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June 15, 2012

By FedEx
Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
14th and Pennsylvania Avenue, NW
Room 2099B
Washington, D.C. 20230

ATTN: RIN 0694-AF53

RE: Cray Valley Hydrocarbon Specialty Chemicals:
Comment on Proposed Revisions to the Export Administration Regulations
Regarding Control of Energetic Materials and Related Articles That
No Longer Warrant Control Under the United States Munitions List

Dear Sir or Madam:

On behalf of Cray Valley Hydrocarbon Specialty Chemicals ("Cray Valley" or the "Company"), we respectfully submit this letter in response to the Department of Commerce, Bureau of Industry and Security's ("BIS"") request for comments on the proposed rule entitled *Revisions to the Export Administration Regulations (EAR): Control of Energetic Materials and Related Articles That the President Determines No Longer Warrant Control Under the United States Munitions List ("USML")* (the "Proposed Rule").[1] This Proposed Rule was issued pursuant to the Administration's Export Reform Initiative, and proposes revisions to the USML and the Commerce Control List ("CCL").

As discussed below, Cray Valley welcomes the Administration's Export Control Reform Initiative, and in keeping with the spirit of these reform efforts, the Company proposes additional changes to the licensing policies for certain items discussed in the Proposed Rule. These changes are critical to ensuring the continued competitiveness of U.S. industry in the global adhesives market. Moreover, the efforts would further the Administration's reform objectives by lessening certain compliance burdens on both U.S. industry as well as BIS, thereby permitting the U.S. Government to focus its licensing and enforcement resources on more critical national security and foreign policy concerns.

Proposed Amendments to the Commerce Control List

The Proposed Rule describes how energetic materials and related articles that are currently subject to the jurisdiction of the International Traffic in Arms Regulations ("ITAR")

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1 77 Fed. Reg. 25932 (proposed May 2, 2012).

and controlled within USML Category V, would be migrated to the CCL, and therefore transferred to the jurisdiction of the Export Administration Regulations ("EAR"). The Rule proposes to create a new Export Control Classification Number ("ECCN") to control many of the items formerly within Category V of the USML, and to expand ECCN 1C111 to include certain other chemicals currently within Category V, as well as others currently controlled on the CCL. As noted, these amendments are proposed as part of the Administration's Export Reform Initiative, and are intended to narrow the broad scope of the U.S. export control regime to:

(i) Allow for greater interoperability with NATO and other allies while maintaining robust export controls on transactions of concern;

(ii) Enhance the U.S. industrial base by discouraging foreign companies from sourcing items from non-U.S. suppliers to avoid the U.S. licensing obligations; and,

(iii) Permit the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing and, if need be, prohibiting exports and reexports of more significant items to destinations, end users and end uses of greater concern than NATO allies and other multi-regime partners.

See Proposed Rule, 77 Fed. Reg. at 25,933.

Cray Valley supports BIS' efforts to achieve meaningful export control reform. In particular, Cray Valley urges BIS to take additional measures in furtherance of these stated objectives by revising certain licensing policies. Specifically, the Company encourages BIS to modify its approach to the licensing of exports and reexports of Hydroxyl-Terminated Polybutadiene (known as "HTPB"), subject to control within ECCN 1C111.b.2, to enable U.S. industry to obtain the Special Comprehensive Licenses described in Part 752 of the EAR.

As described below, HTPB is almost exclusively used in commercial industrial applications. Nonetheless, an export license is required to export or reexport HTPB to all countries except Canada since HTPB is controlled for Missile Technology ("MT") reasons. [2] Additionally, the licensing requirement currently applies regardless of the value or amount of HTPB subject to export. While we understand that the licensing requirement is based on the language of the Export Administration Act and thus not subject to review absent legislative amendment, Cray Valley respectfully proposes that BIS revise its licensing policies for items such as HTPB, so that exporters may more efficiently obtain BIS authorization for legitimate commercial transactions.

The proposed reforms outlined below are consistent with the goals of the Export

[2] 15 C.F.R. § 742.5.

