RECORD OF COMMENTS: PROPOSED RULE: IMPOSITION OF LICENSE REQUIREMENT FOR EXPORTS AND REEXPORTS OF MISSILE TECHNOLOGY-CONTROLLED ITEMS DESTINED TO CANADA

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(Due June 23, 2005)

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determining which entities are QALICBs with respect to Targeted Populations. Under what circumstances should an entity be determined to be a QALICB with respect to a Targeted Population? For example, should the determination be based on whether the owners, employees or customers of the entity (or some combination thereof) are members of a Targeted Population?

(b) How should the following requirements apply in determining whether an entity is a QALICB with respect to a Targeted Population: (1) The requirement of IRC section 45D(d)(2)(A)(i) under which at least 50 percent of the total gross income of a QALICB must be derived from the active conduct of a qualified business within a Low-Income Community; (2) the requirement of IRC section 45D(d)(2)(A)(ii) under which a substantial portion of the use of the tangible property of a QALICB (whether owned or leased) must be within a Low-Income Community; (3) the requirement of IRC section 45D(d)(2)(A)(iii) under which a substantial portion of the services performed for a QALICB by its employees must be performed in a Low-Income Community; and (4) the requirement of IRC section 45D(d)(3) under which the rental to others of real property is a qualified business only if the real property is located in a Low-Income Community?

Authority: American Jobs Creation Act of 2004, Pub. L. 108–357, Consolidated Appropriations Act of 2001, Pub. L. 106–554.

Dated: May 17, 2005.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 05–10223 Filed 5–23–05; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738 and 742

[Docket No. 011019257–5107–02]

RIN 0694–AC48

Proposed Rule: Imposition of License Requirement for Exports and Reexports of Missile Technology-Controlled Items Destined to Canada

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule with request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is proposing to amend the Export Administration Regulations (EAR) by imposing a license requirement for exports and reexports of items controlled for missile technology (MT) reasons to Canada. To date, the EAR have required a license for MT-controlled items to all destinations except Canada, and generally no license exceptions are available for MT-controlled items.

This rule is consistent with a recommendation made by the General Accounting Office (GAO (renamed the Government Accountability Office)) in a 2001 report that BIS either impose a license requirement for exports and reexports of MT-controlled items to Canada, based on section 6(l) of the Export Administration Act of 1979, as amended, or seek a statutory change. The effect of this rule is that all exports and reexports of MT-controlled items to any destination require a license, and generally no license exceptions are available, so that all exports and reexports of MT-controlled items subject to the EAR are subject to prior review.

DATES: Comments must be received on or before June 23, 2005.

ADDRESSES: You may submit comments, identified by RIN 0694–AC48, to BIS by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. (Follow the instructions for submitting comments.)
- E-mail: *mblaskov@bis.doc.gov*. Include "RIN 0694–AC48" in the subject line of the message.
- Fax: (202) 482–3355.
- Mail or Hand Delivery/Courier: U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AC48.

Send comments regarding the collection of information to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

Comments received on this rulemaking will be available at: *http://www.bis.doc.gov/foia*.

FOR FURTHER INFORMATION CONTACT: Steven Goldman, Director, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3825.

SUPPLEMENTARY INFORMATION:

Background

Consistent with a recommendation contained in a report of the General Accounting Office (GAO), the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) to impose a licensing requirement on exports to Canada of dual-use items listed on the Missile Technology Control Regime (MTCR) Annex.

The Export Administration Act (EAA) of 1979 was amended in 1991 to require a license for the export of dual-use MTCR controlled goods or technology to any country. However, when the Commerce Control List was revised and renumbered in August 1991 (56 FR 42824), the Canadian exemption from license requirements for MT-controlled items was not changed. The continuation of the exemption from the licensing requirements for exports to Canada was consistent with U.S. policy that had, since 1941, permitted the export without license of nearly all dual-use goods and technologies intended for consumption or use in Canada.

On May 31, 2001, the United States General Accounting Office (GAO (since renamed the Government Accountability Office)) issued a report entitled: "Export Controls: Regulatory Change Needed to Comply with Missile Technology Licensing Requirements" (GAO–01–530). That report recommended that BIS either amend the EAR to require a license for exports of dual-use MTCR items to Canada or seek a statutory change from Congress.

In the course of commenting on GAO's report, the Department of Commerce informed GAO that legislation that would replace the Export Administration Act of 1979 (EAA) was pending in the Congress and that the legislation did not contain a provision that would mandate licensing requirements for the export of MT-controlled items to Canada. At various times in the years 2000 to 2002, S. 149 and H.R. 2581, proposed legislation that would have reauthorized the EAA, were under consideration by the Congress. While S. 149 was approved by the Senate, the legislation to replace the Export Administration Act was not enacted. The Department of Commerce also noted in its comments that it had notified Congress of the Canadian exemption for MT-controlled items every year since 1991.

