



SCOMET – DOMESTIC IMPLEMENTATION

- 1. Why strategic trade control?**
- 2. Legal Framework**
- 3. Policy Framework**
- 4. Procedural Framework**
- 5. Enforcement – Penal provisions**

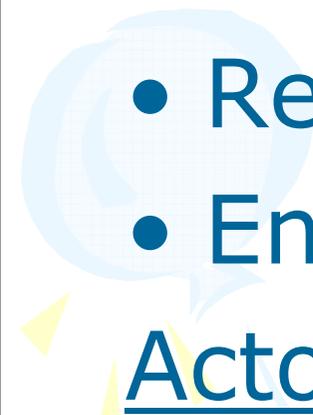
Why Strategic Trade Control (STC)

- Concern over growing proliferation risks due to development of WMD technologies and WMD Cooperation.
- Facilitate high-tech trade and technology transfer.
- Global security and non proliferation.
- Need for a robust strategic trade control system.



Components of STC

- Legal
- Licensing
- Regulatory framework
- Enforcement



Actors:

- Not only Governments but Industry and Trade at large in Global Security chain.
- 



Components of STC

Other Actors:

- Academia, Researchers, Students
 - Voluntary organisations.
 - Scientific and R&D community.
- 
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Legal Framework

- UNSCR 1540 (2004) is the Founding International Legal provision.
- In the Municipal System, Principal legal basis of Strategic Trade Control in India is FT(D&R) Act, 1992 and FT(D&R) Amendment Act, 2010.
- Other legal authorities are WMD Act, 2005 and Atomic Energy Act, 1962



Legal framework

- Sec. 3 (2) of the FTDR Act empowers the Central Government to prohibit, restrict, or otherwise regulate the import or export of goods or services or technology.
- Chapter IV A inserted by FTDR (Amendment) Act, 2010, provides that in regard to controls on export of specified goods, services and technology, the weapons of Mass Destruction and their Delivery Systems (Prohibition of unlawful



Legal framework

Activities) Act, 2005 shall apply to export, transfer, re-transfer, brought in transit, transshipment of and brokering in specified goods, technology or services.

- Chapter IV A of the Act provide for transfer controls and catch all controls
- **Section 14C- Catch-all controls**

No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or



Legal framework

manufacture of a biological weapon, chemical weapon, nuclear weapon etc.

- **Section 14E** of the Act makes provision in regard to offences and penalties for infringement.
- The penal provisions of the Act also include **suspension or cancellation of IE Code** of the person who imports or exports specified goods services or technology in contravention of any provision of the Act or any rule or orders made thereunder.



Policy Framework

- Para 2.1 of FTP provides that Export and Import shall be free except where regulated by FTP or any other law in force.
- Dual use items having potential for use in WMD Programme are called SCOMET (Special Chemicals, Organisms, Materials, Equipments and Technologies).



SCOMET

DGFT

Dual-use items are called SCOMET

S	SPECIAL
C	CHEMICALS
O	ORGANISMS
M	MATERIALS
E	EQUIPMENT
T	TECHNOLOGY

SCOMET List – Appendix 3 to Schedule 2 of
ITC(HS) Classification of Import & Exports



Policy Framework

- Export of SCOMET items is restricted. Their export is permitted only against an authorisation/licence.
- Export restriction and licence applies to SCOMET exports from SEZ as well.
- Appendix 3 to Schedule 2 of ITC (HS) classification contains the list of SCOMET items export of which is regulated and requires an authorization.



Items classified in **Eight** categories

SCOMET List

Eight categories of items

Category0 Nuclear materials, nuclear-related other materials, equipment and technology

Category1 Toxic chemical agents and other chemicals

Category2 Toxic chemical agents and other chemicals

Category3 Materials, Materials Processing Equipment, and related Technologies

SCOMET List

Category4 Nuclear-related other equipment and technology, not controlled under Category 0

Category5 Aerospace systems, equipment, including production and test equipment, and related technology

Category6 (Reserved)

Category7 Electronics, computers, information technology including information security

- The SCOMET list has been updated and harmonised with multilateral control list from

