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## President Obama Announces Progress in U.S. Export Reform Initiative

In August 31, 2010, remarks to the annual Bureau of Industry and Security “Update” conference, President Obama highlighted the primary objectives of his administration’s export control reform initiative, which are:

- Development of a new single list of export-controlled items that updates and consolidates the Commerce Control List (CCL) and the United States Munitions List (USML);
- Creation of common licensing policies to be used by the Department of State, Directorate of Defense Trade Controls (DTC) and the Department of Commerce, Bureau of Industry and Security (BIS);
- Implementation of a single IT system to be used by all agencies engaged in the interagency export review process. All agencies that participate in the interagency review of license applications will migrate to the new IT system, which will be based on a single, unified export license application that will be used by both BIS and DTC, as well as by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC ); and
- Creation of a new single U.S. Government office to coordinate export enforcement, the Export Enforcement Coordination Center.

The president’s address adds momentum to the administration’s drive to overhaul the export control system, which was first announced in August of 2009. Since then, export agencies and officials have proceeded to identify, propose and implement specific steps to streamline the existing export control process.

The current systems entails multiple U.S. government agencies, two separate lists of controlled items, and separate IT systems for license processing. This ungainly structure regularly leaves U.S. exporters confounded by overlapping or conflicting regulations, agency conflicts about jurisdictional reach, and processing delays due to incompatible IT systems amongst the agencies involved.

### Consolidation of Two Lists of Controlled Items

A key element in the export reform initiative is the review and consolidation of the existing export control lists: the CCL, which governs dual-use items and the USML, which governs defense, military, space and satellite items. Ultimately, the single list will be structured as a “positive list” which will clearly identify controlled items using objective criteria (e.g., technical parameters such as horsepower or microns).

The relevant agencies are now reviewing the CCL and USML to create a tiered system that will distinguish between items based on their relative military value and availability. Specifically, the CCL and USML will be split into three tiers:

- **Tier 1** (highest tier) will include items that provide a critical military or intelligence advantage to the United States and are available almost exclusively from the United States, or items that are weapons of mass destruction;
- **Tier 2** will include items that provide a substantial military or intelligence advantage to the United States and are available almost exclusively from our multilateral partners and Allies; and
- **Tier 3** (lowest tier) will include items that provide a significant military or intelligence advantage but are available more broadly.

The new criteria will also establish a “bright line” between items subject to State Department jurisdiction and those subject to Commerce Department jurisdiction.

The transition to a single, “positive” list, will require a complete restructuring of both the CCL and the USML and, ultimately, authorizing legislation. Thus, the CCL and USML will remain as separate lists for least a year, according to agency estimates.

### Licensing Policies

The overhaul of the control lists items will be accompanied by significant changes in export licensing policies. Under the new system, once a controlled item is placed into a tier, a corresponding licensing policy will be automatically assigned to it. In contrast to the existing system, which takes into account the item involved, the country of destination, the end-use, and the end-user, the new system will base licensing determinations primarily on the tiers. As the system has been described, items in the highest tier will require a license to all destinations. Items in the second tier will be authorized for export to certain destinations under license exemptions or general authorizations. For the least sensitive items in the third tier, a license simply will not be required. In addition, new reexport controls will prohibit diversions from authorized to unauthorized destinations. The administration has not yet addressed the effect of these reforms on existing licenses and authorizations, or whether any grandfathering system will be announced.

The administration remains confident that the transition to the new export regime is on track to be completed within the next year. It remains to be seen whether that confidence is justified. The proposed overhaul will require the agencies to review and rewrite both the USML and the CCL. Further, Secretary Gates, who has been a driving force behind this reform effort, recently announced that he will resign in 2011. His departure could disrupt the momentum that must be sustained to accomplish the administration’s export reform objectives.

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