RECORD OF PUBLIC COMMENTS

NOTICE OF INQUIRY: REQUEST FOR PUBLIC COMMENTS ON THE EFFECTS OF EXPORT CONTROLS ON DECISIONS TO USE OR NOT USE U.S.-ORIGIN PARTS AND COMPONENTS IN COMMERCIAL PRODUCTS AND THE EFFECTS OF SUCH DECISIONS.

Publication in the Federal Register: January 5, 2009 (74 FR 263)
Comments due April 20, 2009

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26.	General Electric	Kathleen Lockhard Palma	4/20/09	4
27.	Rolls-Royce Canada, Ltd.	Melanie Gariepy	4/20/09	1
28.	The Boeing Company	Norma Rein	4/20/09	5
29.	Texas Instruments, Inc.	Greg Chalkley	4/20/09	3

nonprivileged foreign status (19 CFR 146.42) is limited to 3.5 million square yards;

(3) Bauhaus must admit all foreign-origin upholstery fabrics other than micro-denier suede upholstery fabric finished with a caustic soda solution to the zone under domestic (duty-paid) status (19 CFR 146.43); and,

(4) Bauhaus shall submit supplemental annual report data for the purpose of monitoring by the FTZ Staff.

Signed at Washington, DC, this 22nd day of December 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–31343 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1599]

Approval of Manufacturing Authority Within Foreign–Trade Zone 158, Vicksburg/Jackson, MS, H.M. Richards, Inc. (Upholstered Furniture)

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Mississippi Foreign–Trade Zone, Inc., grantee of FTZ 158, has requested authority under Section 400.28 (a)(2) of the Board's regulations on behalf of H.M. Richards (Richards), to manufacture upholstered furniture and related parts under FTZ procedures within FTZ 158 Site 15 (FTZ Docket 29–2007, filed 7–26–2007);

Whereas, notice inviting public comment has been given in the **Federal Register** (72 FR 43232, 8–3–2007);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to certain restrictions;

Now, therefore, the Board hereby grants authority for the manufacture of upholstered furniture and related parts (upholstery seat covers) within FTZ 158 for H.M. Richards, Inc., as described in the application and **Federal Register** notice, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the following restrictions:

1)the manufacturing authority shall not commence earlier than January 2, 2009 and shall remain in effect for a period of five years from the later of January 2, 2009 or the date of approval;

2)the annual volume of the foreign micro–denier suede upholstery fabric finished with a caustic soda solution that Richards may admit to the zone under nonprivileged foreign status (19 CFR § 146.42) is limited to 3.6 million square yards;

3)Richards must admit all foreign–origin upholstery fabrics other than micro–denier suede upholstery fabric finished with a caustic soda solution to the zone under domestic (duty–paid) status (19 CFR § 146.43); and,

4)Richards shall submit supplemental annual report data for the purpose of monitoring by the FTZ Staff.

Signed at Washington, DC, this 22nd day of December 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–31359 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1598]

Approval of Manufacturing Authority Within Foreign–Trade Zone 158m Vicksburg/Jackson, MS, Lane Furniture Industries, Inc. (Upholstered Furniture)

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Mississippi Foreign–Trade Zone, Inc., grantee of FTZ 158, has requested authority under Section 400.28 (a)(2) of the Board's regulations on behalf of Lane Furniture Industries, Inc. (Lane), to manufacture upholstered furniture and related parts under FTZ procedures within FTZ 158 Sites 14 (Belden, MS), 16 (Saltillo, MS), and 17 (Verona, MS) (FTZ Docket 28–2007, filed 7–26–2007);

Whereas, notice inviting public comment has been given in the **Federal Register** (72 FR 43233, 8–3–2007);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to certain restrictions;

Now, therefore, the Board hereby grants authority for the manufacture of upholstered furniture and related parts (upholstery seat covers) within FTZ 158 for Lane Furniture Industries, Inc., as described in the application and **Federal Register** notice, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the following restrictions:

1)the manufacturing authority shall not commence earlier than January 2, 2009 and shall remain in effect for a period of five years from the later of January 2, 2009 or the date of approval;

2)the annual volume of the foreign micro–denier suede upholstery fabric finished with a caustic soda solution that Lane may admit to the zone under nonprivileged foreign status (19 CFR § 146.42) is limited to 6.5 million square yards;

3)Lane must admit all foreign–origin upholstery fabrics other than micro–denier suede upholstery fabric finished with a caustic soda solution to the zone under domestic (duty–paid) status (19 CFR § 146.43); and,

4)Lane shall submit supplemental annual report data for the purpose of monitoring by the FTZ Staff.

Signed at Washington, DC, this 22nd day of December 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–31360 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 0812221638–81639–01]

Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comment on whether U.S. export controls influence manufacturers' decisions to use or not use U.S.-origin parts and components in commercial products and the effects of such decisions. BIS is interested in obtaining specific information about whether such a practice occurs, and if so, its economic effects in order to assess the effectiveness of export controls as well as the impact of export controls on the U.S. economy.

DATES: Comments must be received no later than February 19, 2009.

ADDRESSES: Comments may be submitted via e-mail to *publiccomments@bis.doc.gov*. Please Refer to ''Parts and Components Inquiry'' in the subject line. Comments may also be sent to Parts and Components Study, Office of Technology Evaluation, Room 2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jennifer Watts, Office of Technology Evaluation, Bureau of Industry and Security, telephone: 202–482–8343; fax: 202–482–5361; e-mail *jwatts@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Export controls imposed by various agencies of the United States government, including, but not limited to, those imposed by BIS necessarily have an impact outside the United States. Certain U.S. export control regulations impose license requirements or other restrictions on commercial items manufactured outside the United States if those foreign-manufactured items contain U.S.-origin parts and components. BIS is seeking information to help it assess the impact of U.S. export controls on decisions by manufacturers whether to use U.S.-origin parts and components in their commercial products and the impact of such decisions on the effectiveness of export controls, the strength of the defense industrial base, employment in the United States, the financial strength of U.S. industry, and the ability of U.S. industry to compete in the market.

Specific and quantitative data, from U.S. persons, as well as foreign entities and governments, will be particularly helpful to BIS's assessment, but other types of information, including anecdotal information, will be useful as well. Quantitative data that is aggregated to reflect the combined experience of a group of companies or an industry segment also will be useful, particularly if individual companies are reluctant to provide company-specific quantitative data.

Regardless of whether it is qualitative or quantitative, if a comment asserts that manufacturers have elected not to include U.S.-origin parts and components in a foreign-manufactured commercial product because such inclusion could subject the products to U.S. export controls, the following kinds of data would be useful to BIS's assessment:

- Any evidence or information about the existence of advertising or marketing efforts that use the absence of U.S. origin components or exemption from U.S. export controls as a selling point.
- Any information about possible customer preferences for products that do not contain U.S.-origin components, and whether such preference may be related to relevant U.S. export controls.
- Any information describing parts and components that manufacturers may elect not to use because of their U.S. origin and any information regarding the products into which such parts and components are incorporated.
- Any information about sales lost by U.S. suppliers to non-U.S. competitors.
- Any information about specific commercial products that were designed or modified to explicitly exclude U.S. parts and components due to U.S. export controls.
- Any information about decisions to locate or relocate production facilities outside the United States, including a description of which items (including relevant commodity classification information, such as Export Control Classification Number) would be produced abroad.
- Any information about the possible economic impact (*e.g.*, employment, outsourcing of specific expenditures such as research and development) to companies, industry segments or communities of any decision not to use U.S.-origin parts and components because of U.S. export controls, including any possible impact on the ability to support specific defense industrial base activities.

How To Comment

All comments must be in writing and submitted to one of the addresses indicated above. Comments must be received by BIS no later than February 19, 2009. BIS may consider comments received after that date if feasible to do so, but such consideration can not be assured. All comments submitted in response to this notice will be made a matter of public record, and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. BIS will seek to protect business confidential information from public disclosure to the extent permitted by law.

Dated: December 24, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–31233 Filed 1–2–09; 8:45 am]

BILLING CODE 3501–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230; telephone (202) 482–1391.

Upcoming Sunset Reviews for February 2009

There are no Sunset Reviews scheduled for initiation in February 2009.

For information on the Department's procedures for the conduct of sunset reviews, *See* 19 CFR 351.218. This notice is not required by statute but is published as a service to the international trading community. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's

Notices

Federal Register
Vol. 74, No. 32
Thursday, February 19, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia Advisory Committee and a Subcommittee of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a joint project planning meeting of the Virginia Advisory Committee and a subcommittee of the District of Columbia Advisory Committee will convene on Thursday, March 5, 2009, from 3 p.m. to 4 p.m. The purpose of the meeting is to plan future joint project activities.

The meeting will be conducted by conference call and is available to the public through the following call-in number: (800) 516–9896, access code: 98105. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and the access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Alfreda Greene, Secretary of the Eastern Regional Office, office number (202) 376–7533, TTY (202) 376–8116, by 4 p.m., Tuesday, March 3, 2009.

Members of the public are entitled to submit written comments. The address is Eastern Regional Office, 624 9th St., NW., Washington, DC 20425. Persons wishing to submit their comments, or who desire additional information should contact Alfreda Greene, Secretary, at 202–376–7533 or by e-mail to: *agreene@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of these advisory committees are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E9–3516 Filed 2–18–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application and Reports for Registration as a Tanner or Agent.

Form Number(s): None.

OMB Approval Number: 0648–0179.

Type of Request: Regular submission.

Burden Hours: 112.

Number of Respondents: 54.

Average Hours per Response: 2 hours.

Needs and Uses: The Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*, Sections 1371, 1373, 1374 and 1379), mandates the protection and conservation of marine mammals and makes the taking, killing or serious injury of marine mammals, except under permit or exemption, a violation of the Act. An exemption is provided for Alaskan natives to take marine mammals if the taking is for subsistence or for creating and selling authentic native articles of handicraft and clothing. The possession of marine mammals and marine mammal parts by other than Alaskan natives is therefore prohibited (exception, 50 CFR 216.26: beach found non-Endangered Species Act (ESA) teeth or bones that have been registered with National Marine Fisheries Service (NMFS)). As native handicrafts are allowed by the MMPA to enter interstate commerce, an exemption is also needed to allow non-natives to handle the skins or other marine mammal produce, whether to tan the pinniped hide or to act as an agent for the native to sell his handicraft products.

Affected Public: Business or other for-profit organizations; State, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: February 12, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–3457 Filed 2–18–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 0812221638–9166–02]

Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of Inquiry; extension of comment period.

SUMMARY: This notice extends the comment period for a notice of inquiry

in which BIS requested comments on the effects of export controls on decisions to use or not use U.S.-origin parts and components in commercial products and the effects of such decisions.

DATES: Comments must be received by April 20, 2009.

ADDRESSES: Comments may be submitted via e-mail to *publiccomments@bis.doc.gov*. Please Refer to ''Parts and Components Inquiry'' in the subject line. Comments may also be sent to Parts and Components Study, Office of Technology Evaluation, Room 2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jennifer Watts, Office of Technology Evaluation, Bureau of Industry and Security, telephone: 202–482–8343; fax: 202–482–5361; e-mail *jwatts@bis.doc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security published a notice of inquiry requesting comments on the effects of export controls on decisions to use or not use U.S.-origin parts and components in commercial products and the effects of such decisions (74 FR 263, January 5, 2009). That notice set a due date of February 19, 2009 for receipt of public comments by BIS. BIS is now extending the comment period to April 20, 2009 to allow the public more time to comment.

Dated: February 13, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9–3525 Filed 2–18–09; 8:45 am]

BILLING CODE 3501–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rescission of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 21, 2007, in response to a request from an interested party, the Department of Commerce (''Department'') initiated a changed circumstances review of the antidumping duty order on certain frozen fish fillets from Socialist Republic of Vietnam (''Vietnam''). *See Certain Frozen Fish Fillets from Vietnam: Notice of Initiation and Preliminary Results of Changed Circumstances Review*, 72 FR 46604 (August 21, 2007) (''*Initiation and Preliminary Results*''). We are rescinding the changed circumstances review because we have initiated an administrative review covering the firms in question and intend to address any considerations arising from the changed circumstances review within the context of the 2007/2008 administrative review of this order.

EFFECTIVE DATE: February 19, 2009.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 2007, the Department issued its initiation and preliminary results. *See Initiation and Preliminary Results*. As part of the *Initiation and Preliminary Results*, the Department invited interested parties to submit case and rebuttal briefs, and provided parties the opportunity to request a hearing. *Id.* at 46606. On September 20, 2007, the Catfish Farmers of America and individual U.S. catfish processors (collectively ''Petitioners'') submitted their case brief. No other party submitted briefs. On September 25, 2007, Vinh Hoan Co., Ltd./Corporation (''Vinh Hoan'') submitted a rebuttal brief. Based on parties' comments in their case and rebuttal briefs, the Department issued Vinh Hoan a questionnaire on February 13, 2008, and received its response on February 29, 2008. Because the Department issued its questionnaire subsequent to the briefing schedule, we invited parties to comment on Vinh Hoan's February 29, 2008, response. *See* Memo to the File, dated May 16, 2008. On May 23, 2008, the Department received a supplemental brief from Petitioners. On May 28, 2008, the Department received a rebuttal brief from Vinh Hoan. Based on continuing questions regarding affiliation issues, the Department issued Vinh Hoan and its affiliate a supplemental questionnaire on September 11, 2008, and received their response on September 29, 2008.

On September 30, 2008, we initiated the 2007/2008 administrative review on certain frozen fish fillets from Vietnam. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56795 (September 30, 2008). On October 29, 2008, the Department issued its respondent selection memorandum, wherein Vinh Hoan was selected as a mandatory respondent in the 2007/2008 administrative review. On November 3, 2008, the Department issued Vinh Hoan its initial administrative review questionnaire, including questions regarding its affiliations. On November 24, 2008, December 10, 2008, and December 23, 2008, the Department received Vinh Hoan's and its affiliate's Section A, Section C, and Section D questionnaire responses.