In light of GAO's recommendation, BIS published an "Advance notice of proposed rulemaking" on December 20, 2001 (66 FR 65666), soliciting public comments on the removal of the licensing exemption for export of MT items to Canada. BIS received seventeen comments in response, from Canadian and U.S.-based trade associations, Canadian and U.S.-based companies, a foreign airline, and the Government of Canada. All of the substantive

comments voiced opposition to the licensing requirement.

Summary of Comments

Trade association commenters stated that the license requirement is expected to force Canadian companies to seek business relationships and equipment sources outside of the United States, cause interruptions and delays in binational defense supply lines, negatively impact the intent and spirit of many of the bilateral agreement on defense issues, and negatively impact the integration and interoperability of Canadian and U.S. security forces. One trade association commenter noted that six of the ten largest aerospace companies operating in Canada are subsidiaries of U.S. firms, and stated that imposing a license requirement on MT-controlled items to Canada could lead to loss of significant market share by the aerospace industries of both countries. This Canadian commenter also recommended that the license requirement not be imposed until the Missile Technology Control List Regime (MTCR) control list is completely reviewed. A U.S. industry association commenter that the requirement that all MT-controlled items be licensed to Canada would cause considerable dislocation without yielding any corresponding benefit in terms of control or security, and urged that, absent an enactment by Congress that expressly extends the MT license requirement to Canada, the existing rules not be altered.

Canadian and U.S.-based companies commented that trade between the United States and Canada in MT-controlled items will be adversely affected, and that companies will incur added expenses and delays in obtaining licenses for software and technology exports as well as for equipment exports. One company commented that the added expenses incurred by companies to comply with a licensing requirement will trickle down to the flying public.

Finally, the Government of Canada's comments agreed with those of the trade associations and companies on the adverse effect a license requirement will have on U.S.-Canada trade in MT-controlled items and, because of the close relationship between the Canadian and U.S. industries, on the provision of key equipment to U.S. industry and government, including the military. The Government of Canada also commented that several U.S. trade partners maintain provisions to exempt from individual licensing the export of MT-controlled items to other MTCR member countries, and cited the European Union, Japan, Switzerland, and a Canadian exemption for exports to the United States.

Comments may be viewed at: *http://efoia.bis.doc.gov/pubcomm/MTCR-Canada/MTCR-Canada.pdf.*

Response to Comments and Request for Further Comments

Although the comments received in response to the Advance Notice of Proposed Rulemaking generally were opposed to the license requirement for several reasons, in this proposed rule, BIS requests more specific comments as to the effect that the rule will have in terms of numbers of license applications that the industry and/or individual companies would expect to submit under such a requirement, and, if possible, estimated additional costs of complying with a license requirement. Comments addressing these specific issues will enable BIS to evaluate better the impact that a license requirement will have in measurable terms on industry sectors and individual companies.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 6, 2004, 3 CFR, 69 FR 48763 (August 10, 2004), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This proposed rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This proposed rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. This proposed rule is expected to result in an increase in the number of license applications submitted to BIS. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This proposed rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring a notice of proposed rulemaking and the opportunity for public comment are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, in view of the importance of this proposed rule, BIS is seeking public comments before these revisions take effect. The period for submission of comments will close June 23, 2005. BIS will consider all comments received before the close of the comment period in developing a final rule. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of the final rule. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying. The Bureau of Industry and Security displays these public comments on its Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* BIS does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–0500 for assistance.

List of Subjects

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 742

Exports, Foreign trade.

Accordingly, parts 738 and 742 of the Export Administration Regulations (15 CFR parts 730–799) are amended, as follows:

PART 738—[AMENDED]

1. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

2. Supplement No. 1 to part 738 is amended by adding an "X" under "MT 1" in the "Missile Tech" column for "Canada."

PART 742—[AMENDED]

3. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

§ 742.5 [Amended]

4. Section 742.5 is amended by revising the phrase "to all destinations, except Canada, as indicated by MT Column 1 of the Country Chart" to read "to all destinations, as indicated by MT Column 1 of the Country Chart" in the third sentence of paragraph (a)(1).

Dated: May 19, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–10356 Filed 5–23–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–134030–04 and REG–133791–02]

RIN 1545–BD60 and RIN 1545–BA88

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing; and withdrawal of previously proposed regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations, including consolidated groups, or a group of trades or businesses under common control. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations and withdraws the proposed regulations published in the **Federal Register** on July 29, 2003 (68 FR 44499).