Administration Initiative set forth above. First, as explained, NATO and other allies currently implement fewer licensing restrictions on dual-use items with largely commercial applications, such as HTPB, due to the foreign availability of such items, and the technology for their production. Moreover, these countries are currently contemplating further reduction of the remaining licensing restrictions applicable to such items. Therefore, revision of the U.S. approach to licensing of dual-use items like HTPB is central to achieving greater commercial interoperability between the U.S. and its allies, as well key to maintaining the competiveness of U.S. industry vis-à-vis foreign competitors. Additionally, streamlining the approach to export licensing of non-sensitive dual-use-items will reduce BIS' administrative burden, thereby allowing BIS to shift its resources to the control of higher sensitivity items, or transactions involving end users and end uses of greater concern.

To emphasize the need for these reforms, below we highlight some of the business challenges facing U.S. manufacturers of HTPB as a result of the current U.S. approach to licensing. We also compare these challenges with those of their foreign competitors in NATO and other ally countries, where fewer export licensing restrictions are implemented. Finally, we conclude with a discussion of Cray Valley's proposals for BIS' consideration.

Background Regarding Cray Valley and Hydroxyl-Terminated Polybutadiene

Cray Valley is a U.S. company headquartered in Exton, Pennsylvania. With hundreds of employees and multiple manufacturing facilities in the United States, Cray Valley is a leading global supplier of hydrocarbon resins, diene-based resins, and specialty monomers. The Company produces a variety of grades of HTPB resins at its facility in Channelview, Texas, that are classifiable within ECCN 1C111b.2. While the company also manufacturers a military grade HTPB product that is subject to ITAR-control,[3] nearly all of Cray Valley's sales are for use in commercial applications, such as: adhesives; asphalt modification; coatings (containment, can) and waterproofing membranes; insulating gels; oxygen scavenging in plastics; potting compounds and encapsulants; rollers; and, sealants (insulated glass sealants). HTPB resin products are a staple of the manufacturing process for a range of commercial sectors, from automotives to electronics.

In accordance with its extensive array of commercial uses, today HTPB is widely available and is manufactured in every continent. Publicly available information reflects that

[3] Cray Valley's military grade HTPB resin is used only in military and aerospace applications and is subject to control under the ITAR, as it is described within the technical specifications described in Category V of the USML. Cray Valley expressly excludes these USML controls from the scope of this comment, and is not requesting that the Department of State or Department of Commerce take any additional action to revise the scope of these controls.

HTPB manufacturing plants are currently located in Brazil, Italy, Japan, China, South Korea, South Africa, Russia, Czech Republic, and a manufacturing plant will open in Germany during 2012. The technology for production of HTPB has been publicly available since the publication of a patent for Burke, Jr. et al. (Patent No. 3,673,168, published on June 27, 1972), and the production process uses raw materials which are also readily available.

Despite its widespread foreign availability, the EAR requires U.S. exporters and reexporters to obtain a standard license under Part 748 to authorize each export or reexport of HTPB to any country destination except Canada, regardless of the amount or value or HTPB to be shipped, or the identity of the proposed end-user. Additionally, because HTPB is controlled for MT reasons, the license exceptions within Part 740 of the EAR do not apply.[4] Thus, U.S. companies are required to obtain a standard export license prior to exporting even a sample shipment of HTPB to potential customers, even research institutions in Europe or Cray Valley affiliated entities. This approach to licensing raises numerous business challenges for U.S. manufacturers of HTPB seeking to meet foreign customer's expectations, as demonstrated through the following examples:

- Scenario 1: A derivative of HTPB can be used in can coatings. This requires HTPB to be transferred from a warehouse in one country to an outside production facility in another country. Once the derivative is complete, the material is transferred back to the initial warehouse (again, across country borders) prior to shipment to the customer. The customer, in this developing new field is trying to commercialize in several European countries, reacting to the fluidity of the market. However, under the EAR, every potential supply possibility must be detailed in advance and set forth in a license application.