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly–flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone–in, cross–section cuts of dressed fish. Nuggets are the belly–flaps. The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species Pangasius including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS'').[1] The order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs

[1] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

From: "Brinley Salzmann" <b.salzmann@the-dma.org.uk>
To: <publiccomments@bis.doc.gov>
Date: 1/7/2009 9:45:22 AM
Subject: Parts and Components Inquiry

Dear Sir,

With regard to the request for public comment on whether U.S. export controls influence manufacturers' decisions to use or not use U.S.-origin parts and components in commercial products and the effects of such decisions, please see the attached survey results, in powerpoint presentation format (plus the questionnaire, itself) that we compiled from a survey of our Members some two+ years' ago. The Export Group for Aerospace & Defence (EGAD) is a UK-based Industry grouping specialising in export control matters, with some 255 individual members from 155 UK companies, and this survey represented a sample snapshot of our Members' (and their customers') attitudes towards sourcing controlled technology from the USA.

As a response, we drafted a press release, headed:

"Many UK Companies, and their International Customers, are now adopting a "Buy American Last" Policy

The results of a recent survey of UK Industry by the Export Group for Aerospace & Defence (EGAD) has revealed a disturbing trend for American companies. Increasingly, British companies, including even the UK-based divisions of US-owned companies, are now apparently adopting an unofficial and unstated "Buy American Last" policy due to unsatisfactory experiences with US export control bureaucracy. Their experience of dealing with US export licensing is increasingly affecting their willingness, and that of their national and international commercial and Government customers, to use the USA as a source of suppliers and sub-contractors. Some 55.8% of Industry respondees to the survey indicated that this was impacting adversely on the attractiveness of US suppliers.

One EGAD Member company reported that:

"We are now actively telling our procurement staff to avoid using US-sourced components wherever possible in view of the resulting burden of compliance and record-keeping.""

I hope that this may assist you in your endeavours.

Regards,

Brinley Salzmann
Secretary, Export Group for Aerospace & Defence (EGAD)
c/o DMA
Marlborough House
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Tel: 01428 602622
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Fax: 01428 602628
E-Mail: b.salzmann@the-dma.org.uk <mailto:b.salzmann@the-dma.org.uk>
(work) or brinley.salzmann@ntlworld.com (home)
URL: www.egad.org.uk <http://www.egad.org.uk/>

Dear Sir,

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Regards,

Brinley Salzmann
Secretary, Export Group for Aerospace & Defence (EGAD)
c/o DMA
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Surrey GU26 6LG
Tel: 01428 602622
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E-Mail: b.salzmann@the-dma.org.uk (work) or brinley.salzmann@ntlworld.com (home)
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Reg.No. 1264602 England

EXPORT GROUP FOR AEROSPACE & DEFENCE

(EGAD)

Survey of Practical Experience of Dealing with US Export Controls

Please return by Friday 5th May 2006

Please complete and return by email or fax, this questionnaire to:
Brinley Salzmann at the DMA
Email: b.salzmann@the-dma.org.uk
Fax: 01428 602628

Note: all inputs will be treated with total anonymity

Please Delete/Indicate and Comment as Appropriate

1. How significant (on a scale from 1 to 5, with 1 indicating nil or negligible and 5 indicating very considerable) are your company's business dealings with the USA:
   a) as a market for your products/services _____
   b) as a source for suppliers and sub-contractors _____

and, on the same scale, how familiar are you with the US export control system _____
Comments:

2. Since late-2004 has there been any noticeable improvement in your experience in the time taken to process US export licences? **Yes / No**
Comments (including any indication of current turnaround timescales being experienced):

3. Is your experience in dealing with US export licensing in any way affecting your willingness to do business with the USA, or the attraction of the USA to your company:
   a) as a market for your products/services **Yes / No**
   b) as a source for suppliers and sub-contractors **Yes / No**
Comments:

4. Is experience with the US export control system affecting your commercial or Government customers' willingness for you to use US technology/suppliers? **Yes / No**
Comments:

5. Any other Comments, or examples of practical experiences:

Company Name (Entirely Optional):

EGAD
Export Group for Aerospace & Defence

Bilateral Transatlantic Defence Trade and Collaboration

Background

- EGAD gave an informal briefing to the House of Commons Defence Committee on 6th December 2005 on UK Industry's perceptions of "what now, post the demise of the proposed ITAR waiver?"
- EGAD was challenged to produce a paper on the issue, from UK Industry's perspective
- As part of this, EGAD conducted a survey, in April 2006, of UK Industry

Survey Results on UK Industry's Practical Experiences of dealing with US Export Controls

- Question: Since late-2004 has there been any noticeable improvement in your experience in the time taken to process US export licences?
- Answer: 83.7% of respondees said that there had been **no** improvement, with most of these reporting a deterioration

Survey Results on UK Industry's Practical Experiences of dealing with US Export Controls

- Question: Is your experience in dealing with US export licensing in any way affecting your willingness to do business with the USA, or the attraction of the USA to your company:
  a) as a market for your products/services
- Answer: 67.4% of respondees replied that this had **not** affected the attraction of the US market – it is just too important

Survey Results on UK Industry's Practical Experiences of dealing with US Export Controls

- Question: Is your experience in dealing with US export licensing in any way affecting your willingness to do business with the USA, or the attraction of the USA to your company:
  b) as a source for suppliers and sub-contractors
- Answer: 55.8% of respondees replied that this **was** impacting on the attractiveness of US suppliers as sub-contractors

Survey Results on UK Industry's Practical Experiences of dealing with US Export Controls

- Question: Is experience with the US export control system affecting your commercial or Government customers' willingness for you to use US technology/suppliers?
- Answer: 55.8% of respondees replied that this **was** resulting in their customers' willingness for them to use US technology/suppliers

EGAD
Export Group for Aerospace & Defence

To submit your own comments, contact:

Brinley Salzmann
Tel: +44 (0)1428 602622
Fax: +44 (0)1428 602628
URL: www.the-dma.org.uk
E-Mail: b.salzmann@the-dma.org.uk

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/9/2009 6:55:08 PM
Subject: Fwd: US Export controls affecting non US compnies

Ashley/Jennifer:

Please see the following additional comments submitted by Brinley Salzmann (Secretary, Export Group for Aerospace & Defence -- U.K.) in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> "Brinley Salzmann" <b.salzmann@the-dma.org.uk> 02/09/09 6:50 AM >>>
Dear Sir,

With regard to our evidence (sent to you of 7th January 2009), in response to the request for public comment on whether U.S. export controls influence manufacturers' decisions to use or not use U.S.-origin parts and components in commercial products and the effects of such decisions, please see below some additional, further comments from our Members, who have very real practical experience of both ITAR and EAR.

A response needs to be placed in context. All Wassenaar Members and adherents have controls on exports of military and dual-use goods. What distinguishes US controls is the assumption of extraterritorial jurisdiction on US-origin items/technologies and their re-transfer and re-export. UK Industry has repeatedly made it clear to our Government that extraterritoriality (XT) is objectionable on grounds both of principle and practice, even though UK XT controls apply only to UK persons in a limited range of 'trade' (ie brokering) transactions, and not, as under US law, to all controlled items exported from the US.

XT is objectionable in principle because it makes the same act committed by the same person in the same place subject to 2 different jurisdictions. This is clearly contrary to natural justice. It is bad enough when one jurisdiction regards as criminal an act which is legal in the other. It is worse when compliance with the law in one jurisdiction requires breach of the law in the other. This is not a mere hypothetical case. Export control staffs in Europe face this situation every day when compliance with US law on internal transfers (the deemed export rule), which requires discrimination on grounds of nationality, requires breach of national and EU law, which bans discrimination on grounds of nationality.

Remarkably, the US even asserts jurisdiction over matters totally within the discretion of foreign governments. In the context of ITAR124.16, the Department of State claims the right to consider country of birth or origin in addition to citizenship when 'determining nationality' see 72

FR 71785. The determination of nationality is and must be, of course, entirely a matter for the country concerned.

XT is objectionable in practice because the difficulty of collecting evidence and compelling the presence of witnesses makes the bringing of successful prosecutions very problematic. Even supporters of XT export control legislation accept that the number of such prosecutions is small - only one (under Dutch jurisdiction) has been drawn to our attention. While XT legislation may have certain merits in terms of a 'feel good' factor for legislators and in terms of constraining the travel options of perpetrators, ineffective and ineffectual implementation means that it is of limited adequacy as a deterrent, affecting mainly those companies committed to compliance with the law in the countries in which they operate, whilst leaving deliberate illicit diverters largely untouched.

To non-US companies the burden of compliance with ITAR/EAR is substantial in two main areas. The first is in straightforward compliance costs within the business. In order to ensure that controlled items are transferred to or accessed only by authorised persons/ nationalities, requires comprehensive marking, tracking and record-keeping of controlled items, coupled with thorough training and awareness programmes. A recent independent audit of ITAR compliance noted that the practice of treating controlled items as if they were classified represented best practice. No calculation has been made of the resulting extra costs, but these are clearly significant.

The second main burden, and that of primary interest to the BIS, is that of compliance with re-export and re-transfer controls. The effect of these controls is that components (above the de minimis limit in the case of CCL items, of any value in the case of USML) place re-transfer restrictions on the items into which they are incorporated. This affects the flexibility both of the supplier and of the customer.

The main customer of most UK companies in the Defence Industry is our own Ministry of Defence. The UK MoD has begun to regard with increasing suspicion the impact of US export controls, which is seen to affect its freedom to use, support and re-sell its equipment as it wishes. For the last 2 years a defence contractual condition (DEFCON) has been in place requiring suppliers to list items in their offering subject to export controls, a measure clearly directed at the United States. Furthermore, the UK MoD has gone on record as rejecting foreign claims to XT jurisdiction in the UK (while, in practice, complying with their conditions) and refusing to sign DSP-83s on the same grounds.

So far as many UK companies are concerned, it is not their policy to

impose restrictions on the acquisition of US origin components. It is, however, frequently their policy to require commercial and procurement staffs to consider the costs and penalties of sourcing components from the US; more than once, this has led to decisions to give preference to non-US sources of supply.

The incorporation as original equipment of US engines and avionics into fleets of commercial aircraft (for instance) has placed restrictions on the operations of UK firms over and above those that would be imposed by UK government controls, even though the aircraft in question were designed and manufactured in the UK. It is difficult to believe that if companies were fully aware at the time of the implications of sourcing these components from the US, serious consideration would not have been given to alternatives from alternate suppliers.

This example illustrates a wider point. Compliance is not a static matter. It is the perception of Industry that over the last decade, and particularly since 911, the rigour with which US export controls have been interpreted has been considerably increased, even if, at least for USML items, denial rates have remained very low (in the 1% region). Swingeing fines and a safety first mentality has resulted in a more burdensome application of essentially the same regulations. 'Mission creep' in the definitions of a 'defense service' and of 'brokering' are currently cases in point.

As a result, understanding of the implications of US controls in the larger UK companies has also been considerably enhanced, though the consequence, ironically, has been that the price of compliance has become a matter of much more active consideration in these companies. Conversely, however, their experience of dealing with subcontractors and acquisitions indicates that knowledge of export control compliance requirements in Industry generally is decidedly patchy. Consequently, and, again ironically, it is possible to conclude that part of the reason why such controls have caused no more difficulty than they have is because they are, it must be stressed through ignorance rather than design, in practice far from fully implemented in companies involved with US origin components.

I hope that this additional input may assist you in your endeavours.

Regards,

Brinley Salzmann

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c/o DMA

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Reg.No. 1264602 England

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/9/2009 6:55:08 PM
Subject: Fwd: US Export controls affecting non US compnies

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Reg.No. 1264602 England

From: "Brinley Salzmann" <b.salzmann@the-dma.org.uk>
To: <publiccomments@bis.doc.gov>
Date: 2/9/2009 6:55:15 AM
Subject: Further Evidence for the Parts and Components Inquiry

Dear Sir,

With regard to our evidence (sent to you of 7th January 2009), in response to the request for public comment on whether U.S. export controls influence manufacturers' decisions to use or not use U.S.-origin parts and components in commercial products and the effects of such decisions, please see below some additional, further comments from our Members, who have very real practical experience of both ITAR and EAR.

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Regards,

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>>> "Brinley Salzmann" <b.salzmann@the-dma.org.uk> 02/11/09 11:45 AM >>>
Dear Sir,

With regard to our evidence (sent to you of 7th January 2009 and 9th February 2009), in response to the request for public comment on whether U.S. export controls influence manufacturers' decisions to use or not use U.S.-origin parts and components in commercial products and the effects of such decisions, please see below some additional, further comments from one of our Members, who have very real practical experience of dealing with a number of companies across the World.

As a company largely engaged in the international movement of both ITAR and EAR equipment we are frequently exposed to the constraints and difficulties faced by US exporters considering the effect of movements of material out of the USA. Likewise, we are exposed to the frustration of UK/EU and firms of other nationalities in dealing effectively with the re-transfer demands of both.

In the former case, US exporters are obliged to demand comprehensive detail of the entire supply chain that is anticipated in the movement of the exported parts. This may involve a number of different entities, beginning perhaps with an overarching JV between the US company and a UK counterpart and trickling down to a variety of sub-contractors and service providers. Theoretically, all of these parties may need to be identified and controlled under TAA or license.

In the latter case, that of UK/EU firms, they are often hamstrung for similar reasons. International defence and aerospace companies are global these days, with the effect that a UK firm, for example, may wish to buy from another UK firm who themselves are constrained by ITAR re-transfer controls.

In our experience, the effect of the legislation on personnel at UK/EU firms is :

* Management of UK/EU firms are understandably frustrated to be unable to conduct business within their own country and with other UK firms on account of extra-territorial US legislation (which also has no time limitation).
* Compliance staff, who in all but the largest firms tend to be lower level management with poor access to ITAR/EAR training and support, face daily challenges in trying to facilitate Business Development or Contracts goals while maintaining ITAR/EAR control.