DATES: Written or electronic comments must be received by September 28, 2005. Requests to speak and outlines of the topics to be discussed at the public hearing scheduled for October 19, 2005, at 10 a.m. must be received by September 28, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–134030–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–134030–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–134030–04). The public hearing will be held in the Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Nicole R. Cimino at (202) 622–3120; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin R. Jones at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document withdraws the notice of proposed rulemaking (REG–133791–02) published on July 29, 2003 and amends the Income Tax Regulations (26 CFR 1) relating to section 41. The temporary regulations set forth the rules relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations, including consolidated groups, or a group of trades or businesses under common control under section 41(f) for taxable years ending on or after December 31, 2004. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 19, 2005, beginning at 10 a.m. in the Auditorium, 7th Floor, of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In

communications

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Our File: EAR-MTCR-02-21381

16 June 2005

Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
14th & Pennsylvania Avenue, NW., Room 2705
Washington, DC
20230,

Attn: RIN 0694–AC48

Subject: **Commerce Department Bureau of Industry and Security Removal of Licensing Exemption for MTCR Items Destined to Canada**

Dear Sir,

L-3 Communications Electronic Systems Inc. (L-3 ES) a wholly owned foreign subsidiary of U.S. based L-3 Communications Corporation, is one of the world's largest manufacturers of inertial guidance systems and is the only one based in Canada. These systems are used by intercontinental commercial airlines, business jets, private corporations and charter airlines in over 40 countries. Our customer base in the U.S. totals over 200. L-3 ES is the OEM for over 24,000 systems. L-3 ES also performs repair and overhaul on these airborne navigation products.

Our commercial Inertial Navigation Systems (INS) and instruments (gyroscopes and accelerometers) are controlled under Category 7 of the U.S. Commerce Control List and are identified as Missile Technology Control Regime (MTCR) items. All commercial inertial navigation systems are Transport Canada, FAA and JAA approved for use in civil aircraft.

Commercial navigation equipment shipped to Canada from the U.S. is currently exported without a licence under the EAR exemption. **The vast majority of shipments to L-3 ES consist of equipment sent to Canada for repair and return to the U.S.** The proposed amendment would require that our U.S.-based customers obtain a Commerce export licence to ship to Canada. This will be onerous, expensive and time consuming considering the repaired item will be returned to the U.S. We believe this requirement will greatly increase the turn-around time for equipment repairs and ultimately increase the cost to our customers. This will be due to a rise in Aircraft-on Ground situations, gate delays of aircraft and increased inventories of spare parts.

The implementation of the Canadian Controlled Goods Program (CGP) in 2001 included items controlled by the MTCR. A Canadian export permit is required for all MTCR items exported from Canada with the exception of shipments destined for the United States. A requirement for our U.S. customers to obtain a license to ship to Canada, for repair and return to the U.S., creates a needless and added burden to the industry and the BXA.

A Commerce licence will also be required for the export to Canada of new equipment, software and technology. We anticipate significant delays in the delivery of U.S. sourced piece parts, supplies and production equipment as American suppliers determine whether an export licence is required for L-3 ES procurements. This will adversely affect our ability to meet production schedules and could result in the loss of sales for U.S. companies as we source products in other countries.

We anticipate that the imposition of the rule change will result in the submission of approximately 1000 export license applications per year from our customers. We estimate that the additional costs to U.S. based companies in complying with the license requirement will be $2-4 mil per year.

We urge BIS to withdraw its proposal to amend the Export Administration Regulations. Shipments of commercial MTCR/INS equipment should continue to be exempt from the requirement to obtain an export license.

We would be pleased to discuss any aspect of this matter with you or your officials. Please feel free to contact me at (416) 249-1231 Ext: 2313 should you have any questions.

Sincerely,

L-3 Communications Electronic Systems Inc.

D. Eady
Export Compliance Manager

ICOTT INDUSTRY COALITION ON TECHNOLOGY TRANSFER
1700 K Street, N.W., Washington, D.C. 20006 (202) 282-5994

June 22, 2005

VIA E-MAIL AND FIRST CLASS MAIL

U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
14th Street & Pennsylvania Avenue, N.W.
Room 2705
Washington DC 20230

Attn: RIN 0694-AC48

Re: Proposed Rule: Imposition of License Requirement for Exports and Reexports of Missile Technology-Controlled Items Destined to Canada (70 Fed. Reg. 29660 (May 24, 2005))

Gentlemen/Ladies:

The Industry Coalition on Technology Transfer ("ICOTT") appreciates the opportunity to comment on the above-referenced proposed rule, which would impose a license requirement for exports and reexports to Canada of items controlled for missile technology ("MT") reasons. For the reasons set forth below, ICOTT urges that the proposed rule not be adopted. Instead, the existing Canadian exemption for MT-controlled items should be retained unless Congress *explicitly* extends MTCR licensing requirements to Canada.

For more than sixty years, the United States and Canada have enjoyed a special and unique cooperative relationship on defense and export control matters. The 1941 Hyde Park Agreement provided a license-free zone between the United States and Canada which was essential for the war production efforts of the two countries. Ever since, with only a few exceptions, this Agreement has been regarded by the United States as binding, not only legally but also for practical economic reasons. Since 1941 the two countries have entered into over 2500 other agreements designed to facilitate and maintain a highly integrated and mutually supportive defense industrial base. In the area of export controls, the two countries have created a regulatory structure that---at least for items subject to the Export Administration Regulations---approaches a license-free zone. This beneficial arrangement has enabled government and industry in each country to rely on the specialized capabilities of firms in both nations without significant and unnecessary regulatory constraints.