- Scenario 2: Customer A uses HTPB in their Automotive Sealing compound in Germany. To follow their customer's manufacturing to Brazil, Customer A wishes to get a sample of HTPB shipped to their plant in Brazil. Regardless of the quantity requested, this transaction requires a license. The delay in the U.S. company's ability to deliver even small amounts while there is developmental momentum stalls many projects.

- Scenario 3: In "Slow-Growth Markets," mergers and acquisitions are increasingly common. Customer A (who has current active licenses from BIS for exports to Germany), buys Customer B (who has a current active license from BIS for exports to France). Customer A decides that Customer B will now be known as Customer A France. Although both locations have been reviewed and licensed by BIS, Customer B's license is no longer valid and Customer A France does not have a valid license. The U.S. company cannot service Customer A France without requesting a new license from BIS.

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4 15 C.F.R. § 740.2(a)((5)(i).

- Scenario 4: A U.S. company is storing drums of HTPB at a warehouse in Europe which is listed within the scope of a BIS Export License. That warehouse has a fire; other undamaged company materials in this warehouse are transferred *en masse* to another warehouse approximately 100 miles away that is managed by the same warehouse operating company, so most customers are unaffected. Although no HTPB is damaged, the HTPB cannot be transferred to the second warehouse because the alternate warehouse is in another country (Netherlands to Belgium), which would violate the terms of the BIS export license. Therefore, the U.S. company's customers are negatively affected.

As these actual scenarios demonstrate, the U.S. approach to licensing restricts the ability of U.S. companies to meet potential purchasers' requirements, and deprives U.S. companies of the flexibility needed to address unexpected supply chain issues. Consequently, as explained below, U.S. industry faces commercial disadvantages, particularly when compared with their European competitors who are subject to less onerous licensing policies. Since both the U.S. and the European export controls of HTPB are derived from the Missile Technology Control Regime ("MTCR") and the MTCR Equipment, Software and Technology Annex (the "MTCR Annex") of Dual-Use Items, it is important to first review the MTCR and the export control responsibilities and commitments applicable to countries that are members of the MTCR.

Missile Technology Control Regime

The MTCR is an informal (*i.e.*, not a treaty), voluntary arrangement among countries that share a goal of non-proliferation of nuclear-capable missiles and related technology. In achieving this objective, the regime rests on the member countries' (or "MTCR Partners'") adherence to common export control policy guidelines applied to an integral common list of controlled items set forth in the MTCR Annex. The list consists of a range of software, equipment, materials and associated technology applicable for use in missile and rocket systems, unmanned air vehicles, as well as systems intended for the delivery of weapons of mass destruction ("WMDs"). The Annex is divided into two categories: the most sensitive items are listed in Category I, and the remaining items are in Category II.

Polymeric substances, including HTPB, are listed in Category II (Item 4) of the MTCR Annex.[5] The MTCR Annex Handbook, which provides background regarding the controlled items and their potential uses, explains that these polymers are listed due to their applicability for use as a binder and as fuel in solid rocket motor propellants.[6] However, the MTCR Handbook recognizes that HTPB has "extensive" non-missile proliferation related commercial uses, for

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5 MTCR Equipment, Software and Technology Annex, Category 2, Item 4.C.5.b at 30, available at http://www.mtcr.info/english/annex.html.

6 MTCR Annex Handbook at 4-22, available at http://www.mtcr.info/english/annex.html.

instance uses in asphalt and electronics and as a sealant, and is therefore relegated to the lesser controlled Category II.

With respect to the specific export control commitments applicable to each MTCR Partner under the regime, the MTCR Guidelines prescribe a tiered approach depending upon the sensitivity of the item proposed for export. For the more sensitive items within Category I, partners are obligated to exercise "particular restraint" when considering a proposed export regardless of the stated purpose, and should only approve such exports in rare circumstances where the exporting country has obtained government-to-government commitments from the recipient government, and the exporting country can guarantee that exported items will be used for the stated end-use.

