

Export Control Reform Initiative?

Law360, New York (April 30, 2010) -- President Obama announced last August that he had ordered a broad-based interagency review of U.S. export control regulations, processes and procedures. The stated purpose of the review was to consider reforms to enhance national security, foreign policy and economic security interests of the United States. The president called for reforms that focus on technologies related to global terrorism, the proliferation and delivery systems of weapons of mass destruction, and advanced conventional weapons. On April 20, 2010, Secretary of Defense Robert Gates discussed the results of the review and four proposed reforms.



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Secretary Gates prefaced his outline of the proposed reforms by stating that the goal is to develop a “system where higher walls are placed around fewer, more critical items.” In cooperation with the departments of State, Commerce, Homeland Security, the director of national intelligence, and the national security advisor, the administration has concluded what everyone has known for years — the current system is a tangled, opaque, bureaucratic mess in need of consolidation and simplification. The four key reforms proposed are:

- A single list of export-controlled items and technologies
- A single export licensing agency
- A single agency to enforce export-control regulations
- A unified IT infrastructure to receive, screen and process license applications

Secretary Gates also stated that consolidation of the current dozen or so publicly available lists of banned end-users into a single easily searchable list will be an essential component of the proposed new controls.

A three-phased process of reform has been planned to unfold over the course of the next year. The first phase will be implemented through executive orders to transition to the single list of export-controlled items and technologies, steps toward creating a single licensing agency, and the creation of tiered levels of control — a detailed explanation of this last concept has not been provided. In this phase there will be a “standing up” of an

integrated enforcement center. The second phase of the implementation will be a transition to a single IT structure to help implement the tiered control list and to prepare the way for a unified licensing system.

The secretary acknowledged that while the president has the authority to take those actions through executive orders, they are insufficient in and of themselves. The third phase, and the heart of the proposed reform, requires changes in the regulations that can only be accomplished by Congress. With deeply vested interests on both sides of the issues, the prospects for prompt or easy changes to the laws and regulations are not good. At least the export community can hope that serious discussion begins so that the doors of Congress will be open to seriously consider the needs of U.S. companies.

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