The background features a white page with a thin black border. On the left side, there are decorative elements: a green balloon at the top, a blue balloon in the middle, and a purple balloon at the bottom. Yellow streamers and small yellow triangles are scattered around the balloons. The text is centered and written in a blue, sans-serif font. The URL is underlined and colored purple.

time to time, for example, vide Notification No. 37 (RE-2012) dated 14.03.2013 and Notification No. 26(RE-2013) dated 03.07.2013. The updated list is available in the website address: www.dgft.gov.in



Policy framework

- ITC (HS) contains item wise export and import policy regime. It is aligned with international harmonized system of goods nomenclature.
- Schedule 2 of ITC (HS) gives the Export Policy regime.
- Any item, the import or export of which is restricted, can be imported or exported only through an authorization /permission/license. SCOMET being restricted item requires an authorisation for export



Supply of SCOMET items from DTA to SEZ

- No export permission required
- However, all such supplies will be reported to Development Commissioner of SEZ by the supplier in the prescribed proforma and an Annual Report of all such supplies from DTA to SEZ shall be sent to SCOMET Cell in DGFT (Hqrs.)

Export of SCOMET items from SEZ/EOU to outside the country

- Export permission/Licence required. (Rule 26 of SEZ Rules)



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LICENCING AUTHORITY – SCOMET Items

SCOMET Category	Licencing Authority	
0	D/o Atomic Energy	Export of items under this category regulated by Atomic Energy Act 1962 & rules/notifications
1, 2, 3, 4, 5, 7	DGFT	
6 (reserved)		Reserved for munitions – to be notified

Procedure

- Application for SCOMET Export Licence

- ✓ To be filed On-line in Prescribed Form - **ANF 2E**
- ✓ All columns to be filled completely & correctly
- ✓ Required documents to be enclosed
 - ✓ List of documents given at the end of ANF-2E
- ✓ Complete application to be submitted

DGFT(Hqrs.), Udyog Bhawan, New Delhi



Documentation

- End User Certificate
- Purchase Order/Contract
- Bills of Entry of previous exports
- Technical Specification of the item

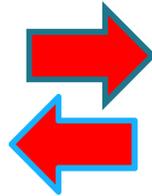
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Documentation

- EUC is the critical document. EUC must indicate name of the item of export, name of the importer, specific end use of the product and details of Purchase Order.
- Additional clause in EUC – non-transfer, from the state of the recipient.



LICENCING



* Members of IMWG

- DGFT(Chair)
- M/o External Affairs
- DRDO/M/o

Defence

- D/o Atomic Energy
- ISRO/D/o SPACE
- NA, CWC
- D/o Chemicals
- D/o Defence

Production

- D/o Bio-Technology
- Intelligence

Agencies

* IMWG-Inter Ministerial Working Group

- ✓ Standing body
- ✓ Meets every month
- ✓ Works by consensus
- ✓ NOCs required from all members



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IMWG Procedure

Evaluation of Applications –Criteria before IMWG

- Credentials of the **end user**
- Credibility of the **stated end-use**
 - Whether the items being exported in line with the business activity of the end user
 - Chain of transmission of item from supplier to in-user
- **Risk Assessment**
 - Possibility of diversion for any mala fide use i.e. development/manufacture of WMD etc.
 - Possibility of the items ending up in wrong hands - non-State actors, terrorists etc.

General criteria/Guidelines - Para 2.49 of Handbook of Procedure, Vol. I



Guidelines for Exporters - Filing of Application

- Correctly and completely filled application to be filed
- Guidelines given at the end of the form must be adhered to
- No PO Box address of the consignee to be accepted
- **Purchase Order (PO)**
 - POs from all parties involved must be submitted
 - PO in language other than English – English translation to be submitted
- **End User Certificate (EUC) in the Prescribed format is the critical/essential document.**
- Details in ANF 2E, EUC & PO should tally



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Guidelines for Exporters - Filing of Application

END USER CERTIFICATE (EUC)

- ✓ EUC strictly In prescribed format – Appendix 36
- ✓ On the letter head duly signed and with seal of the company
- ✓ EUC from all parties involved in the chain of supply
- ✓ From Foreign buyer, Consignee, End User, from any other party involved
- ✓ EUCs must reflect logical flow of items
- ✓ EUCs must reflect correct details of the relevant POs