Alternatively, for the remaining Annex items (in Category II), MTCR Partners are granted additional discretion in the approval of proposed exports based on their consideration of a number of factors.[7] A review of these factors indicates that if the items are intended to be used for the delivery of WMDs, the MTCR Partner must apply a "strong presumption" of denial for such transfers. Additionally, if a proposed transfer could contribute to a delivery system for WMDs, MTCR Partners are required to obtain assurances from the government of the recipient state.

Significantly, the MTCR Guidelines and Annex are implemented by each MTCR Partner in accordance with its national legislation. While the Guidelines require each MTCR Partner to abide by the regulatory commitments outlined above, the MTCR Partners do not adopt export licensing decisions as a group. Instead, each MTCR Partner is responsible for implementing the Guidelines and Annex in accordance with national legislation and practice, and on the basis of its sovereign discretion.[8] Therefore, although each MTCR Partner follows the export control guidelines prescribed by the MTCR, the Partners do not necessarily interpret the guidelines consistently, resulting in divergent export licensing policies, such as those affecting HTPB.

Comparison of U.S. and Foreign Export Control Regimes

Many MTCR Partners are leading exporters of HTPB, including Brazil, Italy, France, the Czech Republic, Russia and Japan. Cray Valley also anticipates that an additional European manufacture of HTPB will enter the foreign market during the coming year. Given that the

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[7] These factors include, but are not limited to: concerns about the proliferation of WMDs; the capabilities and objectives of the missile and space program of the recipient state; the significance of the transfer in terms of the potential development of delivery systems (other than manned aircraft) for WMDs; an assessment of the end-use of the proposed transfer; the applicability of any relevant multilateral agreement; and, the risk of controlled items falling into the hands of terrorist groups and individuals. *See* MTCR Guidelines for Sensitive Missile-Relevant Transfers ¶ 3, available at http://www.mtcr.info/english/guidetext.htm.

[8] *See* MTCR Guidelines for Sensitive Missile-Relevant Transfers ¶ 1, *supra*, note 7.

export control regime applicable to HTPB can greatly increase the lead time required for a particular sale, and that the lead time, in combination with other administrative hurdles can ultimately impact the closure of the sale, it is imperative to U.S. industry that the MTCR Partners maintain parallel export control policies and practices. The lack of parity in the interpretation of the MTCR export obligations provides an unfair competitive advantage to non-U.S. manufacturers of HTPB products.

An analysis of the export control practices of the European Union ("EU") demonstrates the disparity. Within the European customs union, dual-use items are subject to a common system of export controls when exported to country destinations outside the EU.[9] Under the EU export regime, dual-use items may be traded freely within the customs union. That is, all dual-use items[10] may be transferred, without a license, between EU countries.

For exports to destinations outside the EU, the Dual-Use Regulation provides for four different types of export license authorizations. The broadest of the authorizations are the EU General Export Authorizations ("GEAs"), which are issued by the EU and serve as a general authorization for the export of certain specified items to certain country destinations. EU GEA 001, or EU001, authorizes exports *without* a specific license of nearly all items listed in Annex 1, including HTPB, to Australia, Canada, Japan, New Zealand, Norway, Switzerland and the United States. Use of this EU GEA is subject to notification and registration requirements. However, these requirements are established at the EU national level, and some EU countries (including Germany and the United Kingdom) permit exporters to provide notice and register up to thirty days *after* the first export is made under any EU GEA.

The remaining three categories of export authorizations are issued at the national level by each member country, rather than the EU. National General Export Authorizations ("NGEAs") function similarly as the EU GEAs, except that they are granted by the relevant authorities of the EU member country and apply only to exporters within that country's jurisdiction rather than all EU members as a whole. EU member countries that have granted NGEAs include France, Germany, Greece, Italy, Sweden, the Netherlands and the UK. Only Germany and the UK have adopted a range of NGEAs applicable to a variety of products.

For example, pursuant to the German export-control legislation, the Foreign Trade and Payments Act (the "AWG"), and its implementing regulations, the Foreign Trade and Payments Regulations (the "AWV"), no export license is required where a proposed export qualifies for use of an NGEA or a global license. One such German NGEA, Number 12, authorizes the unlicensed export of certain dual-use items listed in Annex 1 to the EU Dual Use Regulation that

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9 Regulation 428/2009 (the "Dual-Use Regulation").