This cooperative relationship has played a critical role in the development and structure of the aerospace, defense, and high-technology sectors in both countries. The virtual absence of a licensing requirement has encouraged many leading United States aerospace and defense firms to establish substantial operations in Canada that are fully integrated with their domestic operations. This regulatory environment has also enabled prime contractors in one country to establish flexible and cost-effective supply arrangements with subcontractors in the other country. The imposition of a licensing requirement for Canada would eliminate a key pillar on which this extensive bilateral trade and investment has been built over the past half century.

Requiring licenses for MT-related exports to Canada would seriously disrupt the operations of aerospace, defense and other high technology firms on both sides of the border. MT licensing requirements would apply to a wide-ranging number of commercial products and services, including computers and other electronics, avionics and aircraft equipment, gas turbine engines and structural composites, and would have adverse impacts on the research sector and small and medium businesses. One leading U.S. aerospace firm has estimated that MT licensing for exports to Canada would require it to seek thousands of additional licenses each year and incur millions of dollars in increased compliance costs. Other private sector sources estimate that hundreds of individual businesses would be adversely affected by an MT licensing requirement, an estimate that likely is conservative, given the extraordinary degree of integration between the U.S. and Canadian high technology, aerospace, and defense sectors.

The adverse impacts of a licensing requirement for exports to Canada of MT items would likely be at least as severe as those that accompanied the Department of State's 1999 rollback of the "Canadian exceptions" to the ITAR's licensing requirements. According to the Canadian Government, the 1999 ITAR licensing changes caused considerable delays in the ability of defense agencies to obtain items vital to support both existing and new defense systems and resulted in similar delays for both the U.S. and Canadian private sector. These changes also reportedly caused some Canadian firms to replace U.S. suppliers of machinery and materials with non-U.S. suppliers. As a consequence of these effects, the two governments, with the strong encouragement of the private sector, subsequently agreed to restore many of the Canadian licensing exemptions under the ITAR. Imposing a licensing requirement for Canada could, in some cases, undermine this initiative by imposing an EAR licensing requirement to transfer EAR-controlled MT technical data to a Canadian national, when arguably more sensitive ITAR technical data would not require a license due to the applicability of an ITAR "Canadian exception."

ICOTT also fails to see the problem to which the proposed regulation is the solution. Canada historically has been a strong partner in nonproliferation matters and the current arrangement governing exports of MT items to Canada has worked well. Moreover, other MTCR-member nations have an approach to Canada that is similar to current U.S. practice. For example, the European Union (whose members include many MTCR countries) permits most MTCR items to be exported to Canada without a license. Additionally, the most sensitive MTCR-controlled items are regulated not by BIS, but by the Department of State under the ITAR. As a consequence, the proposed regulation would impose additional bureaucratic burdens

on commerce for items that are of relatively less concern from a MT standpoint. In short, an MT licensing requirement would cause considerable disruption without yielding corresponding benefits in control or national security.

We recognize that the National Defense Authorization Act for FY 1991 contained a provision requiring licenses for MTCR-controlled items. When it enacted this provision, however, Congress was well aware of the extraordinary history of special export control cooperation with Canada. Accordingly, Congress should not be viewed as having abrogated the Canadian MT licensing exception *sub silentio*. Moreover, since 1991, the Department of Commerce has notified Congress each year of the continued existence of a Canadian exemption for MT-controlled items. This suggests acquiescence by Congress in the Department's effective and practical approach to the export of MT-controlled items to Canada.

In the current national security environment, the United States faces many serious threats. In addressing these threats, the U.S. Government must also use its limited national security resources in a wise and effective manner. Imposing an unnecessary and disruptive MT licensing requirement on exports to Canada will not enhance United States national security and will divert resources from other, more pressing security needs.

For all of the foregoing reasons, as well as the reasons that we anticipate will be advanced by other commenters, ICOTT strongly urges that the proposed rule not be adopted and that existing MT-licensing exemptions for Canada be retained.

Founded in 1983, ICOTT is a group of major trade associations (names listed below) whose thousands of individual member firms export controlled goods and technology from the United States. ICOTT's principal purposes are to advise U.S. Government officials of industry concerns about export controls, and to inform ICOTT's member trade associations (and in turn their member firms) about U.S. Government export control activities.