Complete application in proper format with all required documents facilitates faster processing at DGFT



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Guidelines for Exporters – Due diligence

Before undertaking to deal with the Foreign buyer/Importer/End user

- ✓ Know the line of activity of the foreign buyer/importer/end user
- ✓ If possible, visit works of the end user
- ✓ Check that items are within normal requirement of operations/are in line with business activity
 - Qualitatively & quantitatively



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ENFORCEMENT



ENFORCEMENT - Customs

- Primary enforcement agency is customs.
- To make sure items being exported in accordance with Export Policy
- Prosecution for violation of export policy under Customs Act
- Violation, if any , reported to DGFT



ENFORCEMENT – DGFT

Penal provisions under FT (D&R) Act for violation of Foreign Trade Policy and Export Control provisions.

- Suspension/cancellation of 'IE Code' - Sec. 8
- Penalty up to 5 times the value of the goods exported - Sec. 11
- Criminal prosecution for unauthorised export of SCOMET items.



ENFORCEMENT

WMD Act 2005

- Prohibition
 - on manufacture/possession/acquisition of WMD
 - on export of material/technology which can be used for WMD
 - on brokering in material/technology which can be used for WMD
 - on transfer to non-State actors, terrorists
- Provisions more stringent
- Civil/criminal prosecution for violation
 - Imprisonment from five years to extending up to life imprisonment
 - Penalty of up to twenty lakh rupees for unauthorised export



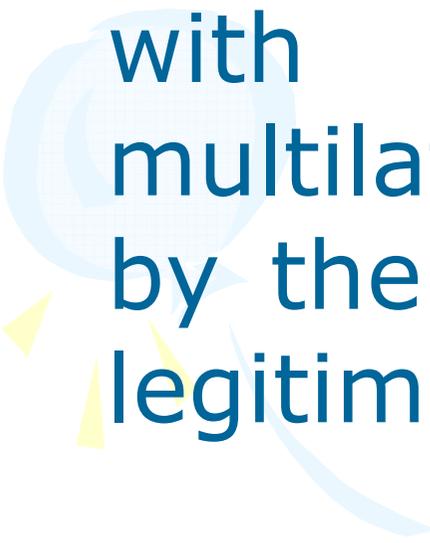
India's Stakes in STC

- India at present is on growth track and is currently building its economic and trade capacities. At this juncture, any extra control vis-à-vis multilateral STC regimes is not acceptable to the Stake holders including the Government.
- A good section of India's trade and industry is clamouring for reforms in



