

# Client Alert

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## Department of Commerce Announces New Export Classification as Part of Export Controls Reform

The Bureau of Industry and Security (“BIS”) of the U.S. Department of Commerce has announced the creation of a new Export Control Classification Number (“ECCN”) 0Y521 series. The ECCN will apply to items (i) that are not currently identified in an existing ECCN in the BIS Commerce Control List (“CCL”) or in the United States Munitions List (“USML”) of the Department of State and (ii) that BIS (in consultation with the departments of State and Defense) determines provide a significant military or intelligence advantage to the U.S. or should be subject to controls for foreign policy reasons. Classification under ECCN 0Y521 is intended to be temporary, with an initial term of one year followed by up to two one-year extensions if necessary (with possible further extension under special circumstances). During this period, BIS is committed to determining whether multilateral controls on an item are warranted (with the item moved to an existing ECCN revised as appropriate) or whether the item should be classified as EAR99 and thus not subject to export control. Consistent with the design of the CCL as a “positive” control list, the obligation will be on the government to identify specific items that are subject to the ECCN 0Y521 series. During the ECCN 0Y521 classification period, items would be subject to a nearly worldwide licensing requirement (with the exception of Canada) and to case-by-case review of specific items.

According to the Federal Register notice published by BIS (77 F.R. 22191), the avowed purpose of the new ECCN is to advance the effort to streamline the CCL and simplify export and reexport provisions. This objective would be achieved by having emerging technologies controlled, if at all, under the CCL according to the new ECCN rather than under the USML, even though the technology may have military applications. Over time, this should lead to a de facto consolidation of controlled items under the CCL, consistent with the goal of export control simplification under the reform initiative announced by the Obama administration in the fall of 2010 (see September 2010 client alert “Export Controls and Policy Update”). In addition, BIS states in the notice that it intends to have a “fairly high threshold” for classification under the ECCN 0Y521 series. These factors, combined with the ostensibly temporary nature of classification under the new ECCN and the stated intent to seek multilateral controls or move an item to EAR99, should result in controls being limited to instances in which they are truly warranted. At present, however, no items have been designated under the new ECCN. Thus, it remains to be seen how well the promise of this new approach will be fulfilled.

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