AIAC Aerospace Industries Association of Canada L'Association des industries aérospatiales du Canada

August 3, 2012

U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
14th and Pennsylvania Avenue, N.W.
Room 2099B
Washington, D.C. 20230
publiccomments@bis.doc.gov or
(http://www.regulations.gov)

Attention: Mr. Timothy Mooney

Subject: RIN 0694-AF66 (BIS-2012-0021) "Specially Designed" Definition

Dear Mr. Mooney:

The Aerospace Industries Association of Canada (AIAC) is a not-for-profit organization advocating on aerospace policy issues that have a direct impact on aerospace companies in Canada. On behalf of its members, AIAC wishes to submit the following comments regarding the proposed rule referenced above.

The "specially designed" definition proposal is welcomed by AIAC as part of the President's Export Control Reform Initiative (ECRI). The decision tree structure and 'catch and release' approach is logical and intends to simplify the widely used term "specially designed" throughout the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR). While we appreciate the new approach to determining what items are "specially designed" for military use, we would like to comment on aspects of the proposal concerning implementation of the new definition.

First, to ensure consistency in the "specially designed" definition proposed by the US Department of State (DOS), **AIAC recommends the BIS proposed definition of End Item in Part 772.1 be modified to read as: "End item. This is an assembled commodity ready for its intended use. Only ammunition, fuel, catalyst or other energy source like electricity may be required to place it in a fully operating state. Examples of end items include ships and aircraft, etc."**

Second, as part of the 'release' of items from the 'specially designed' catch-all net, proposed paragraph (b)(3) also appears unduly restrictive. As this paragraph focuses on form/fit/performance rather than function, requiring identical form/fit/performance will result in catching items that do not warrant "600 series" control and that have performance characteristics equivalent to items that are not controlled on the CCL. BIS should consider allowing a part/component to fall within the (b)(3) release if differences are limited to dimensional variations.

255 Albert Street, Suite 703 Tel.: (613) 232-4297 Email: info@aiac.ca
Ottawa, Ontario K1P 6A9 Fax: (613) 232-1142 www.aiac.ca

Third, AIAC is concerned about whether the definition of "specially designed" is applicable to parts and components that have previously been subject to a US Department of State Commodity Jurisdiction (CJ) that determined such part and component was under the jurisdiction of the US Department of Commerce. In particular, if a part or component was determined to be under DOC jurisdiction in a DOS CJ, the "specially designed" definition should not be applied to such component and parts whereby the control of such parts and components may return to ITAR controls. In this regard, **AIAC recommends that proposed paragraph (b)(3) should also include a new sub-item (iii) to allow for commodities that have been determined by DDTC as Commerce-controlled items in a commodity jurisdiction in order to not revert back to ITAR controls and be subject to the "specially designed" catch-all.** Text for proposed paragraph (b)(3)(iii) for the Department to consider could be along the lines of: "Is determined as subject to the Export Administration Regulations pursuant to a Commodity Jurisdiction issued by DDTC." In addition, (b)(3)(iii) could also require CJ documentation recordkeeping as is proposed in (b)(4) –(5).

On behalf of its members, AIAC wishes to thank you for the opportunity to comment on this important proposed rule. Please feel free to contact us if you have any questions about these comments.

Sincerely,

Jim Quick
President & CEO