India's stakes

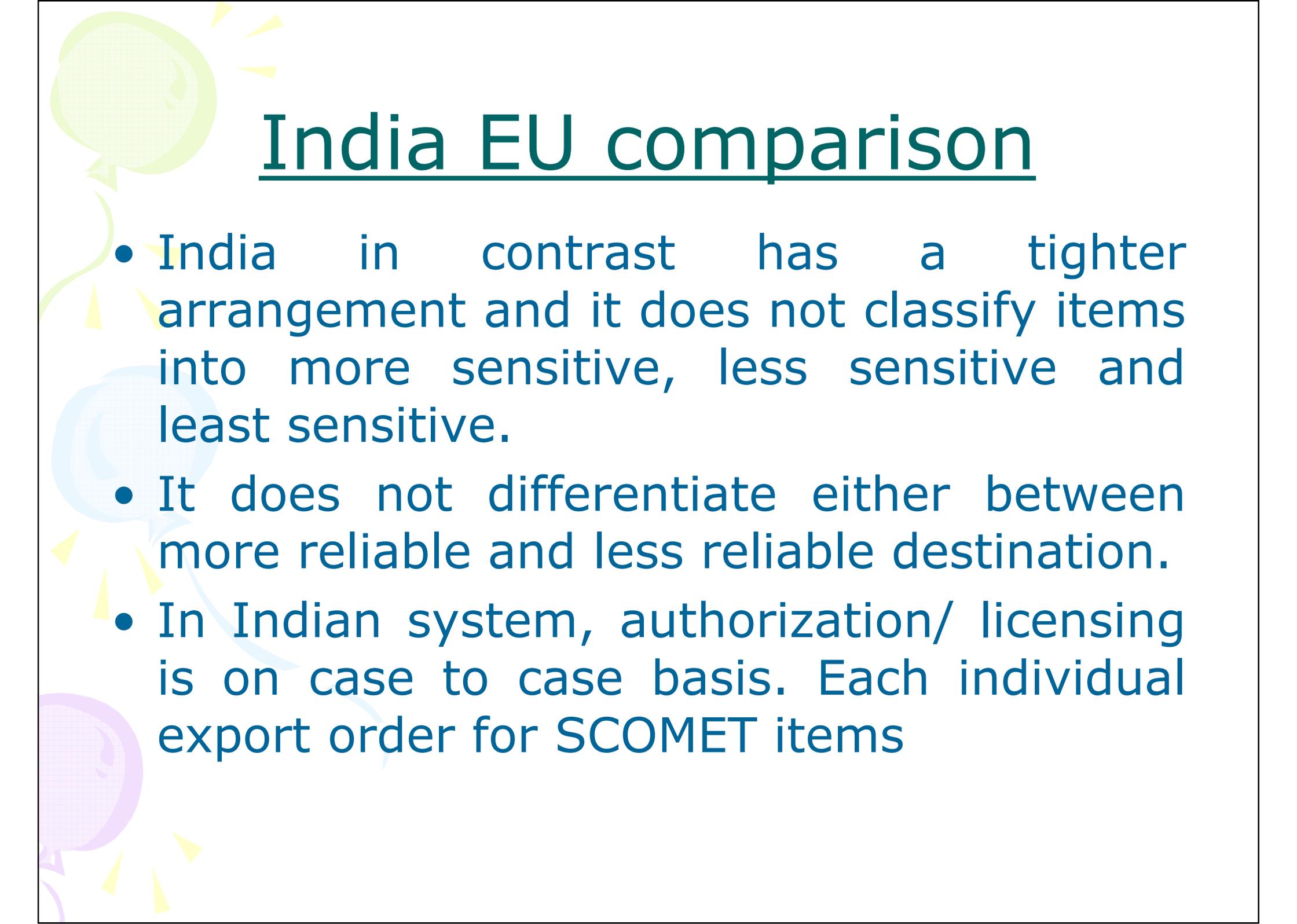
SCOMET export control regime, at least to rationalize it and keep it at par with multilateral regimes. Any multilateral plus restriction is resisted by the economic actors. It is fair and legitimate.





India EU comparison

- EU has a much more liberal export control and licensing regime compared to India.
 - EU system provides for General Export authorisation- both EU as well as National level.
 - Simplification of regime for least sensitive items and more reliable destinations.
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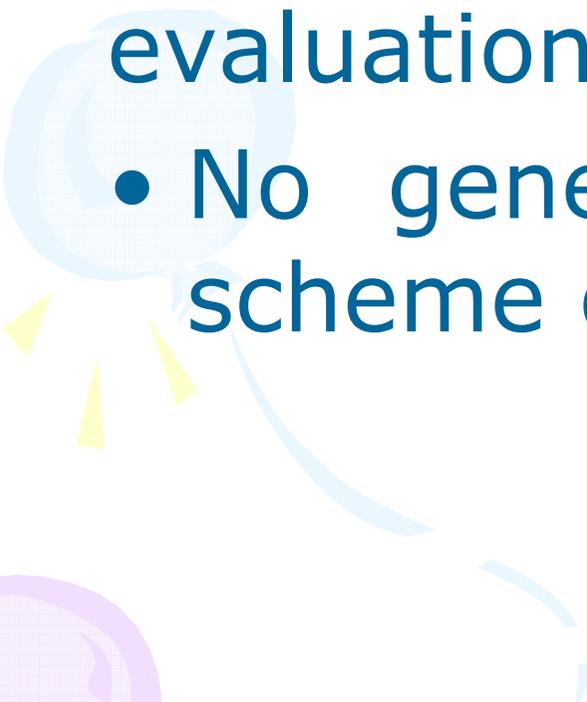
India EU comparison