The effect on overall cost within the supply chain is significant. For example, if Company A (a US exporter) wishes to export under a license, it is not cost effective for them to process an order for one or two items and minimum orders are set. This increases the cost to the foreign buyer not only in terms of quantity but also shipping and

handling costs, etc. The foreign buyer may need a certain quantity for their own purposes, but they may also intend to sell to others so again, the quantity ordered increases. Once the parts are received, they pass into stock and must be maintained in a state to ensure that parts, authorised by ITAR to the foreign buyer only or possibly others on license or TAA, are not diverted to others. This increases warehouse, personnel and IT costs. Finally, as the foreign buyer may not be completely knowledgeable about ITAR and the time taken to obtain licenses etc...or even if his original US seller will assist, he orders significantly more parts than is necessary to ensure no breakdown in manufacturing schedules.

These are just a few examples. Overall, these demands are completely counter to 21st Century supply chain activity.

Putting the two together....i.e, frustrated UK firms, compliance staff under commercial pressure and counterintuitive supply chain demands, can lead either to avoidance of US product or more frequently, poor compliance. A culture of poor compliance is precisely the highly fertile environment in which real criminals and proliferators operate.

I hope that this yet further additional input may assist you in your endeavours.

Regards,

Brinley Salzmann

Secretary, Export Group for Aerospace & Defence (EGAD)

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Reg.No. 1264602 England

From: WILLIAM ARVIN
To: WATTS, JENNIFER
Date: 1/8/2009 9:35:39 AM
Subject: Fwd: Impact of US Export Controls

>>> HILLARY HESS 1/8/2009 9:05 AM >>>
FYI...

>>> $(BÂ ä@•Û <Aoi.Tamotsu@ap.MitsubishiElectric.co.jp> 1/8/2009 12:11 AM >>>
To: Ms. Hillary Hess, Director, Regulatory Policy Division, BIS
Fr: Tamotsu Aoi, Export Control Department, Mitsubishi Electric Corp.

Dear Hillary-san,

We have noted that BIS is now asking US exporters in its Federal Register whether foreign manufacturers avoid using US-origin components in their products because of extrateritorial application of US export controls.

Is our understanding correct that our continued efforts through the organizaqtion CISTEC have now started producing some positive effects? Or was this move started for some completely different reasons?

Looking forward to your response,

Best regards,

Tamotsu Aoi
Corporate Exoport Control Division
Mitsbishi Electric Corporation

PATTON BOGGS LLP
ATTORNEYS AT LAW

2550 M Street, NW
Washington, DC 20037-1350
202-457-6000

Facsimile 202-457-6315
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January 16, 2009

Daniel E. Waltz
202-457-5651
dwaltz@pattonboggs.com

Via Mail & E-Mail

Jennifer Watts
Parts and Components Study
Office of Technology Evaluation
Room 2705
U.S. Department of Commerce
14th Street and Pennsylvania Ave., NW
Washington, DC 20230

Re: Parts and Components Inquiry

Dear Ms. Watts:

I have enclosed a copy of the submission of our client, NoblePeak Vision Corporation, responding to the January 5 Federal Register Notice in which the Bureau of Industry and Security solicited information about the effects of U.S. export controls on foreign persons' decisions to use or not use U.S.-origin products, parts or components. Should you have questions or require additional information, please do not hesitate to contact me.

Very truly yours,

Daniel E. Waltz

NoblePeak Vision Corp

January 15, 2009

Via Mail & E-Mail

Jennifer Watts
Parts and Components Study
Office of Technology Evaluation
Room 2705
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Re: Parts and Components Inquiry

Dear Ms. Watts:

NoblePeak Vision Corporation (NoblePeak) welcomes this opportunity to submit a comment in response to the Federal Register notice published on January 5, 2009 by the Bureau of Industry and Security (BIS) soliciting information about the effects of U.S. export controls on foreign persons' decisions to use or not use U.S.-origin products, parts or components. As explained below, as a result of an inter-agency disagreement about the export status of our night vision camera, all of our export license applications have been on hold since May 24, 2008. We now have 4 license applications pending. Under these circumstances, we have stopped pursuing international sales. Thus, potential foreign customers are denied even the threshold opportunity to decide whether they might want to buy our camera. Instead, because of U.S. export controls, they are necessarily forced to buy comparable cameras manufactured by our foreign competitors. Moreover, we understand that our situation is not unique. We are aware of other U.S. manufacturers of night vision cameras who are similarly unable to obtain export licenses. The net effect of the current inter-agency impasse is thus to deny U.S. manufacturers any ability to market or sell their products outside of the U.S. This serves only to weaken U.S. companies while strengthening their foreign competitors. We explain our product and the background surrounding the current regulatory impasse below.

NoblePeak has developed an image sensor that has a broad spectral response and can sense light from the visible spectrum into the near infrared and short wave infrared spectrum. This germanium sensor is built on a silicon substrate. Thus, in manufacturing a camera based on this sensor, NoblePeak can use the same manufacturing infrastructure available to fabricate computers, cell phones and other mass-produced products. As a result, NoblePeak anticipates bringing to market a night vision camera at one tenth the cost of competing products. This low cost opens a wide set of commercial opportunities in uses ranging from automotive to medical to surveillance. On its face then, the NoblePeak camera would plainly appear to be a "dual use" product subject to the Export Administration Regulations (EAR).

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NoblePeak Vision Corp

In June, 2007, NoblePeak received from BIS a commodity classification classifying the camera under ECCN 6A003B.4.a.[1] It then submitted an application to BIS for an export license authorizing shipment of a prototype camera to JVC in Japan. That first prototype had a relatively small sensor (128 x 128). The case was elevated to the Operating Committee where the Department of Defense (DoD) voted against granting the license, but was outvoted. DoD then appealed the case to the ACEP. After the vote at the Operating Committee, but before the case was considered at ACEP, the Defense Technology Security Administration (DTSA) prepared and submitted to the Directorate of Defense Trade Controls (DDTC) a request for a commodity jurisdiction (CJ) for the camera, asserting that the camera is a defense article, subject to the International Traffic in Arms Regulations (ITAR). At the ACEP meeting, DoD again voted against granting the license, but was the only agency to do so. The requested license was therefore issued.

In February, 2008, NoblePeak submitted an application for a license authorizing the export to Bosch in Germany of a prototype camera with a larger sensor (744 x 576). Exactly the same scenario unfolded in connection with that application: DoD was outvoted at the Operating Committee, DTSA filed a CJ request before the case was considered at the ACEP, DoD was the lone agency to vote against license issuance at the ACEP, and the requested license was issued.

DoD now takes the position that no further BIS export licenses can be issued until the CJ reviews are completed. The CJ reviews themselves, however, are going nowhere. As a result, NoblePeak has had numerous export license applications pending for months. The first was submitted in February, 2008 and thus has been pending for over 11 months. All of these pending applications are effectively frozen.

The CJ requests prepared by DTSA are inaccurate and misleading. We have, in correspondence, identified those inaccuracies and have repeatedly requested an opportunity to meet with DDTC and/or DTSA to address them. To date, however, we have been unable to obtain such a meeting. Copies of our letters and e-mails and the responses we have received are attached to this submission as **Exhibits A-G**. They include greater detail and provide some sense of our frustration, both with the process and with the present outcome (stalemate).

As a matter of law, NoblePeak objects to the standards that DTSA and DDTC appear to be prepared to adopt in asserting that the NoblePeak camera can be characterized as a defense article subject to the ITAR. NoblePeak also objects to the process adopted by DoD in which DTSA prepares and submits to DDTC a CJ request in an apparent effort to stymie the issuance of export licenses. As a matter of policy, NoblePeak believes that subjecting commercial night vision products to ITAR regulation will ultimately prove counter to the United States national interests.

Finally, NoblePeak objects to the situation presently, in which its pending export licenses languish. There are companies outside the United States that have developed cameras with capabilities that are similar to the NoblePeak camera. We have attached information about some of these foreign

[1] CCATS Number G056354. As a result of this classification, an export license from BIS is required as a condition of export to all countries except Canada.

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competitors and the cameras they have developed as **Exhibit H**. These companies do not confront the need to obtain individual export licenses or the delays in obtaining required export licenses that NoblePeak does. As a result, potential foreign customers of the NoblePeak camera are instead opting to buy comparable products from our foreign competitors. Those non-U.S. companies will therefore obtain the sales, the revenue and the growth that result from NoblePeak's inability to compete internationally.

Clearly, with respect to our night vision camera, and also with respect to night vision cameras manufactured by other U.S. manufacturers, current U.S. export controls are dysfunctional. The two BIS export licenses we have received were laden with provisos which rendered them as restrictive as licenses issued by DDTC under the ITAR. As noted above, given the classification of our camera under ECCN 6A003, an export license from BIS is required as a condition of exporting our camera to every country other than Canada. Why then should DoD, DTSA and DDTC insist that the cameras be licensed by DDTC under the ITAR rather than BIS under the EAR? As a commercial matter, we are aware that foreign customers are disinclined to buy products from the U.S. if they are subject to the ITAR and require licensing by DDTC. Indeed, our distributor in Japan sent us a letter stating as much. (Copy attached as **Exhibit I**). Thus, the prospect of export licensing by DDTC clearly could drive potential foreign customers to choose cameras manufactured by our foreign competitors rather than ours. More fundamentally, however, as noted above, given the present inter-agency impasse and the resulting inability to issue to us any export licenses, potential foreign customers can not even entertain the threshold question of whether they would be interested in buying our camera.

We appreciate the opportunity to provide our views. If you have questions or require additional information please do not hesitate to contact Daniel Waltz of Patton Boggs LLP. He is our outside counsel assisting us with export licensing matters and can be reached by telephone at (202) 457-561 or by email at dwaltz@pattonboggs.com

Very truly yours,

Michael Decelle
President & CEO

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NoblePeak Exhibits

	Date	Document
A.	4/16/08	Letter to Beth McCormick (DTSA)
B.	5/2/08	Letter from Michael Laychak (DTSA)
C.	5/7/08	Letter to Frank Ruggiero (DDTC)
D.	5/7/08	Letter to Michael Laychak (DTSA)
E.	5/9/08	E-Mail from Robert Kovac (DDTC)
F.	5/16/08	Responding e-mail to Robert Kovac (DDTC)
G.	6/27/08	Letter to Ann Ganzer (DDTC)
H.		Information about NobelPeak's foreign competitors and the SWIR cameras they manufacture and market
I.	6/12/08	Letter from Macnica, Inc., NoblePeak's Japanese distributor

EXHIBIT A

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ATTORNEYS AT LAW

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April 16, 2008

Daniel E. Waltz
202-457-5651
dwaltz@pattonboggs.com

VIA E-MAIL & MAIL

Beth M. McCormick
Deputy Undersecretary of Defense,
Technology Security Policy
& National Disclosure Policy
Defense Technology Security Administration
2850 Eisenhower Avenue
Alexandria, VA 22314

Re: NoblePeak Vision Corporation - TriWave™ Camera, CJ 352-07

Dear Ms. McCormick:

We were recently retained by NoblePeak Vision Corporation (NoblePeak) to assist with respect to export licensing issues. NoblePeak, located in Wakefield, Massachusetts, has developed the TriWave™ Camera, which incorporates a germanium-based CMOS imager that has a broad spectral response and can sense light beyond the visible spectrum into the near infrared and short wave infrared spectrum. The TriWave™ Camera was not developed for a military application. Nothing about it has been designed, modified or adapted for a military use. Rather, it was conceived and designed for a variety of commercial applications including medical, automotive and perimeter security.

Last June, NoblePeak applied to the Department of Commerce Bureau of Industry and Security (BIS) for a commodity classification for its TriWave™ Camera with a 128x128 array. The requested classification was issued June 15, 2007 and classified the camera under ECCN 6A003B.4.A.[1]

NoblePeak later received an order for this same TriWave™ Camera from the Victor Company of Japan, Ltd. (JVC) and applied to BIS for a license authorizing the shipment of the ordered camera to JVC. We understand that that license application was the subject of some interagency dispute and that, as a result, it was referred to the Operating Committee. When the Operating Committee voted in favor of granting the requested license, the Department of Defense appealed and the case was therefore referred to the Advisory Committee on Export Policy (ACEP). As

[1] CCATS Number: G056354 (copy attached as Appendix A).

you know, ACEP includes representatives of several federal agencies, including the Departments of State, Defense and Commerce. Representatives who serve on the ACEP have the rank of Assistant Secretary or equivalent. The ACEP met, considered the pending export license application, and voted to approve it. The export license was issued to NoblePeak on January 10, 2008 accordingly.[2] NoblePeak informed JVC in Japan of the license conditions and shipped the licensed camera to JVC in February.

In short, the issue of whether NoblePeak's TriWave™ Camera is subject to the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR) has been fully vetted in an interagency process that involved both the Departments of State and Defense at a high level. That issue has now been resolved. I was thus surprised to learn that, while that interagency process was pending, the Department of Defense drafted a request for a commodity jurisdiction with respect to NoblePeak's TriWave™ Camera and submitted it to the State Department's Directorate of Defense Trade Controls (DDTC) for adjudication.

This strikes me as both unnecessary and highly irregular. Since the issue was already being considered in an established interagency process, why would the Department of Defense initiate a second, parallel process? Moreover, we are not aware that an agency or company other than a manufacturer of a product may submit a request to DDTC for a commodity jurisdiction. If such a rule is adopted, the consequences could be pernicious. Would this mean, for example, that NoblePeak could request of DDTC that it make a commodity jurisdiction with respect to a competitor's products?