Sincerely,

Eric L. Hirschhorn

Eric L. Hirschhorn
Executive Secretary

ICOTT Members

American Association of Exporters and Importers
Semiconductor Equipment and Materials International
Semiconductor Industry Association

The Boeing Company
1200 Wilson Blvd.
Arlington, VA 22209-1989

June 22, 2005

BOEING

U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
Room 2705
14th Street and Pennsylvania Avenue, N.W.
Washington, DC 20230

Re: RIN 0694-AC48
Proposed Rule: Imposition of License Requirement for Exports and Reexports of Missile Technology Controlled Items Destined to Canada (70 Federal Register 29660 dated May 24, 2005)

Dear Sir or Madam:

The Boeing Company appreciates the opportunity to comment on the referenced proposed ruling by the Bureau of Industry and Security which would impose a license requirement for exports and reexports to Canada of items controlled for missile technology (MT) reasons.

Boeing Commercial Airplanes, the Boeing Business Unit that manufactures commercial aircraft (hereafter referred as "Boeing"), would be significantly impacted by the proposed regulations. Specifically, Boeing has relied on a license-free environment for many years to establish a close and efficient relationship with Canadian suppliers and close collaboration with subsidiaries located in Winnipeg, Toronto, Vancouver and Arnprior. Integration with our Canadian subsidiaries and suppliers has allowed us to reduce costs and enhance our posture in an intensively competitive international market that often results in our having to market in an unlevel playing field.

Boeing Winnipeg is a direct partner to Boeing on our new airplane, the 787 Dreamliner. Exports to Boeing Winnipeg in support of this program are controlled for MT reasons since the aircraft is made mostly of composite materials. The proposed regulatory environment could lead to delays in the work

performed in Canada which would neutralize efficiencies that we hoped to achieve by working with our Canadian subsidiaries and suppliers. Any disruption in the 787 program that would affect our launch date could put us at a competitive disadvantage with respect to the new airplane being developed by Airbus, the A350, since our earlier launch date is an essential factor in our ability to win sales and recover our R&D and other nonrecurring costs.

Additionally, we are in final negotiations with four Canadian companies and have contracted with a fifth in support of an important program, the Large Cargo Freighter, involving production of Section 49 (fairings and main landing gear doors), vertical fin to body fairings, the cargo loader, etc. Those operations could suffer, as well.

Boeing also employs more than 200 Canadian citizens in the U.S. in support of commercial aircraft manufacturing; individual licenses would be needed for these employees and our ability to move them quickly and efficiently from one activity to another would obviously be restricted. Additionally, it would be very costly to make people stop working on projects if a license is not obtained immediately, or within the grace period should one be granted. As far as the additional number of licenses that would have to be processed by BIS, we estimate that Boeing alone would increase that number by 25%.

Just as important, the impact of this new licensing requirement could be felt in the Canadian commercial aviation area, as well, since exports of parts and components that may be controlled for MT reasons, such as inertial reference units, accelerometers, etc, could no longer be promptly effected in airplane on-the-ground situations, or other emergencies in which a part must be provided immediately to ensure safety of flight and also to prevent an airline from incurring immediate revenue losses. The current system of operations of Canadian airlines presupposes a license free environment for these parts, and the imposition of a licensing requirement could have an adverse impact on the passenger service and maintenance and service schedules these airlines have in place until they make the required system changes.

Following is a list of items on the Commerce Control List (and corresponding ECCN's) that Boeing currently transfers to Canada without an export license. This list demonstrates demonstrate the magnitude of the adverse impact that removal of the exemption would have on the company.

- 1B001 - Equipment for the production of composites, fibers, prepregs or preforms (except NDI equipment).
- 1B101 - Equipment for the production of structural composites (for example, filament winding and tape-laying machines).
- 1C007 - Ceramic base materials and ceramic matrix composite materials.

- 1C107 – Graphite and ceramic materials.
- 1D001 – Software for the development, production or use of equipment controlled by 1B001 (see 1B001 above).
- 1D101 - Software for the use of equipment controlled by 1B101 (see 1B101 above).
- 1D103 Technical data and procedures used in production of items controlled by 1C007 and 1C107
- 1E001 - Technology for the development or production of composite materials and items controlled by 1B001, 1B101, 1C007, and 1C107.
- 1E101 Technology for the use of items controlled by 1B001, 1B101, 1C007, 1C107, 1D001, 1D101 and 1D103
- 1E102 - Technology for the development of software controlled by-1D001, 1D101 and 1D103.
- 1E103 - Technology for the production of items controlled by 1C007, and 1C107.
- 2B004 - Hot isostatic presses.
- 2B009 - Spin-forming and flow-forming machines.
- 2D001 – Software for the development, production or use of hot isostatic presses and spin forming and flow forming machines (2B004).
- 7E003 Technology for items controlled by 7A001 through 7A004 (systems control on the plane

It is our hope that a regulatory solution can be achieved that will allow exceptions for the above ECCNs for specific activities. Additionally, we would propose that the new controls be applicable to new transfers, since it may not be productive to impose controls on technology and equipment that have already been exported. Such an approach would also protect Canadian companies from potential work interruptions if licenses cannot be obtained as soon as needed.