- India in contrast has a tighter arrangement and it does not classify items into more sensitive, less sensitive and least sensitive.
- It does not differentiate either between more reliable and less reliable destination.
- In Indian system, authorization/ licensing is on case to case basis. Each individual export order for SCOMET items



India EU comparison

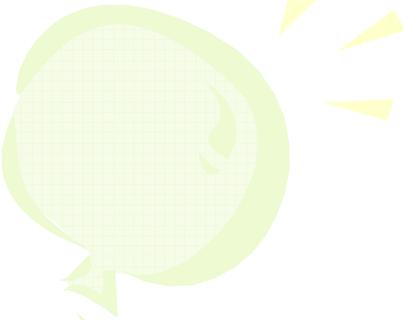
requires a separate authorisation, a separate application and separate evaluation.

- No general authorisation in Indian scheme of things.
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Option for reforms

- Given the highly restrictive STC regime in India vis-à-vis EU, there is a widely felt need for an option for export control reforms to ensure security and competitiveness in a changing world.
- 2009- President Obama directed for comprehensive review of export controls.



Option for reforms

2010- US assessed that the export control system is complicated, redundant and tries to protect too many items.

- 2010 recommendation for reforms was wide ranging and included, inter-alia, streamlining of control list by transferring formerly US Munition list items to the Commerce Control list.
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India's reform agenda Balancing risk and trade

- Certain items in existing SCOMET control list to be recast at par with the specification/description in multilateral list by way of updation so as to provide Indian exporters a level playing field.
- Fast Track licensing for export of SCOMET items against repeat orders