BIS faxed to us last week a copy of the request for commodity jurisdiction that it had received from DDTC for comment (CJ Request). A copy of that fax is attached hereto as Appendix C. The CJ Request itself is a four page letter signed by you. Its first page bears a stamp indicating that it was received on October 26, 2007. That date is striking for at least two reasons. First, as noted above, at that time the issue of the proper regulatory jurisdiction over NoblePeak's TriWave™ Camera was already pending before another established interagency forum. Second, DDTC asked NoblePeak's counsel last November 1 to prepare a request for a commodity jurisdiction and to submit it by November 8. NoblePeak's outside counsel prepared a request for a commodity jurisdiction and submitted it to DDTC on November 7 as requested.

As the company that designed and now manufactures the TriWave™ Camera, it seems obvious that NoblePeak is the most authoritative source of accurate information regarding the Camera itself. Although the request for a commodity jurisdiction submitted by NoblePeak's counsel was prepared in a compressed timeframe, it contained accurate information that is critical to a proper

[2] Export License D381036 (copy attached as Appendix B).

understanding of the Camera's development, and thus to a proper determination with respect to export licensing jurisdiction.

In contrast, the CJ Request submitted by your office is riddled with inaccuracies and misstatements. Most importantly, the CJ Request baldly asserts that "the TriWave™ Camera core based on the TriWave™ FPA has been specifically configured for a military application." This statement is flatly wrong as was clearly demonstrated in the materials provided by NoblePeak's counsel to DDTC. This characterization is also critical to the question of whether or not the TriWave™ Camera is properly considered a defense article.

The CJ Request we received from BIS did include as an attachment three slides apparently taken from a NoblePeak presentation. Even these few pages clearly contradict the incorrect assertion in the CJ Request that the TriWave™ Camera was specifically designed for a military application. Thus, the very title of the presentation is "Night Vision for Main Street." The second page summarizes the markets being targeted by NoblePeak, noting that the TriWave™ Camera provides "night vision capability at a price feasible for commercial security" and that the camera can monitor areas not currently practical such as remote parking lots, outdoor areas where lighting is considered a nuisance to neighbors and areas with large perimeters. The third slide notes that the TriWave™ Camera will be available at less than one tenth of the price of other currently available options. Everything about these three slides thus screams commercial application.

The CJ Request also notes that NoblePeak sought military funding for the design and development of the TriWave™ Camera, then states that the "Department of Defense interprets this to mean that the TriWave™ Camera core is also designed and developed for a military application." This "interpretation" is unwarranted and inconsistent with the facts. NoblePeak did apply on several occasions for Department of Defense funding, but all of its requests were rejected. NoblePeak has instead received funding exclusively from commercial companies. Its TriWave™ Camera was likewise designed for commercial applications and has been delivered predominantly to customers who ordered it for evaluation in connection with potential commercial applications.

The question of whether NoblePeak's TriWave™ Camera should be subject to the EAR or the ITAR has been raised to a high level in an established interagency process and has now been resolved. The CJ Request prepared by your office that is presently undergoing review is inaccurate and misleading. Under these circumstances we submit that the CJ Request should be withdrawn.

NoblePeak recognizes that there are significant sensitivities relating to night vision cameras and technology, and is perfectly willing to meet and discuss with all relevant agencies the products it has under development, their capabilities, and which of them may appropriately be considered

defense articles. This dialogue is appropriate with respect to new and more powerful products, however, not the TriWave™ Camera that has already been subject to high level interagency review.

I will call your office in the coming days to discuss this matter with you. In the meantime, if you would like to contact me, please do not hesitate to call me at (202) 457-5651 or to send me an email at dwaltz@pattonboggs.com.

Very truly yours,

Daniel E. Waltz

cc: Clifford King
Mike Decelle
Mario Mancuso
Matt Borman
Brian Nilsson
Frank Ruggiero
Robert Kovac
Mary Ann Rashid
Gregory Tarr
Chris Costanzo
John Varesi
Jim Thompson
John Goodrich
Jeffery David

EXHIBIT B

DEFENSE TECHNOLOGY SECURITY ADMINISTRATION
2900 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2900

Mr. Daniel E. Waltz
Patton Boggs LLP
Attorneys at Law
2550 M Street, NW
Washington, DC 20037-1350

MAY 2 2008

Dear Mr. Waltz:

I am responding to your recent letter dated April 16, 2008, regarding Commodity Jurisdiction (CJ) case CJ-352-07 on behalf of the Deputy Under Secretary of Defense for Technology Security Policy and National Disclosure Policy and Director of the Defense Technology Security Administration. Your request that the Department of Defense (DoD) withdraw its CJ submission is based on several misunderstandings of the commodity jurisdiction process within the U.S. Government.

The Arms Export Control Act (AECA) authorizes the President to create the U.S. Munitions List (USML) and establish the necessary regulations to control exports of "defense articles," which are items identified by the USML. The International Traffic in Arms Regulations (ITAR), 22 C.F.R. part 120.2 states that the items controlled under the USML shall be designated by the Secretary of State with the concurrence of the Secretary of Defense. The ITAR outlines the policy to be used in determining commodity jurisdiction in 22 C.F.R. 120.3 and the procedures to be used in making such determination in 22 C.F.R. 120.4.

The Defense Technology Security Administration (DTSA) is the DoD Field Activity responsible for implementing DoD technology security policies. As part of that duty, DTSA makes recommendations to the Departments of State and Commerce on the national security implications relating to the export of dual-use and defense trade related technologies, goods, and services. A vital national security responsibility involved in that mission is ensuring that commodities subject to export license requirements are adjudicated via the appropriate licensing authority. In the Department of Commerce licensing process, DoD not only has the responsibility to review the license for national security concerns, but also to raise commodity jurisdiction questions to the appropriate regulatory authority resulting from our national security analysis. Based on the significant technical capabilities of the NoblePeak TriWare Camera, DTSA fulfilled that requirement by raising the question of the camera's export licensing via the Department of

Commerce to the attention of the Department of State for jurisdictional review. Such a review and determination can only be carried out under the authority of the Department of State as described in the ITAR. Under this process, the Departments of Defense and Commerce play important consultative roles.

The processes initiated by your client's submission of a license to the Department of Commerce, and their request for a CCATS determination, do not determine, nor have any authority to determine, the appropriate export licensing jurisdiction of a commodity. After considering your request, we intend to permit the CJ process to run its course and will await the Department of State's formal determination.

Michael R. Laychak,
Licensing Director
Defense Technology Security
Administration

cc: Clifford King
Mike Decelle
Mario Mancuso
Matt Borman
Brian Nilsson
Frank Ruggiero
Robert S. Kovac
Mary Ann Rashid
Gregory Tarr
Chris Costanzo
John Varesi
Jim Thompson
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EXHIBIT C

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May 7, 2008

Daniel E. Waltz
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Frank J. Ruggiero
Deputy Assistant Secretary
of State for Defense Trade Controls
Room 1204 SA-1
2401 E Street, NW
Washington, DC 20520

Re: NoblePeak Vision, Inc. CJ 352-07

Dear Mr. Ruggiero:

Late last October the Deputy Undersecretary of Defense Technology Security Policy and National Disclosure Policy sent to your office a request for a commodity jurisdiction (CJ) ruling relating to a multi spectral infrared camera designed and manufactured by our client NoblePeak Vision Corp. We understand that the matter is presently pending at the Directorate of Defense Trade Controls (DDTC) under case number CJ 352-07. On April 16, we sent a letter to Ms. McCormick on behalf of NoblePeak objecting to both the process and the substance of the CJ process initiated by DTSA. We received a letter dated May 2 from the Licensing Director at DTSA, asserting that DTSA is properly authorized to initiate CJ reviews, declining our request to withdraw the CJ request submitted by DTSA and indicating that DTSA now awaits the results of that CJ review. That letter did not address the material inaccuracies contained in the DTSA-initiated CJ request that were identified in our earlier letter of April 16. I believe you were copied on both letters.

We are very familiar with the commodity jurisdiction process but are not aware of any law or regulation that would authorize DTSA to initiate a commodity jurisdiction review. Guidance regarding commodity jurisdictions posted on the website of the DDTC is clear in stating that, if someone other than the manufacturer of a product wishes to submit a CJ request, that request must include a letter of authorization from the manufacturer on company letterhead signed by a company official. *See*, http://pmddtc.state.gov/docs/faqs_cj.pdf. NoblePeak certainly never authorized DTSA to initiate a commodity jurisdiction review with respect to its 128x128 TriWave™ Camera. Nor would it given the material misstatements contained in the CJ

request prepared and submitted by DTSA.[1] We thus conclude that DDTC has departed from its established policies and procedures in accepting the CJ request from DTSA. If DDTC is aware of some regulation or policy authorizing the initiation and submission of CJ request by DTSA, or by another party, without the consent of the product manufacturer we ask that you please send a copy to us.

It seems that all parties agree that ITAR section 120.3 establishes the criteria that apply in determining whether any given product is or is not a defense article subject to the ITAR. Those criteria are very clear. Among other things, they provide that a product may be designated as a defense article only if it is "specifically designed, developed, configured, adapted, or modified for a military application." As explained in our letter of April 16, the NoblePeak TriWave™ Camera was not specifically designed, developed, configured, adapted, or modified for a military application. On the contrary, it has been designed, and is presently being manufactured, for civilian and commercial applications. Thus, given the clear criteria established by the ITAR, there is no basis under which the TriWave™ Camera can be designated a defense article.

If DDTC and DTSA were inclined for some reason to ignore the clear standards established by the ITAR and declare the TriWave™ Camera a defense article, the camera would presumably be classified under USML Category XII(c). But this category is likewise clear in specifying that it includes night sighting equipment and infrared, visible and ultraviolet devices only if they have been "specifically designed, developed, configured, adapted, or modified for a military application." Thus the very USML category under which the TriWave™ Camera might be classified excludes products, like the TriWave™ Camera, that have been designed and manufactured for civilian and commercial applications.

Finally, USML Category XII(c) is very clear in stating that a commercial camera is licensed by the Dept. of Commerce even if it incorporates a focal plane array or other detector that is subject to the ITAR. The detector incorporated into NoblePeak's TriWave™ Camera is not subject to the ITAR because it was designed and intended for commercial applications. Even if it were, however, the camera itself would remain subject to the export licensing jurisdiction of the Department of Commerce under the explicit language of the USML.

We note in closing that the CJ request prepared and submitted by DTSA cites to a number of earlier CJ determinations for the proposition that the TriWave™ Camera should be designated a defense article. It recently came to our attention that, in at least one case, a camera

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[1] For example, as noted in our letter of April 16, the DTSA-initiated CJ request claims that the TriWave™ Camera "has been specifically configured for a military application." That is simply not true. Yet, as explained below, that inaccurate claim is central to the issue of whether the TriWave™ Camera can properly be designated a defense article.

very similar to the TriWave™ Camera was declared by DDTC to be subject, *not* to the ITAR, but to the Department of Commerce Export Administration Regulations. A copy of that CJ determination is attached (CJ 155-01, December 3, 2001). The camera at issue there was manufactured by Electrophysics Corporation of Fairfield New Jersey. Like the TriWave™ Camera that is the subject of the pending CJ request, it incorporated a 128x128 detector. CJ 155-01 thus appears to contradict the claims made in the DTSA-initiated CJ request that earlier CJ determinations dictate the designation of the NoblePeak TriWave™ Camera as a defense article.

Again, because the NoblePeak TriWave™ Camera was designed and developed for civilian and commercial applications, it cannot properly be designated a defense article. DDTC and its sister agencies are charged with applying the ITAR as written. If they believe that the standards that govern the export of night vision equipment should be revised, the ITAR and EAR should be amended to inform the regulated community accordingly. It would be fundamentally unfair, and also inconsistent with DDTC's legal obligations, to apply a standard that some may desire, but that has not been adopted and codified as required by the Administrative Procedures Act.

As indicated in our April 16 letter to Ms. McCormick, NoblePeak would be happy to meet with you and your staff to provide additional information about its TriWave™ Camera and discuss with you any concerns you might have regarding its export from the United States. If, despite the points made above, the pending CJ process is allowed to continue, any decision to designate the TriWave™ Camera a defense article without inviting the participation of the Camera's developer and manufacturer would represent yet another misuse of the administrative process and would call into serious question the validity of the decision itself.

Very truly yours,

Daniel E. Waltz
Partner

cc: Beth McCormick
Michael Laychak
Robert Kovac
Mary Ann Rashid
Clifford King
Mike Decelle
Mario Mancuso
Matt Borman

Brian Nilsson
Gregory Tarr
Chris Costanzo
John Varesi
Jim Thompson
John Goodrich
Jeffrey David

United States Department of State

Bureau of Political-Military Affairs
Office of Defense Trade Controls

Washington, D.C. 20037

JUN 10 2002

In Reply Refer to
ODTC Case CJ 155-01

YOUR LETTER DATED: December 3, 2001

REQUEST FOR COMMODITY JURISDICTION DETERMINATION FOR: 8128 MicronViewer InGaAs Camera

Your commodity jurisdiction (CJ) request was referred to the Departments of Commerce and Defense for their review and recommendations. As a result, the Department of State has determined the referenced commodity is not subject to the licensing jurisdiction of the Department of State. However, the export of the commodity may require authorization from the Department of Commerce. Please consult their Export Counseling Division at (202) 482-4811 to determine your licensing requirement prior to export.

This determination is based on the information in your request that the Model 8128 camera, which is currently being offered in four versions (8128D, 8128DE, 8128V and 8128VE) is a commercial system with a military focal plane array incorporated. This camera has been specifically modified/adapted for commercial telecommunication applications. However, the export of the military FPA is subject to the licensing jurisdiction of the Department of State. Should you require further assistance on this matter, please contact Ms. Carol Basden at (202) 663-2719.

Sincerely yours,

Carol B. Basden for

William J. Lowell
Director
Office of Defense Trade Controls

Michelle Intiso
Electrophysics Corporation
373 Route 46 West – Bldg. E
Fairfield, NJ 07004-2442

EXHIBIT D

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May 7, 2008

Daniel E. Waltz

Michael R. Laychak
Licensing Director
Defense Technologies Security Administration
2900 Defense Pentagon
Washington, DC 20301-2900

Re: NoblePeak Vision, Corp.