We believe that it would be in the interest of the USG to preserve our collaboration with Canada on the 787 and other highly competitive programs such as the Large Cargo Freighter in order to avoid disruptions that could have unintended and broad implications.

Please let us know if you would like to have additional details on the information provided in this letter. We would also be pleased to meet with you to discuss this matter further.

Sincerely,

Norma Rein
Manager, Export Policy and Regulatory Reform
703-465-3655

BOEING

East Air Corporation

June 22, 2005

Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
14th & Pennsylvania Avenue, NW.
Room 2705
Washington, DC 20230

Attn: RIN 0694-AC48

Subject: **Commerce Department Bureau of Industry and Security Removal of Licensing Exemption for MTCR Items (Inertial Navigation Equipment) Destined to Canada**

Dear Sir,

East Air Corporation is strongly opposed to the proposed amendment to the Export Administration Regulations (EAR) to impose a license requirement for exports and re-exports of items controlled for missile technology (MT) reasons to Canada.

East Air Corporation is a commercial aviation airline/service provider. We rely on Canadian based aerospace companies to supply and repair Inertial Navigation System (INS) equipment in a timely manner. The turn-around-time for INS equipment is critical in keeping our customers aircraft flying. The requirement to obtain and process an export license for the repair of INS equipment in Canada will lengthen the repair turn-around-time which could result in delayed or cancelled flights.

We anticipate that the imposition of the rule change will result in the submission of numerous additional export license applications per year. We estimate that the additional costs to our company in complying with a license requirement will be considerable and have a negative impact on our profitability.

We urge BIS to withdraw its proposal to amend the Export Administration Regulations. Shipments of commercial INS equipment should continue to be exempt from the requirement to obtain an export license.

337 Second Street, P.O. Box 628 • Hackensack, N.J. 07602-0628 • Telephone: 201-487-6060 • Facsimile: 201-487-5938 • E-mail: info@eastair.com

East Air Corporation

Please feel f ree to contact the undersigned should you have any additional questions.

Sincerely,

Robert Krenitsky

Robert Krenitsky
Vice Presid ent

cc. J Nepola, Presiden t, East Air Corporation
C. Nagel

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CDIA AIDC
Canadian Defence Industries Association
Association de l'industrie de la défense du Canada

22 Jun 05

U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
14th & Pennsylvania Avenue, N.W.
Room 2705
Washington, DC, USA
20230

Subject: **Proposed Rule: Imposition of License Requirement for Exports and Re-exports of Missile Technology Controlled Items Destined to Canada**

Reference: **A. RIN 0694-AC48**

Dear Mr. David Rostker:

The Canadian Defence Industries Association (CDIA) is pleased to respond to the request for comments on the proposed rule to impose licensing requirements for missile technology items destined to Canada.

As an opening comment, CDIA would like to re-affirm our endorsement of, and agreement with, the "Summary of Comments" included on Page 29661 of the Federal Register / Vol. 70, No. 99 / Tuesday, May 24, 2005.

The introduction of the requirement for U.S. industry to apply for a licence for the export and re-export of missile technology controlled items destined to Canada will achieve the following:

1. It will add overhead costs to both the shipper and the receiver of the goods.
2. The overhead costs will either need to be included in the rates charged by the U.S. company, which will negatively impact their ability to compete against non-U.S. suppliers; or, they will absorb the additional costs and reduce their small profit margins. This is a "lose-lose" situation for U.S. suppliers.
3. The uncertainty about the time it will take to complete the entire licensing process will create uncertainty about the ability of U.S. suppliers to respond to product orders in a timely fashion. The increase in project risk will encourage companies to seek non-U.S. suppliers.
4. A requirement for the Department of Commerce to have additional staff, defined procedures and an appropriate working environment to be able to respond to license requests in a timely manner.

Reference A asked for estimates on the potential costs associated with the adoption of the proposed rule. This request is difficult to respond to because key components of the cost equation are not yet known. For example, the complexity of the licensing process and the number of times a month that a specific company will be involved in license submittals has a significant impact on the number of people required to process the license requests. With these uncertainties in mind, and based on our experience with the U.S. ITAR and Canadian Control Goods Program conformance requirements, we would offer that the following cost components need to be included in the DOC template used for cost estimation purposes:

- Annual DOC costs for incremental staffing for license processing, help-desk functions, industry outreach activities, web-site maintenance, infrastructure support, etc.
- Initial development of training materials, process and procedure documentation is expected to cost $50K to $100K per company (e.g. if there are 2000 companies affected, then the initial costs to U.S. industry would range from $100M to $200M
- Initial cost of conducting staff awareness training – estimate 1 hour per person multiplied by an average of $150 per hour multiplied by the number of people in the defense industry that need knowledge of this topic
- Annual cost of conducting staff refresher training - estimate 1/4 hour per person multiplied by an average of $150 per hour multiplied by the number of people in the defense industry that need knowledge of this topic
- Annual cost per company to retain a single employee (equivalent) dedicated to the processing of licencing requests – likely $150K to $200K per employee per year
- The annual cost of orders either not placed or subsequently cancelled because of this issue

From a Canadian industry perspective, costs will be incurred for training and educating company staff about this issue and for the costs associated with sourcing new suppliers as a risk mitigation strategy.