10 The list of items set forth in Annex 1 closely tracks the Commerce Control List under the EAR. HTPB is included in Annex 1 under category 1C111.b.2.

are below a certain value threshold. Exports of HTPB are authorized under this NGEA. To qualify, all goods delivered under a contract may not be worth more than €5,000.00. The authorization is valid for exports to *all* country destinations except those that are subject to an arms embargo under the AWV, and Afghanistan, Yemen, Pakistan and Uzbekistan. In addition to these more liberal licensing policies, the German export authorities report that the processing time for license applications for exports to non-sensitive countries is approximately two weeks.

The following graphical representation summarizes the distinctions between the U.S. and European approaches to the licensing of HTPB exports.

US Manufacturer	License Required?	German Manufacturer	License Required?
Sample USA to Germany?	Yes	Sample Germany to USA?	No
Order USA to Germany?	Yes	Order Germany to USA?	No
Order USA to France?	Yes	Order Germany to France?	No
Order USA to Australia?	Yes	Order Germany to Australia?	No
Average Time for a BIS License?	1 month	Average Time for an Export License?	2 weeks

Notwithstanding the significant distinctions, the two approaches to the export licensing of dual-use items such as HTPB are based on the same MTCR Guidelines. Hence, these approaches reflect largely distinct interpretations of the multilateral regime, effectively resulting in the U.S.' unilateral application of a specific license requirement for such items.

Proposed Solution

To harmonize the current divergent interpretations of the MTCR Guidelines amongst the MTCR Partners, and the resulting competitive disadvantages facing U.S. industry, Cray Valley encourages BIS to review and revise its approach to the export licensing of non-sensitive dual-use items such as HTPB. As noted, such reforms are critical to U.S. industry, and comport with the goals of the Administration's Export Control Reform Initiative by reducing the administrative burden on BIS, thereby allowing BIS to focus on transactions involving more sensitive items, end-countries, and/or end-users.

Historically, implementation of export reform for items such as HTPB that are controlled for MT purposes has been challenged on the grounds that such reforms necessitate prior legislative action. Specifically, these arguments cite to the statutory language of the Export Administration Act, as amended by the National Defense Authorization Act of 1991.[11] We respectfully submit that export reform is possible within the current statutory framework which

[11] *See* Transcript of BIS Update 2011 Conference on Export Controls and Policy, Missile Technology Policy and Licensing Issues and Trends (Jul. 19, 2011) at 19-20.

requires "an individual validated license for . . . any export of goods or technology" on the dual-use control list that is controlled for MT reasons.[12] In accordance with this language, we propose that BIS revise its approach to export licensing by allowing U.S. industry to obtain Special Comprehensive Licenses for non-sensitive, dual-use items, such as HTPB. We do not request that BIS modify or revise the current licensing requirements for HTPB. Likewise, we do not request that BIS authorize the application of any License Exception set forth in Part 740 of the EAR.[13]

Additionally, while Cray Valley's proposals are not in conflict with the statutory language, it is important to note that the language has not been consistently interpreted as a blanket constraint on the export of MT-controlled items without a license. Indeed, all exports to Canada of MT items are exempted from the "individual validated license" requirement.[14] Likewise, the EAR authorizes the unlicensed export of certain MT-controlled radar, accelerometers, gyros and corresponding test equipment, software and technology under license exceptions TMP, RPL, TSU and AVS.[15]

Lastly, based on a review of the MTCR Partners' export control regimes, it is apparent that the limited export reforms proposed herein for HTPB are congruent with the policies of the U.S.'s closest allies. Published information regarding the export reform efforts of U.S. allies such as the European Union demonstrates that their export licensing requirements for less sensitive items, such as HTPB, are likely to be further dismantled over the coming years. A Green Paper published by the European Commission in June of 2011 discusses the utility of the current international export regime controls of dual-use items in light of the increasing global supply of such items.[16] Noting the "simplification of export control procedures" being undertaken in third countries, the EU Report also requests public comment on the impact of the EU dual-use regime on the competitiveness of EU exporters, and to rate the current EU export control system as compared to the export control systems of third countries.[17] The modernization of the EAR through export reforms is therefore in accordance with the U.S. allies'

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12 *See* 50 U.S.C. App. 2405(l).