Dear Mr. Laychak:

Thank you for you letter of May 2, responding to our letter of April 16. While we appreciate your response, we continue to believe that DTSA should withdraw its pending request for a commodity jurisdiction regarding the 128x128 TriWave™ Camera developed by our client NoblePeak Vision, Corp. (CJ 352-07). Those concerns were summarized in a letter we sent to the Deputy Assistant Secretary of State for Defense Trade Controls earlier today. You were copied on that correspondence and we would be pleased to speak with you or your colleagues about any of the points made in it.

We are writing to you today about a separate but related matter. Last February 28, NoblePeak submitted to the Department of Commerce Bureau of Industry and Security (BIS) an application for a license authorizing the export to a Bosch in Germany of a TriWave™ Camera that incorporates a larger (744x576) detector for evaluation in connection with a potential automotive application (Case No. Z729807). We understand that that license application was the subject of some interagency dispute. As a result, it was referred to the Operating Committee, which met last week and voted to approve the license. We understand further that the Department of Defense appealed and that the case is therefore scheduled for consideration by the Advisory Committee on Export Policy (ACEP) this Friday.

We just learned that, in the past days, DTSA has prepared and submitted to the State Department's Directorate of Defense Trade Controls (DDTC) a request that DDTC initiate a Commodity Jurisdiction (CJ) review of the 744x576 TriWave™ Camera. We anticipate that, at the ACEP meeting this Friday, DTSA will argue that the ACEP can not consider this case because a CJ review is now pending.

As noted in our letter today to the Deputy Assistant Secretary of State for Defense Trade Controls, under the ITAR and EAR as presently written, the NoblePeak TriWave™ Camera can not properly

be designated a defense article because it has not been "specifically designed, developed, configured, adapted, or modified for a military application." If DTSA, DDTC or other agencies believe that this standard should be modified, then the corresponding regulations must be amended. We have not yet located any regulation that would authorize DTSA to initiate a CJ review. Despite this apparent lack of any legal foundation, it now appears that DTSA is initiating such reviews for the purpose of frustrating interagency proceedings which are firmly grounded in law. *See*, Executive Order 12981, Administration of Export Controls, 60 Fed. Reg. 62981 (Dec. 8, 1995). It is difficult to imagine a clearer abuse of process.

As we did with respect to the CJ review that DTSA initiated for NoblePeak's 128x128 TriWave™ Camera, we request the DTSA withdraw its recent request for a CJ review of the more recent 744x576 TriWave™ Camera. Also, given the manifest inaccuracies contained in that earlier DTSA-initiated CJ request, we ask that we be provided a copy of the recently submitted request and that NoblePeak be allowed to comment on it. Finally, if the CJ request is not withdrawn, we ask that NoblePeak be allowed to participate in the CJ review. As the developer and manufacturer of the 744x576 TriWave™ Camera, it seems obvious that the comments and participation of NoblePeak can only improve the process.

Very truly yours,

Daniel E. Waltz

cc: Beth McCormick
Frank Ruggiero
Robert Kovac
Mary Ann Rashid
Gregory Tarr
Mario Mancuso
Matt Borman
Brian Nilsson
Chris Costanzo
John Varesi
Jim Thompson
John Goodrich
Jeffrey David
Clifford King
Mike Decelle

EXHIBIT E

Waltz, Daniel

From: Kovac, Robert S [KovacRS@state.gov]
Sent: Friday, May 09, 2008 11:56 AM
To: Waltz, Daniel
Cc: Ruggiero, Frank J; Michael.Laychak@osd.mil; beth.mccormick@osd.mil; Trimble, David C; Dalton, Jane G; Ganzer, Ann K; Rashid, Mary Ann; Tarr, Gregory L; davidj@tswg.gov; mmancuso@bis.doc.gov; mborman@bis.doc.gov; bnilsson@bis.doc.gov; ccostanz@bis.doc.gov; jvaresi@bis.doc.gov; john.goodrich@fluke.com; cliffordking@noblepeak.com; mike.decelle@noblepeak.com; Tucker, Maureen E
Subject: RE: NoblePeak Vision

Before this discussion goes any further, I think we need to clear up a few issues seem to be causing some confusion.

1. Neither the Arms Export Control act nor the International Traffic In Arms Regulations define or limit who may submit a Commodity Jurisdiction request. 22 CFR 124.4 outlines the procedures to be followed when "doubt exists as to whether an article or service is covered by the U.S. Munitions List." DTSA clearly has the legal foundation to make such a request.

2. Your claim that the TriWave camera "can not properly be designated a defense article" is also not supported. Thermal imaging for observation and targeting is clearly a "military application." Whether the TriWave cameras have a "military or intelligence applicability so significant" that control under the U.S. Munitions List is required is a decision made at the end of the commodity jurisdiction process with all factors taken into account.

3. Since the process established under EO 12981 assumes that the item being licensed is under the jurisdiction of the Department of Commerce, I could imagine no greater "abuse of the process" then attempting to adjudicate a USML article under a Department of Commerce license.

Robert S. Kovac
Managing Director, Directorate of Defense Trade Controls
Bureau of Political Military Affairs
US Department of State
-----Original Message-----
From: Waltz, Daniel [mailto:DWaltz@PattonBoggs.com]
Sent: Wednesday, May 07, 2008 6:22 PM
To: Michael.Laychak@osd.mil
Cc: Michael.Laychak@osd.mil; beth.mccormick@osd.mil; Ruggiero, Frank J; Rashid, Mary Ann; Tarr, Gregory L; Kovac, Robert S; davidj@tswg.gov; mmancuso@bis.doc.gov; mborman@bis.doc.gov; bnilsson@bis.doc.gov; ccostanz@bis.doc.gov; jvaresi@bis.doc.gov; john.goodrich@fluke.com; cliffordking@noblepeak.com; mike.decelle@noblepeak.com
Subject: FW: NoblePeak Vision

Mr. Laychak:

I have attached a scanned copy of a letter relating to what we understand is a newly-initiated Commodity Jurisdiction review of a NoblePeak Tri"Wave camera that is scheduled for consideration at this Friday's meeting of the ACEP. You will receive the hardcopy by mail. We would welcome the opportunity to meet with you and your staff to discuss this latest Commodity Jurisdiction review, as well as the review initiated by DTSA last October (CJ 352-07).

Daniel E. Waltz

Patton Boggs LLP
2550 M St. NW
Washington DC 20037
Tel: 202-457-5651
Fax: 202-457-6315
mailto:Dwaltz@pattonboggs.com

> _____
> From: Waltz, Daniel
> Sent: Wednesday, May 07, 2008 6:17 PM
> To: Waltz, Daniel
> Subject: NoblePeak Vision
>
> <<NoblePeak.pdf>>

EXHIBIT F

Waltz, Daniel

From: Waltz, Daniel
Sent: Friday, May 16, 2008 5:03 PM
To: 'Kovac, Robert S'
Cc: Ruggiero, Frank J; Michael.Laychak@osd.mil; beth.mccormick@osd.mil; Trimble, David C; Dalton, Jane G; Ganzer, Ann K; Rashid, Mary Ann; Tarr, Gregory L; davidj@tswg.gov; mmancuso@bis.doc.gov; mborman@bis.doc.gov; bnilsson@bis.doc.gov; ccostanz@bis.doc.gov; jvaresi@bis.doc.gov; john.goodrich@fluke.com; cliffordking@noblepeak.com; mike.decelle@noblepeak.com; Tucker, Maureen E
Subject: RE: NoblePeak Vision

Mr. Kovac:

Many thanks for your email of May 9. I address the points it makes below:

1. You are correct that neither the Arms Export Control Act nor the International Traffic in Arms Regulations define or limit the parties that may submit a commodity jurisdiction request. DDTC guidance does impose such limits, however. DDTC's Commodity Jurisdiction (CJ) FAQs, for example, includes the following:

Q: Who can submit a CJ request?

A: We prefer that the manufacturer submit the request because of the background and sales information required. However, a designated representative may submit a CJ request on the manufacturer's behalf. In such cases, the CJ request package must include a letter of authorization from the manufacturer on company letterhead signed by a company official, a mailing address, and phone number. (Emphasis added.)

Similar guidance is contained in DDTC's Guidelines for Preparing Commodity Jurisdiction (CJ) Requests and in its Instructions/Guidelines for Request for Commodity Jurisdiction (CJ)/U.S. Munitions List (USML) Determination Form DS-4076. It thus appears that DDTC is bending its own policies in accepting CJ requests from DTSA that are not authorized or supported by the relevant product's manufacturer.

2. You seem to suggest that a product can be designated a defense article if it has "military or intelligence applicability so significant" that control under the USML is required. As you know, the quoted language is taken from ITAR Section 120.3(b), which establishes one of the two bases under which a product may be designated a defense article. The full text provides that a product may be designated a defense article if it:

"(b) is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability such that control under this subchapter is necessary." (Emphasis added.)

Thus, it is not the case that a product may be designated a defense article solely on the basis that it has significant military or intelligence applicability. Rather, two conditions must be satisfied. First, the product must have significant military or intelligence applicability. Second, the product must also be specifically designed, developed, configured, adapted, or modified for a military application.

ITAR Section 120.3(a) defines the second basis for designation as a defense article. This subsection also provides that a product may be designated a defense article only if it is specifically designed, developed, configured, adapted, or modified for a military application. Thus, this requirement is contained within the ITAR, is binding upon DDTC, and cannot be ignored. Moreover, as explained in my letter to Deputy Assistant Secretary Ruggiero of May 7, the same requirement is replicated in Category XII(c) of the USML, the only category that could conceivably apply to the NoblePeak TriWave ™ camera. DDTC thus could not, consistent with applicable legal standards, designate the TriWave ™ camera a defense article solely on the basis of its military or intelligence applicability. Before it could properly be designated a defense article, the TriWave ™ camera would also have to be "specifically designed, developed, configured, adapted, or modified for a military application." Yet, the TriWave ™ camera has not been "specifically designed, developed, configured, adapted, or modified for a military application." On the contrary, it has

been designed and developed for civilian and commercial applications. The TriWave ™ camera thus cannot be properly designated a defense article.

3. You seem to suggest that the interagency consideration of the export license applications submitted by NoblePeak to the Department of Commerce, first by the Operating Committee then by the ACEP, is some type of an abuse of process. This claim, however, assumes that the NoblePeak TriWave ™ camera is a USML article. We certainly hope that this claim does not foreshadow the conclusion of the pending commodity jurisdiction reviews of the TriWave ™ camera. That same issue has been considered by the Operating Committee and ACEP in connection with two separate license applications submitted by NoblePeak and, in both cases, the determination was made that the TriWave ™ camera is properly subject to Department of Commerce licensing. Moreover, as explained above, the TriWave ™ camera cannot, consistent with the legal standards contained within the ITAR, be designated a defense article. In submitting export license applications to the Department of Commerce, NoblePeak has at all times acted in good faith and in a transparent manner. The Department of Commerce and other interested agencies have acted consistent with procedures established by regulation and Executive Order in considering and adjudicating those license applications. We therefore fail to understand your characterization of the adjudication of those applications as a possible "abuse of the process."

Despite our disagreements, we were very pleased to receive your email, as we hope that it might represent the opening for further dialogue. We find it somewhat startling that, in considering a company's product, DDTC and its sister agencies would decline, even reject, that company's active participation. The one DTSA-initiated CJ request we reviewed contains striking errors, errors that were not acknowledged or addressed in your email. It is difficult to understand how the CJ process can be allowed to proceed until those errors are acknowledged and rectified. We submit that NoblePeak's active involvement in the continuing CJ review would be instrumental in that regard. We therefore take this opportunity to renew NoblePeak's request that it be allowed to participate in the consideration of the two CJ reviews that are now pending with respect to the TriWave ™ camera. We also take this opportunity to renew NoblePeak's request that it receive a copy of the commodity jurisdiction request that, we understand, was submitted to DDTC by DTSA last week.

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-----Original Message-----
From: Kovac, Robert S [mailto:KovacRS@state.gov]
Sent: Friday, May 09, 2008 11:56 AM
To: Waltz, Daniel
Cc: Ruggiero, Frank J; Michael.Laychak@osd.mil; beth.mccormick@osd.mil; Trimble, David C; Dalton, Jane G; Ganzer, Ann K; Rashid, Mary Ann; Tarr, Gregory L; davidj@tswg.gov; mmancuso@bis.doc.gov; mborman@bis.doc.gov; bnilsson@bis.doc.gov; ccostanz@bis.doc.gov; jvaresi@bis.doc.gov; john.goodrich@fluke.com; cliffordking@noblepeak.com; mike.decelle@noblepeak.com; Tucker, Maureen E
Subject: RE: NoblePeak Vision

Before this discussion goes any further, I think we need to clear up a few issues seem to be causing some confusion.

1. Neither the Arms Export Control act nor the International Traffic In Arms Regulations define or limit who may submit a Commodity Jurisdiction request. 22 CFR 124.4 outlines the procedures to be followed when "doubt exists as to whether an article or service is covered by the U.S. Munitions List." DTSA clearly has the legal foundation to make such a request.

2. Your claim that the TriWave camera "can not properly be designated a defense article" is also not supported. Thermal imaging for observation and targeting is clearly a "military application." Whether the TriWave cameras have a "military or intelligence applicability so significant"

that control under the U.S. Munitions List is required is a decision made at the end of the commodity jurisdiction process with all factors taken into account.

3. Since the process established under EO 12981 assumes that the item being licensed is under the jurisdiction of the Department of Commerce, I could imagine no greater "abuse of the process" then attempting to adjudicate a USML article under a Department of Commerce license.

