AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

The Voice of the International Trade Community Since 1921

August 3, 2012

Via E-Mail: publiccomments@bis.doc.gov

Regulatory Policy Division
Bureau of Industry and Security
Room 2099B
U.S. Department of Commerce
14th Street and Pennsylvania, NW
Washington, DC 20230

Re: Proposed Rule on "Specially Designed" Definition
Docket No.: 120403245-1034-01
RIN 0694-AF66

Dear Sir or Madame:

On behalf of the American Association of Exporters and Importers (AAEI), we respectfully submit these comments concerning the proposed rule on the definition of the term "Specially Designed" that was published in the *Federal Register* on June 19, 2012 (77 Fed. Reg. 36,409).

AAEI has been a national voice for the international trade community in the United States since 1921. AAEI represents the entire spectrum of the international trade community across all industry sectors. Our members include manufacturers, importers, exporters, wholesalers, retailers and service providers to the industry, which is comprised of brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of these enterprises are small businesses seeking to export to foreign markets. AAEI promotes fair and open trade policy. We advocate for companies engaged in international trade, supply chain security, export controls, non-tariff barriers, import safety and customs and border protection issues. AAEI is the premier trade organization representing those immediately engaged in and directly impacted by developments pertaining to international trade. We are recognized as the technical experts regarding the day-to-day facilitation of trade.

1. General Comments

AAEI appreciates the opportunity to comment on the definition of "specially designed" and the major areas that the Administration is seeking to modernize under the President's Export Control Reform Initiative. AAEI strongly supports the President's export control reform effort. AAEI has participated in consultations with Administration and Congressional staffs regarding recommendations for export control reform of the current statutory and regulatory regime.

We appreciate the enormity of undertaking the task of modernizing the U.S. export control system that has developed over 50 years and reforming it in a relatively short period of time and therefore commend the Bureau of Industry and Security

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(BIS) and Directorate of Defense Trade Controls (DDTC) for its extensive efforts and progress made to date.

2. Specific Comments

AAEI strongly supports the goal of a positive list of items that are controlled and the removal of common, overused and not well defined terms, such as "specially designed." Nonetheless, the practical application of the proposed rule on specially designed is still confusing in some respects.

Specifically, the proposed rule still appears to reflect an underlying focus on the design intent of the item rather than national security interests and military functionality of the item. We believe that manufacturers, exporters and others involved in the production and export of export controlled products could more easily interpret and comply with the rules if the definition moved further from the concept of design intent towards an analysis of the unique characteristics of the item that imbue it with the military functionality.

In addition to these unique characteristics, the importance of the item to be controlled to national security interests should be taken into consideration. We recognize that steps toward this alternative approach have already been taken, as seen in the language of paragraph (a)(1) of the proposed definition of specially designed, which positively lists that items with "properties peculiarly responsible" for characteristics described in the U.S. Munitions List are controlled. Because the stated goal is to create a positive list that moves items from the control of the ITAR to the Export Administration Regulations, where possible, we believe a definition that enumerates even more discernible, limiting factors will more likely achieve the objective of increasing national security by focusing controls on the most critical items.

Beyond this conceptual ambiguity, we would like to present our views on some textual confusion and some suggestions for clarifying them. We offer the following suggestions to the proposed rule for inclusion in the final regulation to be issued by BIS:

1. We suggest the below wording can be stricken, as the same idea is stated in the subsequent sentence:

> §772.1 Specially designed.
> When applying this definition, follow this sequential analysis: Begin with paragraph (a)(1) of this section and proceed through each subsequent paragraph. ~~If a commodity would not be controlled as a result of the application of the standards in paragraph (a) of this section, then it is not necessary to work through paragraph (b) of this section.~~ If a commodity would be controlled as a result of paragraph (a), then it is necessary to work through each of the elements of paragraph (b).

2. We suggest deleting the word "unassembled," as it does not add clarity to the provision. It is our understanding this paragraph refers to a part that has not been assembled into another item, not that the part itself is unassembled:

   § 772.1(b)(2) Is a single ~~unassembled~~ part that is of a type commonly used in multiple types of commodities not enumerated.

3. We suggest deleting the following text referencing "production":

   § 772.1 (b) (3) Has the same form, fit, and performance capabilities as a part, component, accessory, or attachment used in or with a commodity that: (~~i) Is or was in production (*i.e.*, not in development); and~~ (ii) Is not enumerated on the U.S. Munitions List.

The likely intent of the text is to distinguish "production" from "development." However, we do not believe that this language adds any clarity.

4. Quality improvements and feature enhancements can change the basic performance or capability of an item and therefore could be considered "development." We submit that the emphasis should be on the definition of "development" rather distinguishing it from "production." Consider the suggestion made above and eliminating Note to paragraph (b)(3) in its entirely.

5. We also suggest removing the Note to paragraph (b)(5), as it seems redundant and renders the provision too wordy, which adds to the confusion.

3. Conclusion

AAEI and its member companies greatly appreciate all the work and effort being made by BIS, DDTC and Government to achieve this goal. AAEI would be pleased to discuss these comments in more detail with BIS leadership and staff.

Sincerely,

Marianne Rowden
President & CEO

cc: Douglas N. Jacobson, Co-Chair, AAEI Export Compliance & Facilitation Committee
Phillip Poland, Co-Chair, AAEI Export Compliance & Facilitation Committee