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Regulatory Policy Division
Bureau of Industry and Security
Room 2099B
U.S. Department of Commerce
14th St. and Pennsylvania Ave. NW
Washington, DC 20230
By email to: publiccomments@bis.doc.gov

Re: RIN 0694-AF66 "Specially Designed" Definition

MIT appreciates the opportunity to comment on the proposed definition of "Specially Designed" through the Proposed Rule RIN 0694-AF66.

We continue to applaud the efforts of the Departments of Commerce, Defense, and State to rationalize, clarify and focus U.S. export control, and we appreciate the progress so far. For the current proposed rule, we specifically appreciate the efforts to harmonize the EAR and ITAR definitions of "Specially Designed".

The goal of positive lists with objective parameters is compelling. It would reduce uncertainty, and it would also reduce unnecessary control of items and technology previously swept in by the "catch-all" descriptions, improving compliance and reducing unintended obstacles and friction. For universities with substantial non-US population like MIT, this should translate into more effective research while still respecting deemed export restrictions.

While initially we all hoped this would mean the end of "specially designed" in the lists, we understand that the devil is in the details, including multilateral export control regimes that rely on "specially designed" and on controlled items where identifying appropriate objective parameters is difficult. It makes sense to enlist industry expertise in identifying these difficult objective parameters, as RIN 0694-AF68 Feasibility of Enumerating "Specially Designed" Components, both for the US lists and for proposal to the multilateral regimes.

In the long term, we continue to believe it will be best to reduce use of "specially designed" to the absolute minimum, and when its use is unavoidable to focus on items that have been developed to have unique properties for a specific purpose, and which have no other function or use, as in the Missile Technology Control Regime definition. Our comments on the current proposed "Specially Designed" definition in RIN 0694-AF66 are

as a transitional definition, reflecting the complexity of making changes to the current system with all its parts, players, and constituents.

Paragraph (a)'s broad inclusions is a reasonable approach to assure that currently-controlled items are not unintentionally removed from control. It's encouraging and appropriate that (a)(1) is based on development resulting in "properties particularly responsible for achieving...the performance levels in the relevant ECCN or USML paragraph". However, (a)(2) brings in all "part[s] or component[s] necessary for an enumerated or referenced commodity or defense article to function as designed". Since this includes design attributes having nothing to do with the reason for control of the commodity or article, we would recommend focusing on parts or components necessary for an enumerated or referenced commodity to acquire "properties particularly responsible for achieving...the performance levels in the relevant ECCN or USML paragraph". Alternatively, this could be addressed in the release paragraph (b).

Paragraph (b)'s "release" provisions reflect the kinds of items that have often been considered to be unnecessarily considered "specially designed". Paragraph (b)(5) is designed to release parts, components, accessories or attachments originally developed for a general purpose not specific to a related enumerated item, but "...with no reasonable expectation of use in a particular application" could be confusing, since any item is developed for some application. We suggest that the wording of (b)(5) be changed to "Was or is being developed with no reasonable expectation that its predominant use would be in the application which in (a) would cause it to be 'specially designed'". This change would serve to clarify that the consideration is limited to the particular reference causing the evaluation of the part, component, accessory or attachment.

The "Note to paragraph (b)(4) and (b)(5)" introduces an important recordkeeping requirement that could be easily overlooked.

Thank you for the opportunity to comment. We would be happy to discuss this further at your convenience.

Sincerely yours,

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