Robert S. Kovac
Managing Director, Directorate of Defense Trade Controls
Bureau of Political Military Affairs
US Department of State
-----Original Message-----
From: Waltz, Daniel [mailto:DWaltz@PattonBoggs.com]
Sent: Wednesday, May 07, 2008 6:22 PM
To: Michael.Laychak@osd.mil
Cc: Michael.Laychak@osd.mil; beth.mccormick@osd.mil; Ruggiero, Frank J; Rashid, Mary Ann; Tarr, Gregory L; Kovac, Robert S; davidj@tswg.gov; mmancuso@bis.doc.gov; mborman@bis.doc.gov; bnilsson@bis.doc.gov; ccostanz@bis.doc.gov; jvaresi@bis.doc.gov; john.goodrich@fluke.com; cliffordking@noblepeak.com; mike.decelle@noblepeak.com
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> _____
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>
> <<NoblePeak.pdf>>

Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated. To learn more about our firm, please visit our website at http://www.pattonboggs.com.

EXHIBIT G

PATTON BOGGS LLP
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June 27, 2008

Daniel E. Waltz
202-457-5651
dwaltz@pattonboggs.com

VIA MAIL & E-MAIL

Ann Ganzer, Director
Office of Defense Trade Controls Policy
PM/DDTC, SA-1, 12th Floor
Directorate of Defense Trade Controls
Bureau of Political Military Affairs
U.S. Dept. of State
Washington, DC 20522-0112

Re: NoblePeak Vision, Inc. CJ 149-08

Dear Ms Ganzer:

On February 28, 2008, our client NoblePeak Vision Corp. submitted to the Department of Commerce, Bureau of Industry and Security (BIS) an application for a license authorizing the export to Bosch in Germany of one NP-EC700-M01 TriWave™ Evaluation Kit incorporating a 744 x 576 multispectral infrared focal plane array (the "TriWave™ Camera"). The case was circulated for review, DTSA objected to the granting of the license, and the case was elevated to the Operating Committee accordingly. At the Operating Committee, DTSA was the only agency that objected to the granting of the license. DTSA appealed and the case was elevated to the ACEP. It appears that, after being outvoted at the Operating Committee and shortly before the ACEP meeting, DTSA prepared and submitted to DDTC a request for commodity jurisdiction for the TriWave™ Camera. (the "CJ Request," Case No. CJ 149-08). NoblePeak learned of the CJ Request and we sent a letter to DTSA on May 7 objecting to it and requesting a copy. We received a redacted copy approximately one month later, on June 3rd.

Your staff has invited NoblePeak to submit its comments and thoughts on the CJ Request. Most fundamentally, NoblePeak believes that the CJ Request misunderstands or mischaracterizes both the facts and the law. It also believes that DTSA is pursuing a misguided policy in this and similar cases. We amplify upon these points below.

The Facts

The most fundamental factual inaccuracy or mischaracterization contained in the CJ Request is its unqualified statement that the TriWave ™ Camera "*is configured* for military application." As noted above, the TriWave™ Camera at issue here is an evaluation kit. Effectively, it is a

prototype camera that potential customers are buying for purposes of evaluating the TriWave™ technology. The prototype camera is bulky, heavy, consumes significant power, dissipates significant heat, has not been ruggedized and is designed for operation only in a controlled environment (e.g., at room temperature). Given these inherent characteristics of the prototype, we submit that, not only is the prototype not configured for military application, the prototype is not even capable of a military application.

The CJ Request likewise asserts that the prototype camera is configured for military application because it is "capable of" supporting long-range target ID, counter-camouflage and passive night vision applications. A kitchen knife is "capable of" killing military personnel, yet kitchen knives are not considered defense articles. That is because the ITAR do not allow the designation of a product as a defense article based upon what the product is "capable of." Rather, the ITAR employs a higher standard, allowing a product to be designated a defense article only if it has been specifically designed, developed, configured, adapted, or modified for a military application.

The CJ Request also argues that the prototype camera is configured for military application because it is configured for "military night vision/targeting," citing the TriWave™ Camera product data sheet. The data sheet, posted on the NoblePeak website, cited that application among several other potential applications. Clearly then, the prototype camera was not specifically designed, developed, configured, adapted, or modified for military night vision/targeting. Rather, it was developed for evaluation and consideration in connection with a number of potential applications, only one of which was military. The focus of NoblePeak's product development efforts has always been the commercial market. The fact that DTSA chose to pluck a single reference to a potential military use from the website and cite to it in support of its argument that the camera should be designated a defense article seems disingenuous at best. NoblePeak has since revised its product data sheet to add additional examples of commercial applications which more accurately reflect the business focus of NoblePeak. The copy of the current product data sheet is attached hereto for your review and reference. (**Exhibit A**).

Finally, on this threshold issue, the CJ Request asserts that the prototype is "inherently military" because of its performance characteristics. If the prototype is "inherently military," why has NoblePeak received orders and inquiries from automotive companies that seek to evaluate the camera for possibly use in automobiles, orders from medical companies that seek to evaluate use of the camera in medical imaging applications, and similar orders from companies interested in evaluating use of the camera in commercial security cameras, machine vision, semi-conductor testing, remote ground sensing, industrial scanning and vision systems among others? The commercial response to, and interest in, the prototype camera in the marketplace is more telling evidence of the predominantly commercial applications of the camera than the simple, unsupported statement that the prototype camera is "inherently military."

Next, the CJ Request makes the puzzling claim that the repeated decisions by the U.S. military to not fund research and development of the TriWave™ Camera somehow "validates the significant military applicability" of the TriWave™ technology. This assertion is so twisted as to border on ludicrous.

The CJ Request also claims that "foreign availability is not a significant factor." We beg to differ. The Belgian company XenICs has developed a camera that is comparable in its performance to the TriWave™ Camera. We understand that XenICs can export this camera without obtaining an individual export license to all 27 members of the European Union, and may export to major European allies such as the United States, Canada, Australia, Japan, New Zealand and Switzerland without applying for or obtaining an individual export license under authority of the European Union's Community General Export Authorization (CGEA). Insofar as it now appears that all pending NoblePeak export license applications are on hold, foreign availability is most definitely a significant factor. If NoblePeak is unable to export its prototype camera, non-U.S. customers will inevitably turn to alternate suppliers like XenICs. This will stimulate the growth of companies like XenICs while slowing the growth of NoblePeak. This can hardly be the result desired by DTSA specifically, or the U.S. government more generally.

The Law

The CJ Request then makes a puzzling set of assertions with respect to our allies' export regulation of night vision products and the impact that their regulation should have upon corresponding U.S. regulation. The CJ Request notes that many night vision products are described on the Wassenaar Arrangement (WA) Dual Use List, but then claims that inclusion on the WA Dual Use List has no bearing on the jurisdictional status of a given product in the United States. In fact, under the ITAR, inclusion on the WA Dual Use List does impact jurisdictional status in the United States. Under ITAR Section 120.4 (d)(3)(ii), in determining whether a given product is a defense article, consideration must be given to "the nature of controls imposed by other nations on such items (including Wassenaar Arrangement and other multilateral controls)." The next subsection further specifies:

> That items described on the Wassenaar Arrangement List of Dual-Use Goods and Technologies shall not be designated defense articles or defense services unless a failure to control such items on the U.S. Munitions List would jeopardize significant national security or foreign policy interests.[1]

[1] 22 CFR Section 120.4 (d)(3)(iii). Of course, even if a determination is made that failure to control an item might jeopardize national security or foreign policy interests, it remains the case that a product may be designated a defense article only if it has been specifically designed, developed, configured, adapted, or modified for a military application. 22 CFR Section 120.3.

The CJ Request's assertion that inclusion on the WA Dual Use List has no bearing on jurisdictional status in the U.S. is thus clearly contradicted by the ITAR. Under the ITAR, a product included on the WA Dual Use List can be designated a defense article in the United States only under the most unusual circumstances.

Next, the CJ Request claims that the French government controls under the French munitions list focal plane arrays (FPAs) that are described on the WA Dual Use List. The CJ Request does not say, however, that the French are controlling night vision cameras under the French munitions list. We have attempted to research the French government's regulation of FPAs and night vision cameras but, to date, have found nothing indicating that the French have departed in any way from the E.U.'s general adherence to the requirements of the Wassenaar Arrangement. We have found references on French governmental websites to special controls imposed upon exports of helicopters and tear gas, but nothing relating to FPAs. We have heard rumors that the French have stopped providing information about their exports of FPAs as a form of retaliation for the United States' refusal to provide such data for FPAs and night vision equipment that we treat as defense articles. If this is true, it may not necessarily follow that the French are in fact treating exports from France of FPAs and night vision equipment as munitions items. Moreover if, like the U.S. in many cases,[2] the French are treating FPAs, but not night vision cameras, as munitions list items, then the French practice would seem to support NoblePeak's position that its TriWave™ Camera should likewise be treated as a dual-use item subject to BIS export licensing. Any additional information that DDTC or DTSA could provide to us on the French regulation of exports of FPAs and night vision cameras would be appreciated.

The CJ Request also notes that, at Wassenaar in 2007, new controls for low light sensors were agreed on. This hardly seems relevant to the question of whether such products should be considered defense articles, however. Indeed, to the degree that such low light sensors have been included on the WA Dual Use List, the argument for considering them defense articles in the United States is weaker, not stronger.

Policy

NoblePeak has no objection to the notion that its exports of the TriWave ™ Camera must be reviewed and licensed by the U.S. government. Under the TriWave's ™ current classification (6A003), exports must be licensed to every country other than Canada. NoblePeak understands that various U.S. government agencies will have an opportunity to review and vote on these applications. While the perspectives of each such agency might differ, all of them understand

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[2] *See, e.g.*, CJ 155-01 (June 10, 2002) (Micron Viewer InGaAs Camera is a commercial product subject to BIS jurisdiction, even though the FPA it incorporates is a defense article subject to the ITAR).

and act to protect the United States' national security. There thus appears to be little reason in policy to insist that the TriWave ™ Camera is a defense article subject to the ITAR rather than accepting the obvious commercial reality that the TriWave ™ Camera is designed and intended primarily for commercial applications and should thus be licensed as a dual use product.

Foreign distributors balk at the prospect of having to register with DDTC as a broker while foreign customers dislike having to complete DSP-83s and, in some cases, have them signed by government officials as well. More generally, fairly or unfairly, non-U.S. customers and potential business partners of NoblePeak have become persuaded that the DDTC export licensing process is painfully slow and sometimes unpredictable. One consequence of this perception is that non-U.S. companies are increasingly reluctant to design into their products components such as cameras if they are subject to the ITAR. NoblePeak's distributor in Japan, Macnica, wrote a letter to NoblePeak stating that, if NoblePeak's TriWave™ technology is governed by the ITAR, that will do severe damage to the possibility of building a successful business in Japan, as Japanese companies will seek to obtain comparable technology from countries outside the U.S.A. (copy attached as **Exhibit B**). In addition, NoblePeak is aware of companies that have chosen to use non-U.S. sensors or non-U.S. cameras in their own systems so as to avoid the delays and possible disruptions in supply if they instead design-in a U.S. sensor or camera subject to the ITAR. Indeed, there is at least one U.S. company in the industry that has consciously moved production offshore and sourced its sensors from non-U.S. vendors in order to avoid ITAR regulation.

NoblePeak does not doubt for a moment the good intentions of those within DTSA and DoD who believe that NoblePeak's TriWave™ Camera should be regulated as the defense article under the ITAR. As explained above, NoblePeak strongly believes that any such classification would be flatly inconsistent with the standards that DDTC is obliged to apply under the ITAR. Equally important, however, any such decision would serve to damage NoblePeak commercially while strengthening its non U.S. competitors. The perceptions and fears of non-U.S. buyers and business partners may not be fair and may not be justified, but they are real. Thus, the effort to assert ITAR jurisdiction over night vision products and technology that are clearly commercial will serve ultimately to damage the U.S. industry and, by extension, U.S. national security, not strengthen it. NoblePeak thus believes that, for reasons of both law and policy, its commercial TriWave™ Camera should properly be considered a dual use item subject to licensing by BIS.

As indicated repeatedly in our prior correspondence, NoblePeak would be happy to meet with you and your colleagues to provide additional information about its TriWave™ Camera and discuss with DDTC and other interested agencies any concerns they might have regarding its

export from the United States. We submit that any decision to designate the TriWave™ Camera a defense article without inviting the participation of the Camera's developer and manufacturer would call into serious question the validity of the decision itself.

Very truly yours,

Daniel E. Waltz
Partner

cc: Beth McCormick
Michael Laychak
Frank Ruggiero
Robert Kovac
Lisa Sampson Wenger
Mary Ann Rashid
Gregory Tarr
Mario Mancuso
Matt Borman
Bernie Kritzer
Brian Nilsson
Chris Costanzo
John Varesi
Jim Thompson
John Goodrich
Jeffrey David
Mike Decelle
Clifford King

EXHIBIT H

Foreign Availability Summary

SWIR Camera Technology

Summary:

There is growing participation in the Short Wave Infrared (SWIR) market, with both established and newly-emerging vendors. Most international vendors are from the European Union but there is at least one new vendor based in Taiwan (Chunghwa). One of the most high profile EU suppliers, XenICs, has established a Singapore-based subsidiary to serve the Asian, Australian, and Middle East markets, including China and India. Some of these companies are located in Wassenaar countries, while others are not. All enjoy significantly greater freedom to market and sell their products internationally than NoblePeak. Shipments to many countries can be made without first obtaining individual export licenses. In addition, sales can be made to countries, like China, that are subject to an embargo under the ITAR.

Known Foreign Suppliers

1. XenICs (www.xenics.com) /sInfraRed (www.sinfrared.come)

XenICs is a Belgium-based maker of cameras for the near-infrared (NIR), shortwave- infrared (SWIR), midwave-infrared (MWIR) and longwave-infrared (LWIR) spectral regions (total spectral range from 1 to 14 microns). XenICs operates a wholly-owned subsidiary called sInfraRed which is based in Singapore and serves the Asia, Australia, and Middle East regions.