In conclusion, CDIA believes that the proposed rule will have a negative impact on the North American Defense Industrial Base and is unlikely to contribute to enhancing the security of our countries.

Sincerely,

per

S.D. (Stan) Jacobson
Vice-President Export
Canadian Defence Industries Association

GORMAN AVIATION, INC.
James L. (Jim) Gorman
President

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22 June 2005

Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
14th & Pennsylvania Av NW Room 2705
Washington, DC 20230

Attn: RIN 0694-AC48

Subject: Commerce Department Bureau of Industry and Security Removal of Licensing Exemption for MTCR Items (Inertial Navigation Equipment) Destined to Canada

Dear Sir,

Gorman Aviation is strongly opposed to the proposed amendment to the Export Administration Regulations (EAR) to impose a license requirement for export and re-exports of items controlled for missile technology (MT) reasons to Canada.

Gorman Aviation is a commercial aviation service provider. We rely on Canadian based aerospace companies to supply and repair Inertial Navigation System (INS) equipment in a timely manner. The turn-around-time for INS equipment is critical in keeping our aircraft flying. The requirement to obtain and process an export license for the repair of INS equipment in Canada will lengthen the repair turn-around-time which could result in delayed or cancelled flights.

We anticipate that the imposition of the rule change will result in the submission of approximately (100) export license applications per year. We estimate that the additional costs to our company in complying with a license requirement will be $20,000.00 per year.

We urge BIS to withdraw its proposal to amend the Export Administration Regulations. Shipments of commercial INS equipment should continue to be exempt from the requirement to obtain an export license.

Please feel free to contact the undersigned should you have any additional questions.

Sincerely,

James L. Gorman

James Gorman, President
Gorman Aviation Inc
(972) 317-2985
(972) 317-3084 fax
email:gormanz1@aol.com

United Technologies Corporation
Suite 600
1401 Eye Street, N.W.
Washington, DC 20005
(202) 336-7400

United Technologies

June 23, 2005

VIA ELECTRONIC MAIL

Bureau of Industry & Security
U.S. Department of Commerce
14th & Constitution
Washington, DC 20230

Re: Comments Concerning Proposed Rule (RIN 0694-AC48)

To Whom It May Concern:

United Technologies Corporation ("UTC") files these comments in response to the May 24, 2005 request for public comment on a proposed rule that would amend the Export Administration Regulations ("EAR") to impose a license requirement for exports and reexports to Canada of items controlled for missile technology ("MT") reasons. In short, the proposed changes would significantly increase the burden and cost of doing business for UTC's aircraft engine design and manufacturing subsidiaries, Pratt & Whitney ("P&W") and Pratt & Whitney Canada ("P&WC"), and for U.S. operators of their engines, with little, if any, appreciable gains to national security. As a result, UTC respectfully requests that BIS amend the proposed rule to create an exemption for Canadian support of civil-certified engines used on civil-certified aircraft operated by bona fide civil operators. Alternatively, if such an exemption is infeasible, we request that BIS revise the proposed rule to provide for blanket licenses that would enable U.S. civil aircraft operators to ship civil-certified engines to Canada for maintenance, repair and overhaul ("MRO") over a defined period of time, with no dollar or quantity limit.

I. UTC Background

UTC is a global corporation based in Hartford, Connecticut. With over $37 billion in revenue in 2004 and approximately 210,000 employees in 62 countries, UTC supplies a broad range of high technology products and support services to the building systems, transportation, and aerospace industries. UTC's companies are industry leaders, and UTC's best-known products include Pratt & Whitney jet engines, space propulsion and power systems; Carrier heating, air conditioning and refrigeration systems; Otis elevators and escalators; Sikorsky helicopters; and Hamilton Sundstrand flight and space systems. In 2004, 59 percent of UTC's total revenues were generated outside of the United States.

II. Current Aircraft Engine-Related License Requirements for Canada

MTCR controls cover gas turbine engines of a specific thrust range that are used in commercial transport aircraft operated by individuals and by air transport companies in the general aviation market. Under the EAR's current MT controls, only the engine and

engine technology are controlled; engine parts and technology are excluded, as are engines exported as part of a civil aircraft. Moreover, under current regulations, exports of engines from the U.S. to Canada do not require a license.