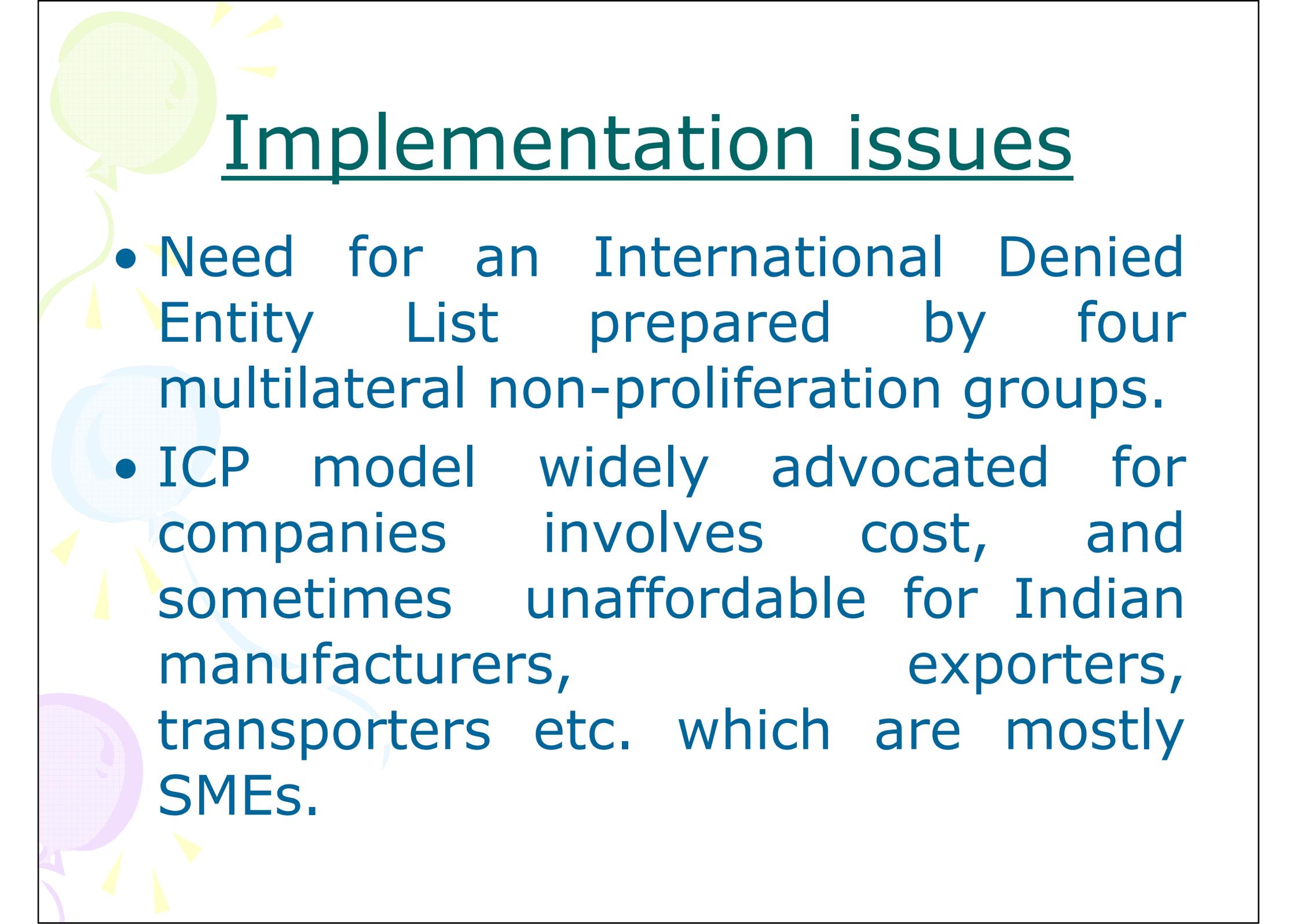
India's reform agenda

by the same exporter to the same importer/end user, for the same end use and same destination, subject to a cap on export quantity in a specified period and some sort of assessment of end user's capacity.

- Automatic licensing for export of spares or for replacement of an item already exported.

India's reform agenda

- After all, in STC, our primary concern is the credential of end use and end user and level of due diligence and robustness of control mechanism at the end of the importing country.
- We must facilitate responsible exports. This is the objective of reforms.



