesses not being able to fulfil export orders due to licenses not being granted in time.

However, despite the amendments, some practical challenges may arise when it comes to the finer details of the application for the GAED. For e.g., the end user certificate ("EUC") is required to be filled, signed and stamped, not only by the applicant exporter but all intermediaries and foreign buyers. It is unclear if the EUC will be required prior to issuance of the GAED (as suggested by Paragraph II(b) of the Public Notice, which would mean that the applicant may need to procure EUCs from all the buyers and other intermediaries it anticipates to contract with in the coming 3 years. Moreover, the EUC also requires the applicant to populate the quantity of export, which may be difficult for the applicant to predict. This interpretation is also supported by Paragraph I of the Public Notice, which requires the applicant to submit information in proforma ANF 10G, which also requires details of the consignee and the quantity of the consignment, among other details. This may prove to be difficult since the exporter may not be able to predict its buyers and outgoing consignments for the next 3 years. Moreover, if additional buyers are required to be added, it is unclear how this will be done – whether through updating the existing application or through a separate GAED.

Further, the fact that the IMWG can reject an application for a GAED without assigning any reasons should be reconsidered. A reasoned order is critical not only to avoid arbitrariness in grant of GAED but also to provide transparency and business certainty.

Overall, the amendments are progressive and are also in line with an overall push towards "Make in India", and incentivising manufacturing and investments into the UAV sector. Moreover, the easing of exports should boost local manufacturing and cross border technology collaborations which will only foster the growth of the Indian UAV industry. These amendments, coupled with a broad easing of regulations in 2021, should translate to significant ease of doing business. However, practical challenges of naming buyers, predicting quantities of exports, etc. would need to be evaluated.

– Aniruddha Majumdar & Huzefa Tavawalla

You can direct your queries or comments to the authors.

Annexure – Category 5B under SCOMET list

5B Unmanned aerial vehicle systems including cruise missiles, drones, remotely piloted air vehicles, autonomous programmable vehicles, related equipment, technology or software and specially designed components therefor:

(a) i. Complete unmanned aerial vehicle systems (including cruise missile systems, target drones, exclusive delivery drones, drones with encrypted/satellite communication, drones with explosive/warhead/electronic warfare payload capability) or any related technology or software.

Note: Cruise missiles (regardless of their end use) and their related systems will be classified under sub-category 6A004 (Munitions List)

ii. Unmanned aerial vehicle systems including reconnaissance and other drones, remotely piloted air vehicles and autonomous programmable vehicles [not specified above at (a)]

(b) Complete unmanned aerial vehicle systems having an autonomous flight control and navigation capability or capability of controlled flight out of the direct vision range involving a human operator, designed or modified to incorporate an aerosol dispensing system/mechanism, with a capacity greater than 20 liters.

Technical Note: For the purposes of this entry, an aerosol consists of particulate or liquids other than fuel components, by-products or additives, as part of the payload to be dispersed in the atmosphere.

Note: This entry does not control unpowered airborne vehicles such as gliders, hot air balloons etc.

1. Associated launchers and ground support equipment;
2. Related equipment for command and control.
3. Light weight Turbojet and turbofan engines (including turbo compound engines).
4. Ramjet, Scramjet, pulse jet, combined cycle engines, including devices to regulate combustion, and specially designed components.
5. Sating, arming, fusing and firing mechanisms for weapons or warhead.
6. Production facilities and Production equipment specially designed for equipment or materials for 5B.
7. Technology, for the development, production or use of equipment, materials or software specified for 5B.
8. Software, for the development, production or use of equipment or materials specified for 5B.
9. Software which coordinates the function of more than one subsystem, specially designed or modified for use in the systems specified in 5B.
10. Turboprop engine systems' specially designed for the systems in 5B.a, and specially designed components therefor, having a maximum power greater than 10 kW (achieved uninstalled at sea level standard conditions), excluding civil certified engines.

Technical Note: For the purposes of this entry, a turboprop engine system" incorporates all of the following:

1. Turboshaft engine; and

2. Power transmission system to transfer the power to a propeller

Note: Unmanned aerial vehicle systems including drones, remotely piloted air vehicles and autonomous programmable vehicles specified at 5B(a)(ii), and not covered under SCOMET Categories/sub-categories 5B(a)(i) & 5B(b), 6A010, 8A912, and capable of range equal to or less than 25 km and delivering a payload of not more than 25 kgs (excluding the software and technology of these items), will be subject to the General Licensing procedure under General Authorisation for Export of Drones(GAED) policy.

¹Notification No. 14/2023 dated June 23, 2023, available at: <https://content.dgft.gov.in/Website/dgftprod/24ea669e-2e1a-4f53-b9d3-20f0dc1f60a6/Notification%20No.%2014%20English.pdf> (last visited on June 30, 2023).

²See <https://content.dgft.gov.in/Website/dgftprod/4127ff46-d3a2-435c-ba4d-8df14f609dbb/Public%20Notice%2019%20English.pdf> (last visited on June 30, 2023).

³Category 5B, Appendix 3 (SCOMET List), Schedule 2 of Indian Trade Classification (Harmonised System) Classification of Imports and Exports. Available at- https://content.dgft.gov.in/Website/append3_0.pdf

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