



# U.S. Export Controls

## What's New

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International Trade & Customs Broker Association  
September 17, 2010

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# What's New

## Export Controls Overview

- > National Export Initiative/Export Control Reforms
  - What's the Plan?
- > New Encryption Regulations
- > Embargoes and Sanctions
  - New Iranian regulations/UN sanctions



# National Export Initiative/Export Control Reforms

- > Goal to double exports over 5 years
  - Current status of U.S. export controls places U.S. business at a competitive disadvantage
  - How to correct this without negatively impacting National Security?
- > Export Control Reform:
  - Single Control List
  - Single Primary Enforcement Coordination Agency
  - Single Information Technology (IT) System
  - Single Licensing Agency



# National Export Initiative/Export Control Reforms

## > Phase I

- Control Lists - Harmonize definitions; establish new independent control criteria to be used to screen items (*i.e.*, performance, not design intent)
- Licensing – streamline and standardize licensing policies and processes
- Enforcement – Creation of Enforcement Fusion Center
- IT – Determine enterprise-wide needs for single Government point of entry for exporters



# National Export Initiative/Export Control Reforms

## > Phase II

- Control List –
  - Restructure lists into identical tiered structures
  - Apply control criteria/remove controls as appropriate/possible
- Licensing –
  - Complete transition to mirrored control list system
  - Implement licensing harmonization
- Enforcement – expand outreach and compliance
- IT – transition toward a single electronic licensing system



# National Export Initiative/Export Control Reforms

## > Phase III

- Control List – Merge CCL and USML into a single list
- Licensing – implement single licensing agency
- Enforcement – Consolidate enforcement activities
- IT – implement a single, enterprise-wide IT system (licensing and enforcement)
- Would require legislation



# National Export Initiative/Export Control Reforms

- > Phase I has already started:
- > Examples:
  - New Encryption regulations
  - State Department policy change on dual/third country nationals
  - Ongoing review of USML
    - Category VII is complete
    - Category XV is next



# National Export Initiative/Export Control Reforms

One example: Encryption Regulations

- > Non-core “Information Security” Items removed from C5P2
- > Company Registration
  - Allows Self-Classification for many/most remaining encryption items
  - Also required for b.2 and b.3 exporters
  - Annual self-classification report replaces semi-annual sales report
- > 5E002 Technology eligible for export under ENC



# National Export Initiative/Export Control Reforms

One example: Encryption Regulations

## > Changes to control list

- Encryption previously a “negative list”
  - Anything containing encryption was “in” unless excepted
  - Exceptions are a sign of a “negative” list
- Change to “positive list” by focusing on actual function of “information security”
  - Focus on information security function, speed, bandwidth
  - Removal of “ancillary” encryption items



# National Export Initiative/Export Control Reforms

One example: Encryption Regulations

- > Previously “ancillary” encryption items, now removed from controls of C5P2
  - Cryptographic functionality is limited to supporting the primary function of the product and
  - The primary function of the product is something other than:
    1. “Information security”
    2. Computers (operating systems, parts and components);
    3. Sending, receiving or storing information\*;
    4. Networking (includes operation, administration, management and provisioning).
  
- \* If the primary function of the product is sending, receiving or storing information, but the function of cryptography is the support of entertainment, mass commercial broadcasts, digital rights management or medical records management (i.e., anti-piracy, medical records privacy, etc.), such items are excluded from C5P2.



# National Export Initiative/Export Control Reforms

One example: Encryption Regulations

- > Also removed from Category 5, part 2
  - Certain receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption;
  - Equipment where the cryptographic capability is not user-accessible, is specially designed and limited to allow any of the following:
    1. Execution of copy-protected software;
    2. Access to any of the following:
      - Copy-protected contents stored on read-only media; or
      - Information stored in encrypted form on media (e.g., in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public;
    3. Copying control of copyright protected audio/video data; or
    4. Encryption and/or decryption for protection of libraries, design attributes, or associated data for the design of semiconductor devices or integrated circuits;
  - Certain equipment specially designed for the servicing of portable or mobile radiotelephones and similar client wireless devices



# National Export Initiative/Export Control Reforms

One example: Encryption Regulations

- > Reduce some remaining C5P2 controls
  - Registered companies can self-classify most remaining encryption products
    - 5A002.a.1, a.2, a.5, a.6, a.9
      - e.g., Systems specially designed or modified to use ‘quantum cryptography.’ a/k/a Quantum Key Distribution
    - 5D002 equivalents
    - 5X992
      - Mass Market
      - “Does not control” notes – smart cards, equipment for banking or money transactions, etc.
  - Reduce reporting requirement
    - Annual self-classification replacing semi-annual sales report
  - Authorize some exports of 5E002 technology under ENC



# National Export Initiative/Export Control Reforms

One example: Encryption Regulations

- > What still requires a 30 day review?
  - (b)(2) items:
    - Network infrastructure products
    - Encryption source code
    - Products designed or modified for “government end-users”
    - Commodities and software with penetration capabilities
    - Public safety (e.g., first responder radios, TETRA)



# National Export Initiative/Export Control Reforms

One example: Encryption Regulations

- > What still requires a 30 day review or license?
  - (b)(3) items:
    - Chips, chipsets, electronic assemblies
    - Cryptographic libraries and modules
    - Development kits
    - “Non-standard” cryptography
    - Products that perform vulnerability analyses, network forensics, computer forensics
    - Products that activate or enable encryption



# National Export Initiative/Export Control Reforms

## Encryption Requirements Matrix

	Encryption Registration	Annual Self-Classification Report	30 day review	Semi-Annual Reporting
ENC (a)				
ENC (b)(1)	X	X		
ENC (b)(2)	X		X	X
ENC (b)(3)	X		X	B3iii
ENC (b)(4)				
MMR (b)(1)	X	X		
MMR (b)(3)	X		X	
MMR (b)(4)				



# Foreign Policy Controls

- > OFAC as part of Export Control Reform Initiative
  - Single Licensing/IT/Enforcement for product exports only (TSRA licenses, etc.)
- > U.S. Export Controls continue to move toward more targeted controls against potential bad actors, identified risks
  - Fewer products requiring licenses, more restricted party lists
  - Example, additional targeted controls against Iran



# Foreign Policy Controls

- > U.N. Resolution 1929 (2010), June 9, 2010
  - Expands the existing “arms embargo and tightening restrictions on financial and shipping enterprises related to ‘proliferation-sensitive activities.’”
    - Iran should not acquire interests in any commercial activity relating to uranium enrichment and other nuclear materials or technology
    - All States should prevent the transfer to Iran of any tanks, armored combat vehicles, large-caliber artillery systems, attack helicopters, or missiles and related systems or parts



# Foreign Policy Controls

- > Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (“CISADA”) – July 1, 2010
  - Impose costs on attempts to develop nuclear weapons, attempts to provide support for terrorists
    - Further restrict access to international financial markets
  - What does this mean for U.S. exports/imports?
    - Imports of gifts, carpets, foodstuffs (caviar, pistachios) no longer permitted
    - TSRA exports of agricultural products, medicine and medical devices – no change
    - Informational materials, humanitarian assistance and parts and technologies to assure the safety of civilian aviation – no change



# Questions?