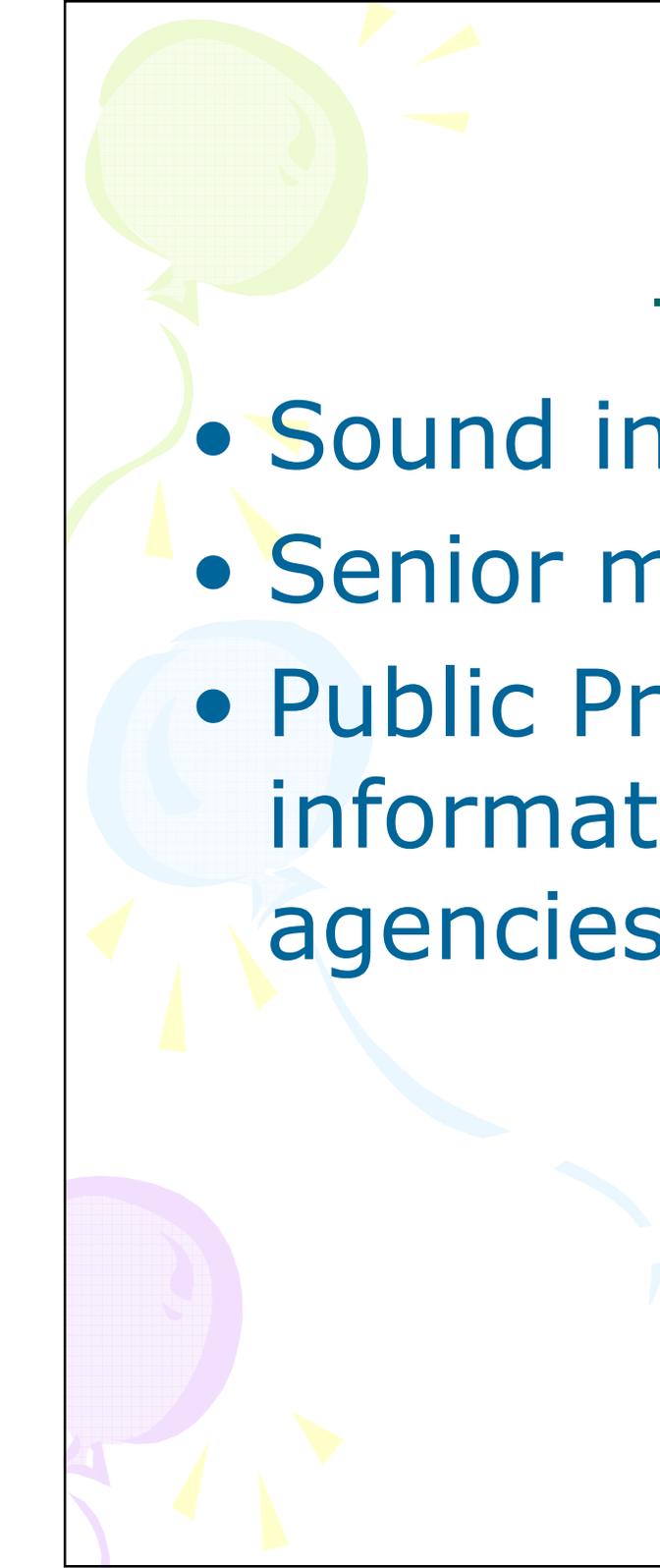
Implementation issues

- Need for an International Denied Entity List prepared by four multilateral non-proliferation groups.
- ICP model widely advocated for companies involves cost, and sometimes unaffordable for Indian manufacturers, exporters, transporters etc. which are mostly SMEs.



Best Practices

- Commitment globally, vertically and horizontally.
- ICPs to be drawn up by the companies, not by Government.
- Effective Government outreach to industry on licensing law, policy and procedure.
- IT support for effective compliance



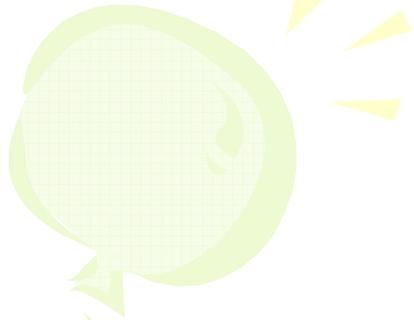
Best Practices

- Sound internal audit.
- Senior management commitment.
- Public Private co-operation- sharing information with Law Enforcement agencies.



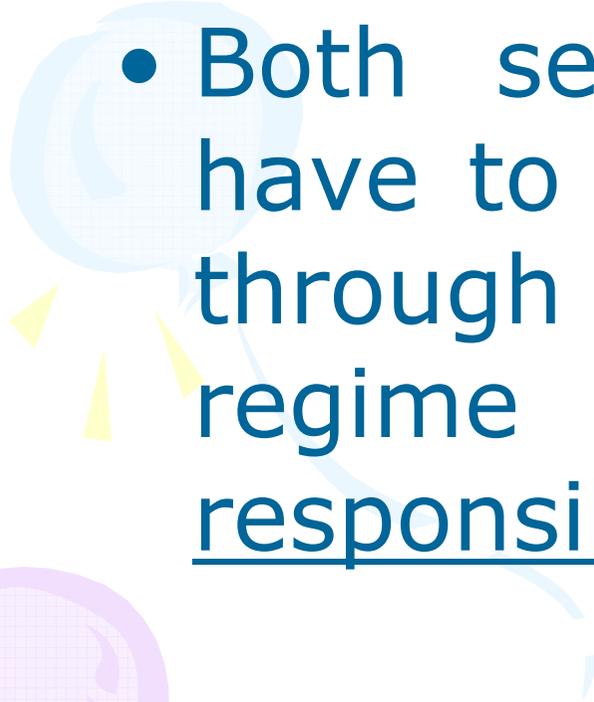
Conclusion

- India's commitment to global security and non-proliferation is total.
- India's Export control of SCOMET is at a nascent stage and is to evolve further with the membership of four multi-lateral export control regimes.
- However India is on growth path and International Trade has a substantial share in our GDP. India is also building its trade and economic capacities. At this juncture, we have to strike a delicate balance between our strategic proliferation concerns on one hand and the legitimate



Conclusion

trade interests of our industry on the other.

- Both security and competitiveness have to be ensured. This is possible through reforms in the export control regime which will facilitate only responsible exports.
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Thank you