13 15 C.F.R. Part 740.

14 15 C.F.R. § 742.5(a)(1) (stating that "[l]icenses for these items are required to all destinations, except Canada…").

15 15 C.F.R. Part 740.

16 European Commission, Green Paper: The Dual-Use Export Control System of the European Union: Ensuring Security and Competitiveness in a Changing World (Jun. 6, 2011) at 4-5, available at http://ec.europa.eu/trade/creating-opportunities/trade-topics/dual-use/.

17 *Id.*

attitude as to the appropriate level of control for such low-sensitivity items, and is necessary for U.S. exporters to compete in the increasingly deregulated global dual-use markets.

Proposal 1: Amend Section 752.3(a)(1) of the EAR

With this background, we propose that BIS amend Section 752.3(a)(1) of the EAR (at 15 C.F.R. § 752.3(a)(1)) to delete the restriction on the eligibility of MT controlled items for use of Special Comprehensive Licenses ("SCL") under Part 752 of the EAR. Under the SCL licensing mechanism, qualified U.S. exporters would be able to obtain authorization for multiple exports and reexports of HTPB without submitting repeated license applications. For companies like Cray Valley, who have demonstrated a solid licensing history and have a roster of long-term, legitimate commercial customers in NATO and other ally countries, use of the SCL would minimize the types of business challenges described previously. Further, although U.S. exporters will remain disadvantaged in comparison to their European competitors until the underlying licensing requirement is removed, use of the SCL would reduce the foreign competition's edge.

For example, the SCL mechanism would allow BIS to authorize, through a single license application, a number of activities that may be necessary for U.S. exporters to address the supply chain issues that arise when servicing foreign customers. These may include the following circumstances:

- *Authorize exports and reexports by SCL holders and SCL consignees without requiring specific approval of the value exported to each recipient under the license.* Currently, U.S. exporters of HTPB may include up to fifty (50) end-users within one license application, but are required to track the value and volume of HTPB shipped to each end-user, not simply the total amount shipped under the license. This requirement compels U.S. companies to dedicate resources and incur costs to track such information, while the foreign competition is not under corresponding obligations. Under an SCL, U.S. companies could identify the total value of all anticipated HTPB transactions under the license, and could amend this amount with notice to BIS (no prior BIS approval required). Since SCLs are not subject to the fifty end-user maximum limitation, U.S. companies could also include all end-users for a particular region within one license application.

- *Reduce the frequency with which SCL consignees and end-users are required to submit BIS Certification Forms.* Today, U.S. exporters of HTPB are required to obtain new Form BIS-711 Statement by the Ultimate Consignee and Purchaser from foreign commercial customers for each new license application. Because each transaction involving HTPB must be approved by BIS under the current regulatory regime, U.S. companies are often required to repeatedly request new forms from foreign customers as needed for each new license application. These repeated requests can lead to strained

relationships with foreign customers, especially given that the customers can order HTPB from a European manufacturer without providing comparable forms.

Under an SCL, applicants would only be required to submit one copy of the forms to be executed by the SCL consignees, and any certifications required from the end-users/purchasers. With the exception of limited changes to the SCL terms, for example a change in SCL Consignee ownership, U.S. manufacturers would not be required to obtain new forms or certifications. Additionally, given that each SCL license is valid for four years, as opposed to two, with a potential additional four year renewal period, the foreign purchasers would not be required to submit new forms as frequently.

- *Authorizes SCL consignees to reexport to approved end-users without prior approval from BIS of each individual transaction.* The comprehensive approval of reexports of HTPB by approved foreign consignees to approved end-users would help to address to the warehousing issues that U.S. companies encounter. As explained above, U.S. companies frequently store HTPB at overseas warehouses during the distribution process. To meet customer requirements, or unexpected supply chain emergencies, U.S. companies may be required to shift their supply between warehouse locations. Under an SCL, U.S. manufacturers would be able to shift their supplies between such locations without specific prior approval from BIS, even when the shift would entail a reexport.