XenICs manufactures a NIR+SWIR camera, the Cheetah-FPA-1.7-640, which uses the InGaAs material system. The camera has resolution of 640x512 pixels (*i.e.,* greater than VGA resolution) and a spectral range from 0.9 to 1.7 microns.

Cheetah-FPA-1.7-640 Camera

Key Features (from company website):

- InGaAs detector; >99% pixel operability

- 0.9 to 1.7 µm sensitivity
- 640 x 512 pixels
- Framerate 400Hz, 1730Hz
- GigE and CameraLink interface
- Single stage Peltier cooler
- External trigger input
- Two gain modes
- Multiple sub frame windowing capability

This camera is capable of frame rates from 400 Hz up to 1730 Hz which, combined with its high resolution, makes it extremely capable for serving a range of high-performance imaging applications, including military applications.

XenICs markets its cameras around the world, including at a wide variety of international trade shows in China, Taiwan, South Korea, Japan, Australia, India, and the U.S. It is very clear that XenICs, via its sInfraRed subsidiary, is aggressively targeting customers in non-Wassenaar countries for growth. According to the press release announcing the new subsidiary, "*sInfraRed is to provide comprehensive marketing, sales and support as well as volume production and customization of XenICs' products in the Asia, Australia and Middle East regions.*"

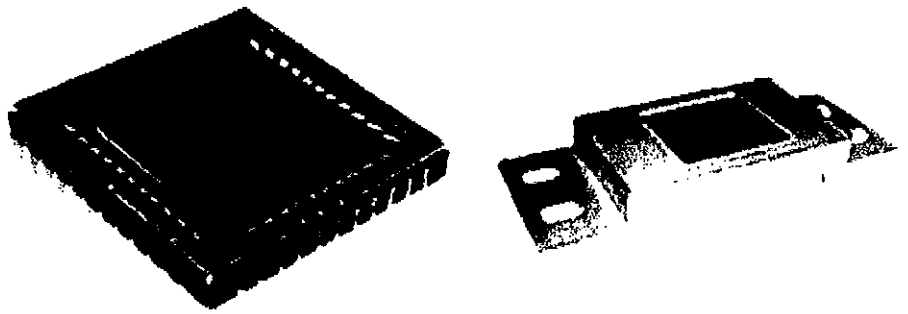
In the same press release, the company makes it clear that it intends to use its Singaporean subsidiary as a low-cost manufacturing center: "*sInfraRed is expected to achieve significant cost reductions for XenICs' newly expanding large volume production of advanced cameras and infrared detector solutions. The establishing of sInfraRed also is a consequence of the strong Euro currency position, which has led XenICs to explore alternative locations for the low-cost production of mainstream products* ***to be able to better compete with USD-denominated*** **competitors**." (Emphasis added.) Given the export restrictions imposed on U.S. companies such as NoblePeak, one can only conclude that XenICs intends to use sInfraRed to enhance its competitive position vis-à-vis U.S. manufacturers.

Further, with respect to export restrictions, it is our understanding that Belgium considers cameras such as the Cheetah-FPA-1.7-640 to be a dual-use item. As such, XenICs is allowed to export its cameras without obtaining individual export licenses to all 27 members of the EU and, under authority of the EU's Community General Export Authorization (CGEA), may export to major European allies such as the U.S., Canada, Australia, Japan, and New Zealand without applying for or obtaining an individual export license.

2. Chunghwa Leading Photonics Tech (www.leadinglight.com.tw)

Chunghwa Leading Photonics Tech (CLPT) is a division of Chunghwa Telecommunications Laboratories (Chunghwa Telecom is the largest telecommunications company in Taiwan). CLPT is using its experience in the design of advanced semiconductors (using the InGaAs material system) for telecommunications applications to develop high-performance focal plane

arrays (FPAs) that image in the NIR and SWIR spectral bands. CLPT is marketing FPAs with resolutions of 320x256 and 640x512 with a spectral range of 0.9 to 1.7 microns.



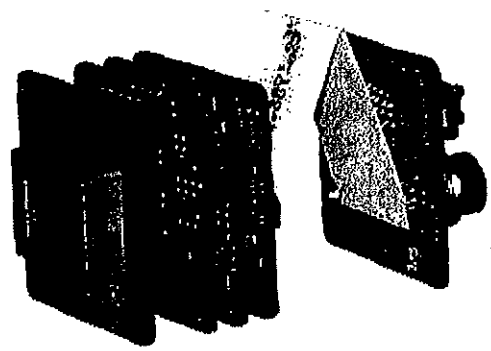
CLPT is currently shipping the 320x256 FPA and reportedly working closely with a UK company on the provision of the 640x512 FPA. Via a third party, NoblePeak has received price quotations for the 320x256 array for delivery to the U.S.

3. Raptor Photonics (www.raptorphotonics.com)

Raptor Photonics is based in Ireland and, according to its website, *"develops innovative camera technology specifically optimized for scientific, industrial,* ***surveillance and homeland security applications.*** *Raptor is leading the revolution in high performance, low light, imaging detection and day/night vision."* (Emphasis added.)

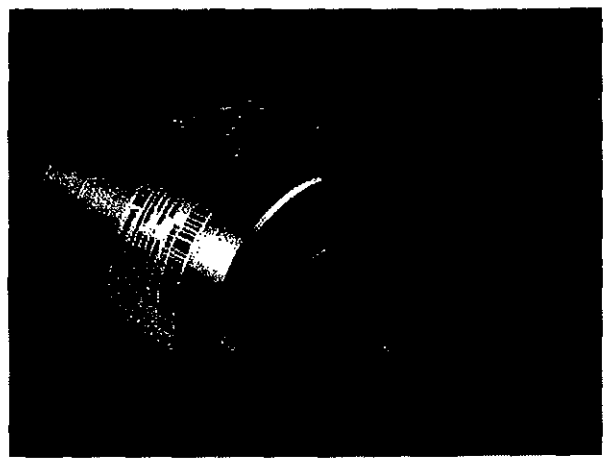
Raptor has developed a camera with 320x256 resolution using an InGaAs FPA sourced from Alcatel-Thales III-V Lab in France. Like similar InGaAs cameras, the Raptor camera has a spectral range from 0.9 to 1.7 microns.

In the press release announcing this camera, Raptor indicated that this camera is intended for use in the security and surveillance market, making it a direct competitor with NoblePeak.



4. VDS Vosskuhler (www.vdsvossk.de)

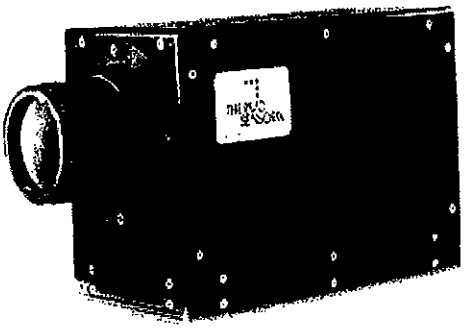
VDS Vosskuhler is based in Germany and develops, produces and sells digital cameras (including CMOS, CCD, and infrared types), components and systems for industrial and medical image processing. In the SWIR band (what VDS Vosskuhler refers to as the NIR band), two cameras are offered: one with 320x256 resolution and the other with 640x512 resolution. Both cameras have a spectral range from 0.9 to 1.7 microns.



5. Thermosensorik GmbH (www.thermosensorik.de)

Thermosensorik is another camera maker based in Germany which markets a family of infrared cameras in the short, medium, and long wave spectral regions. The technology used for their SWIR cameras use both the InSb (Indium Antimonide) and MgCdTe (Mercury Cadmium Tellurium) material systems. Thermosensorik offers InSb cameras with both 320x256 and 640x512 resolutions. These InSb cameras have a spectral range from 1.0 to 5.0 microns. The MgCdTe camera is offered at a resolution of 320x256 pixels and a spectral range from 0.9 to 2.5 microns.

Thermosensorik InSb 320/640 SM/M



Thermosensorik CMT 320 S

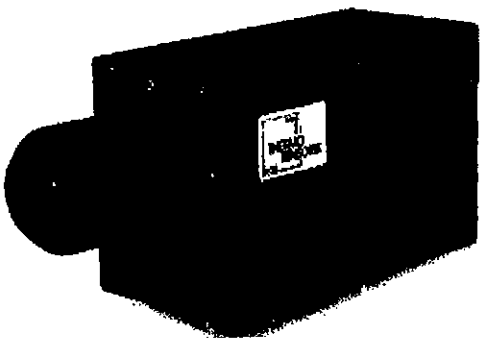


EXHIBIT I

MACNICA

June 12th, 2008

Attn: Mr. Phil Davies
Vice President Sales and Marketing
NoblePeak Vision Corporation
500 Edgewater Drive, Wakefield, MA 01880
Phone: (781) 224-9740 Fax: (781) 224-9747

Dear Mr. Davies,

Thank you for meeting with Mr. Ohkuma, who is our General Manager of Macnica Head Office on May 27th in your offices in Wakefield Massachusetts. I wish to add my strong words to those of Mr. Ohkuma's that the possibility of NoblePeak's TriWave technology being listed as ITAR restricted will do severe damage to the possibility of building a successful business for both of our companies in Japan. We have spent almost 18 months developing a significant business potential with many commercial security camera companies such as JVC, Sony and Panasonic and Automotive companies such as Denso and Honda. I would also like to add that we also have excellent opportunities for the TriWave technology in the medical and industrial markets.

I would like to ask that NoblePeak make the maximum effort to convince the commerce and state departments of the commercial nature of your products and to inform them that the ITAR restrictions will stop Japanese customers from using your technology and to seek this technology from countries outside of the USA.

Please make your best efforts.

Hirokazu Kano
President
TecStar Company, Macnica, Inc.
1-6-3 Shin-Yokohama
Koukoku-ku, Yokohama-city
222-8561 Japan
Tel: +81-45-470-9841 Fax: +81-45-470-9842
URL: www.macnica.co.jp

TecStar
Company

From: RPD PublicComments
To: MILLER, ASHLEY
Date: 1/16/2009 5:40:10 PM
Subject: Fwd: FW: Parts and Components Inquiry

Ashley:

Please see the attached **comments submitted by Patton Boggs LLC** (on behalf of their client, NoblePeak Vision Corporation) in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> "Waltz, Daniel" <DWaltz@PattonBoggs.com> 01/16/09 11:37 AM >>>
Please find attached a scanned copy of the comment of our client
NoblePeak Vision Corporation. We are also sending the hard copy
original by mail.

Daniel Waltz
Patton Boggs LLP
2550 M St. NW
Washington DC 20037
Tel: 202-457-5651
Fax: 202-457-6315
dwaltz@pattonboggs.com

> _____
> From: Waltz, Daniel
> Sent: Friday, January 16, 2009 11:35 AM
> To: Waltz, Daniel
> Subject: Parts and Components Inquiry
>
> <<NoblePeakComment.pdf>>

From: "MJH mail" <stuff@homemail.com.au>
To: <publiccomments@bis.doc.gov>
Date: 1/20/2009 3:26:11 AM
Subject: US Export controls affecting non US compnies

I, until recently worked for an Australian Military goods manufacturer.

I was the Procurement, Logistics and Stores Manager.

I attended a Australian Government seminar on ITAR and BIS impacts on Australian businesses. While many things were said the one that stuck was a Government official telling us that if we could design our product to not have US parts - do it. If we could access the same form, fit and function from a non-US package - do it.

While we found it difficult we started wherever we could.

We also found it difficult dealing with US companies as it seemed we knew more about US Export controls than they did.

I am happy to elaborate some more if asked.

You guys have a problem that over time can only get worse. Once design engineers and procurement people get into the habit of not looking to US for technology it will be too late and a long road to go back on.

Mike

PS I now work as the Export Import Manager dealing largely with ITAR/BIS issues daily.

From: "Nicolaus Spinner" <nicolaus.spinner@spinner-wzm.de>
To: "JENNIFER WATTS" <JWATTS@bis.doc.gov>
Date: 1/26/2009 10:20:46 AM
Subject: *Parts and Comments Inquiry*

Dear Mrs. Watts ,

If you want my comment , then I can confirm that nobody in europe wants to use US components for his own commercial product. Reason is the US re-export control in general and the very complex calculation and handling to find out if a small US part used in a final product does make the final product to fall under US re-export control.
Fortunatly there is also no need to use US products , at least not in our final commercial product. We never used US parts in the past and even there would be a US supplier which could offer us some of his parts for lower price compared to one of our other worldwide suppliers , we would not use the US part due to US re-export rules. In my opinion , the US re-export rules only damages the US industry. Manufacturers worldwide just avoid to use US parts or skip US parts using other worldwide suppliers.
Have you finished your research regarding export licence for 5-axis CNC machines ? I would be happy to get your feedback about the result.

Best Regards
ppa. Nicolaus Spinner
Spinner Werkzeugmaschinenfabrik GmbH
Rudolf-Diesel-Ring 24
82054 Sauerlach Germany
Tel: +49-8104-80343
Fax: +49-8104-80319
website : www.spinner-wzm.de
e-mail: nicolaus.spinner@spinner-wzm.de
Amtsgericht München HRB 40293 , GF: A.Spinner

Message from BIS , Federal Register Vol. 74, No. 2 :

Notices

DEPARTMENT OF COMMERCE
Bureau of Industry and Security
[Docket No. 0812221638–81639–01]
Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions
AGENCY: Bureau of Industry and Security, Commerce.
ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comment on whether U.S. export controls influence manufacturers' decisions to use or not use U.S.-origin parts and components in commercial products and the effects of such decisions.

BIS is interested in obtaining specific information about whether such a practice occurs, and if so, its economic effects in order to assess the effectiveness of export controls as well as the impact of export controls on the U.S. economy.

DATES: Comments must be received no later than February 19, 2009.
ADDRESSES: Comments may be submitted via e-mail to publiccomments@bis.doc.gov. Please Refer to "Parts and Components Inquiry" in the subject line. Comments may also be sent to Parts and Components Study, Office of Technology Evaluation, Room 2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:
Jennifer Watts, Office of Technology Evaluation, Bureau of Industry and Security, telephone: 202–482–8343; fax: 202–482–5361; e-mail jwatts@bis.doc.gov.

