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U.S. Elevates India to Strategic Trade Authorization Tier 1 Status, Easing Future Dual-Use Exports

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August 2, 2018 – On July 30, 2018, the United States Department of Commerce announced that it would elevate India to the Strategic Trade Authorization (“STA”) Tier 1 list, providing India with the same trade benefits afforded to the United States’ closest allies under License Exception STA. Commerce Secretary Wilbur Ross commented that, with the status change, “U.S. companies will be able to more efficiently export a much wider range of products to Indian high technology and military customers. India’s new status will benefit U.S. manufacturers while continuing to protect our national security.” The move will become effective when the Department of Commerce formally amends the list of Tier 1 countries in the applicable regulations through a notice in the Federal Register. As of the date of this Alert, it is not yet clear when that amendment will occur.

License Exception STA, which is codified at 15 C.F.R. § 740.20, permits the export, reexport or in-country transfer without a specific license of certain items on the Commerce Control List (“CCL”) to certain favored countries identified in Country Group A:5, listed in Supplement 1 to 15 C.F.R. Part 740. Those destinations are NATO countries and other close U.S. allies, such as Argentina, Australia, Canada, Japan, and South Korea. India will be the thirty-seventh country added to that list.

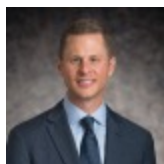
The move is a continuation of a policy of relaxing export controls for India that began under the Obama Administration. Since 2012, the United States and India have engaged in bilateral trade discussions known as the Defense Technology and Trade Initiative (“DTTI”). In 2016, the United States recognized India as a “Major Defense Partner,” which included an initial easing of export requirements for India. The inclusion of India on the STA Tier 1 list reflects India’s commitment to multilateral export controls through its accession to the four major multilateral export control agreements and the development of its own national export control system. Tier 1 status under License Exception STA formally provides the country with the same benefits as other top U.S. allies.

The effect of India’s placement on the STA Tier 1 list is that a majority of the items on the CCL destined for India will now be eligible for License Exception STA. India was previously an STA Tier 2 country. Tier 2 countries are

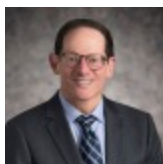
eligible for License Exception STA, but are limited to items controlled only for reasons of national security (NS). With certain exceptions described in section 740.20(b)(2) of the Export Administration Regulations, Tier 1 countries are eligible for items controlled for reasons of national security, chemical or biological weapons (CB), nuclear nonproliferation (NP), regional stability (RS), crime control (CC), and/or significant items (SI).

While License Exception STA can allow eligible items to ship to India quickly without the need to wait for Commerce to approve an individual license, exporters should be aware the use of the license exception also has certain prerequisites and recordkeeping requirements. In particular, the license exception requires the exporter to obtain a written statement from the consignee before the export, reexport, or transfer occurs, agreeing to comply with certain U.S. imposed conditions as to how it uses the U.S. items; to maintain a log that identifies each shipment made under the license exception; and to provide written notice to the consignee that the shipment is made pursuant to License Exception STA. Certain items, such as software source code or items subject to the Wassenaar Arrangement, may have additional reporting and recordkeeping requirements.

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