III. Effect of Proposed Rule on U.S.-Canadian Aircraft Engine Trade

P&WC's PW600 series of engines is a new turbofan engine family with a thrust level of between 800 to 2,000 lb. of thrust, putting the engines under ECCN 9A101a. Engines in this family recently have been selected by Cessna for its Citation Mustang general aviation aircraft; Eclipse Aviation for its Eclipse 500 general aviation aircraft, which is aimed at the emerging corporate air taxi industry; and Embraer in Brazil for its Very Light Jet aircraft, also aimed at the general aviation and air taxi markets. All of these aircraft are in the 1 pilot/5 passenger class and will be sold in the United States and around the world to single aircraft owner/operators and fleet owners. The PW600 family of engines will be civil-certified in both Canada and the United States and other jurisdictions, as required. The engines were designed and will be manufactured in Canada using Canadian-origin technology. The engine will enter service in the United States in early 2006.

Under the May 24 notice of proposed rule making, PW600 engines to be returned to P&WC in Canada from either the aircraft manufacturer or the aircraft operator for MRO would require a BIS export license. Based on the expected aircraft population in the United States and the average use of these engines, we estimate conservatively that by 2010 more than 2,000 engines will need to be exported annually to Canada from the United States for MRO. By 2020, more than 5,000 engines will need to be exported annually. Needless to say, this volume of exports entails substantial licensing burdens.

In many cases, it also will be impossible to determine in advance that an engine will need to be exported to Canada for MRO. In the majority of cases, the export will be of a single engine by a single aircraft owner/operator. Given that these aircraft will be used in the highly competitive general aviation and air taxi markets, it will be imperative to repair and return these engines as quickly as possible. Imposing a new license requirement will likely delay the turnaround time for repairs; delays, in turn, would harm the competitiveness of the operators of the aircraft, especially the air taxi operators, as well as P&WC. A license requirement will also likely increase costs for U.S. operators using the engines, because these operators will likely need to turn to brokers or third-parties to secure export licenses.

IV. Impact on Engine Parts Exports

In addition to the licensing burdens associated with the PW600 turbofan engine family, many shipments between P&WC and its U.S. suppliers of MT-controlled items used in the production of gas turbine engines will be affected by a new licensing requirement, including shipments of raw materials, bearings, machine tools and inspection equipment,

sensors, computers and software and related technologies. The proposed regulatory change will result in a significant number of export license requests for these types of items, perhaps in excess of 1,000 additional requests annually.

V. Recommendations

Given the significant impact that the proposed rule will have on P&WC and U.S. aircraft operators of P&WC engines, we respectfully request that BIS consider amending the rule to create an exemption for Canadian support of civil-certified engines used on civil-certified aircraft operated by bona fide civil operators. Alternatively, we request that BIS revise the proposed rule to provide for blanket licenses that would enable U.S. civil aircraft operators to ship civil-certified engines to Canada for MRO over a defined period of time, with no dollar or quantity limit. We believe that neither of these revisions to the proposed rule would compromise the national security objectives underlying the proposed BIS rule on MT controls.

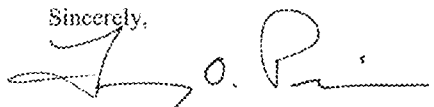
VI. Conclusion

UTC and its aerospace operating companies P&W and P&WC recognize the important national security objectives animating the proposed rule. It is not clear the proposed rule, as currently drafted and as applied to P&W and P&WC, will advance the national security. It will, however, unequivocally increase the licensing and other administrative costs for P&W and P&W Canada, reducing their productivity as well as the productivity of the U.S. operators of their aircraft engines. The proposed rule and associated license requirements also are likely to increase costs for U.S. operators of P&WC engines and U.S. suppliers of P&WC. Because of these added financial and administrative burdens, Canadian firms may seek to reduce their reliance on U.S. suppliers, turning to foreign competitors that are not similarly burdened. In the end, U.S. suppliers would be significantly weakened.

* * *

UTC appreciates the opportunity to present its views to the Department of Commerce on this proposed rule. For additional information about these comments, please contact Jeremy Preiss, UTC's Vice President, Chief International Trade Counsel, at (202) 336-7428.

Sincerely,



Jeremy O. Preiss
Vice President, Chief International Trade Counsel

International Trade Canada / Commerce international Canada

125 Sussex Drive
Ottawa, Ontario
K1A 0G1

June 23, 2005

Regulatory Policy Division
Bureau of Industry and Security
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RE: Federal Register: May 24, 2005 (Volume 70, No. 99)
Bureau of Industry and Security, 15 CFR Parts 738 and 742
Docket No. 011019257-5107-02

Dear Sir/Madam,

The Government of Canada would like to register our continuing concerns on the imposition of a license requirement for exports and re-exports of Missile Technology-Controlled items destined for Canada. While we can not quantify the impact of such a licensing change, we would re-iterate the views expressed in our submission of February 18, 2002 regarding the adverse effect a license requirement would have on U.S.-Canada trade in MT-controlled items. We would also remind that several U.S. trade partners maintain licensing exemptions for MT-controlled items to other MTCR member countries, including the European Union and Japan, as well as Canada with its MT licensing exemption to the United States.

Yours sincerely,

Michael Rooney
Director
Export Controls Division

Canada