- *Permits the amendment of SCLs without requiring a new license application to reflect changes in total value, names of end-users and SCL consignees, reexport territories, the addition of SCL consignees and SCL end-users, and new ownership of SCL consignees or end-users.* Under the current HTPB licensing system, parties are required to submit a new license application for each material change to an active license. Therefore, parties are required to submit all required documentation, and must wait to ship until a replacement license is issued (*see* Scenario 3, above). For companies with over one hundred active export licenses, the need for a replacement license entails additional administrative recordkeeping burdens, and can negatively impact the company's relationship with their foreign purchaser. Under the SCL licensing mechanism, amendment of most license terms and conditions is possible without the submission of a new application.

Proposal 2: Exclude Sample Shipments of HTPB From the Scope of ECCN 1C111

Next, in addition to these licensing policy reforms, we propose that BIS exclude sample shipments of HTPB from the scope of ECCN 1C111. Such an exclusion would be similar to that afforded to certain industrial and biological weapons chemicals controlled within ECCN 1C350, which are arguably more dangerous that HTPB. The demand for sample volumes of HTBP is similarly customary within the industrial adhesives industry (*i.e.,* potential customers perform Quality and Assessment screening on the samples provided prior to placing an order).

To level the playing field for U.S. industry, we propose that such an exclusion apply where: (1) The HTPB will be exported as a sample shipment directly from the United States to research facilities and non-military end-users; (2) The cumulative total of these shipments does not exceed 240 kilograms[18] of HTPB to any one consignee during a calendar year; and, (3) A consignee that receives a sample shipment under this exclusion may not resell, transfer, or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to missile proliferation. As previously noted, German manufacturers are already provided this type of license exemption for sample shipments under the National Export Authorization No. 12. Moreover, authorizing such sample shipments would not raise the risk of the proliferation of missile technology, as 240 kilograms of HTPB is not a sufficient quantity for military application.

Proposal 3: Encourage the MARC to Seek Revision of the MTCR Annex

While we encourage BIS to consider these proposed reforms to provide immediate relief to U.S. industry, we understand that resolution of the issue may require additional action at the international level. To modernize the export licensing controls applicable to HTPB, and align these controls with the almost exclusively commercial-use of HTPB, we also encourage the Missile Annex Review Committee ("MARC") to seek revision of the technical parameters of the HTPB controls currently listed in the MTCR Annex.

A review of the current Wassenaar Dual-Use Goods and Military Items Lists reveals that the MTCR Annex requires updating to reflect amendments which were not previously incorporated. An historical analysis of the evolution of these lists appears to demonstrate that while the Coordinating Committee on Multilateral Export Controls ("COCOM") implemented technical parameters on HTPB controls during the early 1990s, these amendments were never incorporated into the MTCR Annex. Accordingly, the MTCR Annex should be updated to reflect this over twenty year-old 'update.' As the COCOM members recognized decades ago, non-military grade HTPB no longer warrants comprehensive export control in light of its vast foreign availability, the publication of the technology for its production, and its wide-spread commercial uses which now dwarf the missile-related uses.

Conclusion

Lindsay B. Meyer of Venable LLP has been authorized by Cray Valley Hydrocarbon Specialties to act on its behalf. Questions about these comments should be addressed to the undersigned, who may be reached by telephone at 202-344-4829, by fax at 202-344-8300, or by e-mail at LBMeyer@Venable.com.

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[18] The specified amount would permit U.S. companies to export a drum and a pail of HTPB, which is the industry standard for samples of the material.

Thank you for your consideration of the above.

Respectfully yours,

Lindsay B. Meyer
Maria A. del-Cerro
Counsel for Cray Valley Hydrocarbon Specialty Chemicals

cc: William Wittig, Vice President of Business and Trade Compliance
Cray Valley Hydrocarbon Specialty Chemicals

DC2/1245569.01