SUPPLEMENTARY INFORMATION:
Background
Export controls imposed by various agencies of the United States government, including, but not limited to, those imposed by BIS necessarily have an impact outside the United States. Certain U.S. export control regulations impose license requirements or other restrictions on commercial items manufactured outside the United States if those foreign-manufactured items contain U.S.-origin parts and components. BIS is seeking information to help it assess the impact of U.S. export controls on decisions by manufacturers whether to use U.S.- origin parts and components in their commercial products and the impact of such decisions on the effectiveness of export controls, the strength of the defense industrial base, employment in the United States, the financial strength of U.S. industry, and the ability of U.S. industry to compete in the market.
Specific and quantitative data, from U.S. persons, as well as foreign entities and governments, will be particularly helpful to BIS's assessment, but other types of information, including anecdotal information, will be useful as well. Quantitative data that is aggregated to reflect the combined experience of a group of companies or an industry segment also will be useful, particularly if individual companies are reluctant to provide company-specific quantitative data.
Regardless of whether it is qualitative or quantitative, if a comment asserts that manufacturers have elected not to include U.S.-origin parts and components in a foreign-manufactured commercial product because such inclusion could subject the products to U.S. export controls, the following kinds of data would be useful to BIS's assessment:

- Any evidence or information about the existence of advertising or marketing efforts that use the absence of U.S. origin components or exemption from U.S. export controls as a selling point.

- Any information about possible customer preferences for products that do not contain U.S.-origin components, and whether such preference may be related to relevant U.S. export controls.

- Any information describing parts and components that manufacturers may elect not to use because of their U.S. origin and any information regarding the products into which such parts and components are incorporated.

- Any information about sales lost by U.S. suppliers to non-U.S. competitors.

- Any information about specific commercial products that were designed or modified to explicitly exclude U.S.parts and components due to U.S.export controls.

• Any information about decisions to locate or relocate production facilities outside the United States, including a description of which items (including relevant commodity classification information, such as Export Control Classification Number) would be produced abroad.

• Any information about the possible economic impact (e.g., employment, outsourcing of specific expenditures such as research and development) to companies, industry segments or communities of any decision not to use U.S.-origin parts and components because of U.S. export controls, including any possible impact on the ability to support specific defense industrial base activities.

How To Comment
All comments must be in writing and submitted to one of the addresses indicated above.
Comments must be received by BIS no later than February 19, 2009. BIS may consider comments received after that date if feasible to do so, but such consideration can not be assured.
All comments submitted in response to this notice will be made a matter of public record, and will be available for public inspection and copying.
Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record.

BIS will seek to protect business confidential information from public disclosure to the extent permitted by law.
Dated: December 24, 2008.
Christopher R. Wall,
Assistant Secretary for Export
Administration.
[FR Doc. E8–31233 Filed 1–2–09; 8:45 am]
BILLING CODE 3501–33–P

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/5/2009 1:24:38 PM
Subject: Fwd: US Export controls affecting non US compnies

Ashley/Jennifer:

Please see the following comments submitted by Bob Varga (Toho Tenax America, Inc.) in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> Bob Varga <BVarga@tohotenax-us.com> 02/02/09 7:48 PM >>>
Toho Tenax is a manufacturer of carbon fiber used for reinforcing polymer composites. We are the world's 2nd largest producer of carbon fiber behind Toray Industries, and the world's largest producer of chopped carbon fiber (~ 14,000 tons/year of carbon fiber). Chopped carbon fiber is used significantly in thermoplastic (and thermoset) compounding systems for literally thousands of a parts. Since the majority of the thermoplastic compounding manufacture and assembly occurs in SE Asia, export licenses are normally required for:

* Carbon fiber meeting 1C010.b limits (which is most fiber in production in the US)
* Compounds made from such fibers qualify as "prepregs" under 1C010.e. These compounds require an export license from the US, PLUS they fall under de minimus regulations if the compounding and/or molding is done outside the US.

Customers in the US as well as abroad (primarily in Malaysia, Singapore, Japan, South Korea, Taiwan and China) will specifically look for carbon fiber materials that do NOT meet 1C010.b. Fibers meeting 1C210.a are specifically excluded (only "continuous" forms fall under 1C210), falling to 1C990 which has virtually no export restrictions associated with it. These customers specifically look for 1C990 fibers to circumvent the need for an export license from the US.

This has resulted in a drop in business demand for our short fiber products across the globe, shifting to suppliers (mostly overseas and in China) that produce fibers that do no meet 1C010.b levels or that do not have de minimums requirements like under the US EAR.

Bob Varga
Technical Sales Engineer
Export Compliance Officer
Toho Tenax America, Inc.
18552 MacArthur Blvd., Suite 325
Irvine, CA 92612
(949) 474-3278, x25 (office)
(949) 500-1161 (cell)
www.tohotenaxamerica.com<http://www.tohotenaxamerica.com/>

From: "Harald Hohmann" <harald.hohmann@hohmann-partner.de>
To: <jwatts@bis.doc.gov>
Date: 2/12/2009 10:49:34 AM
Subject: Requuest for Public Comments on US Export Controls

Dear Ms. Watts,

please find enclosed my comments, with the request to inform us about any steps to be taken and where this enclosed document will be published.

With best regards

Harald Hohmann

RA PD Dr. Harald Hohmann

Hohmann & Partner Rechtsanwälte

Schlossgasse 2

63654 Büdingen

Tel. 06042 - 9567-0

Fax 06042 - 9567-67

mobil 0174 - 929-4153

mail to: harald.hohmann@hohmann-partner.com

website www.hohmann-partner.com

CC: <publiccomments@bis.doc.gov>

Hohmann & Partner Rechtsanwälte
Schlossgasse 2 · D-63654 Büdingen
Telefon 06042 / 95 67-0 · Telefax 06042 / 95 67-67
E-Mail info@hohmann-partner.com · Website www.hohmann-partner.com

Büdingen (near Frankfurt), 12 February 2009

To Christopher R. Wall,Assistant Secretary for Export Administration, BIS
Via publiccomments@bis.doc.gov
"Parts and Components Inquiry"
And: Jennifer Watts, Office of Technology Evaluation, BIS, Room 2705
jwatts@bis.doc.gov

Concerning FR Doc. E8-31233 Filed 1-2-09, 8:45 <billing code 3501-33-P>
Public Comments on Effects of US Export Controls on Decision to Use US/Non-US parts

Dear Ms. Watts, dear Mr. Wall,

we are a law-firm that is highly specialised in EC and US export & customs law, and we have clients in the EC, but also in the US, Japan, China and India. Since more than 6 years we are doing consultation services for exporters.
We want to answer the questions as follows:

- US export controls have a large influence on our clients whether to buy US or non-US goods or components. This is especially true for the 10% or 25% *de minimis*-threshold which is decisive for the question whether US re-export licenses are required.
- In several cases, our clients decided not to buy US parts/components in order that the foreign products (e.g. products made in the EC) remain below this *de minimis*-threshold, or they decided to modify the EC products in order to explicitly exclude US parts and components as much as possible.
- This concerns many different products, but especially high-tech goods, like machines, car components, software, or energy. Very often, it has to do with listed US software, even with very normal US software, like Microsoft products. In all these cases, our clients have preferred to buy machine or car components or software etc. from non-US origin.
- In one case, it concerned a nuclear power plant. Since it was consisting of ca. 10% US components and it was not 100% sure, whether it was above or below the 10%-threshold, and since it should be exported to a sensitive country like Iran, our client decided to modify the national origin of the components of this nuclear power plant in such a way, that it finally had less than 7% US components, in order to evade of the harsh restrictions of US export controls.
- In other cases, it was decided by our clients that US citizens or US green card-holders should be fired from EC companies or at least: that they should not have any responsible function for the daily business, especially for the export business, of these EC companies, in order to evade the possible conclusion that this EC company should be regarded as "US person" and has to comply with unilateral US embargoes. So US export controls have sometimes impacts also on employment.
- Some companies have also thought about re-locating production facilities outside the US, in order to evade harsh consequences of US export controls, like complying with unilateral US embargoes and US sanction lists.

We hope that our comment will help to reduce some of the harsh consequences of US export controls.

Hohmann & Partner Attorneys
Dr. Harald Hohmann

TriQuint Semiconductor Texas
500 W. Renner Rd.
Richardson, TX 75080
972-994-8200

February 17, 2009

Parts and Components Study
Office of Technology Evaluation
Room 2705, U.S. Department of Commerce
14th Street and Pennsylvania Avenue, NW.
Washington, DC 20230

To the Office of Technology Evalutaion:

Thank you for looking into this issue of foreign availability and the disadvantages to American companies working within the requirements of export restrictions. TriQuint Semiconductor will obey the law, but it is heartening to know that the Department of Commerce, ever industry's ally, also hears the frustrations voiced by our sales force in the field.

Much of our feedback from customers has been carefully non-written, and our salesmen pointed out that our customers are reluctant to put their concerns in writing. Please see the attached email dated January 26 from Rob Christ for details. As an example, I've attached a slide from a Thales powerpoint presentation. Although the slide simply refers to ITAR/EAR restrictions in component sourcing, the salespeople in the room said that the verbal component of this section of this presentation was much more strongly worded and phrased as a desire to avoid ITAR/ EAR restrictions wholly.

Other European example:

BAE considered using our TGA9083 and our competitor M/A-Com's part MA03501D but after realizing that export of either US company's product would require ITAR license, chose to fund their own, similar, product from Filtronic and designing another at their Bookham Foundry in order to own the intellectual property. Please see attached email dated January 13, 2009 from Graham Teague for details.

Asian examples:

Jeson Wireless, Skyway Beijing, and Guangyue Radio all of China, showed initial interest in 13-15 and 18-23GHz products, but as our MMICs in these frequency ranges are 3A001.b.2, they would require license to China. Product details are on attached email dated January 24 from Simon Wei. Named competitors, chosen by the Chinese for simpler exportability despite lower performance, are Eudyna of Japan, United Monolithic Semiconductors of France, and Mimix Asia.

Also, we have a part-specific competitive disadvantage. This part has been classified as ITAR, so I don't know that it would help in your immediate discussions, but I thought it might be of some use as background informations in how our competitors are capitalizing on the restrictions placed on us. Our part TGA9083 was, on several occasions, denied an ITAR license under DoDI 5230.28 (for reference, DoS case numbers 922841, 922330 and others). Our competitor, MIMIX, has created several products that match our XI(c) product, manufactures them out of Taiwan using Netherlands technology and ships freely, to our detriment.

As I stated, our customers have been quite vocal, but unwilling to express their reluctance to deal with export regulations in writing, making it difficult for us to document the occurances. I hope that you are able to gather enough information from all US entitles to help convince the other US agencies that restriction at the component level, especially of a component where other countries do have native technology, places US companies at a disadvantage.

Thank you,

Jennifer Thompson
Export Compliance
TriQuint Semiconductor
(ph) 972 994 3803 (fx) 972 994 5659 (email) Jennifer.thompson@tqs.com

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/18/2009 1:11:51 PM
Subject: Fwd: Parts and Components Inquiry

Ashley/Jennifer:

Please see the attached comments and supporting materials submitted by **Jennifer Thompson (TriQuint Semiconductor)** in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> "Thompson, Jennifer" <jennifer.thompson@tqs.com> 02/17/09 5:17 PM >>>
Please find attached our response to the Department of Commerce's "Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions" as published January 5th of this year.

The word document is our response in letter form and the .pdf document are scans of customer and sales information provided as documentation and details.

Thank you for hearing the voice of industry and inviting our participation in the regulatory process.

Thank you,

Jennifer Thompson

TriQuint Semiconductor

Export Compliance

ph (972) 994-3803

jennifer.thompson@tqs.com

Thompson, Jennifer

From: Christ, Rob

Sent: Monday, January 26, 2009 3:42 AM

To: Thompson, Jennifer

Subject: Information on competition using EAR/ITAR as competitive threat

Attachments: RE: Export Feedback by 31 Jan.; WG: End Use/End User Policy Retraction; WG: LHPAA program - *Thales X-Band Power Amp requirement; See bullet about risk on last page of this* Thales slide show; WG: BAE Letter Concerning a TAA; WG: BAe, Scotland; WG: TGA9083 Data Sheet

Hi Jennifer,

It is really hard to find smoking guns on this – still looking. Apparently the community is careful not to put it in writing or presentations. We are told constantly, especially in Israel, France and UK, that they will always buy a non-US sourced part even for substantially more money to avoid EAR and especially ITAR. This is the entire business model for UMS and WIN in Europe. We can compete on price and performance, but we can't compete for any equivalent GaAs part if there is an alternative. According to my conversations with knowledgeable customers, this was largely precipitated by the Bush Administration's use of the export regs as a political weapon, largely to pressure compliance with Iraq and the War on Terror. There is some hope that the Obama Administration will not be so political. I am using, to the best of my ability, the explanation that TriQuint's new policy is a method to help customers stay out of trouble, that the likelihood of getting cut off is much, much lower if they follow our new policy. It is a tough argument to make, but it is all I have.

So here are a few items that may help with the investigation:

Literature from MIMIX: www.mimixasia.com/products This is an entity set up by Mimix Broadband (a US company) in Taiwan, using designs from the Netherlands (TNO) and foundry from Taiwan (WIN Semiconductors) to avoid export regs. The parts are nearly exact copies of our TGA-9083. This was the part that was declared X1 by the DOS. TriQuint no longer has any technology advantage for high power broadband, yet we are still restricted. We have a quality and support advantage, but that is all we have today. I have asked our Israel Sales Manager to dig up any documents that prove their strategy, but like I said they have been very careful.

Comments from Thales: Thales was using a general statement for EAR99 parts similar to what we are going to do for the yearly negative affirmation, but it looks like they were trying to do it for 3A parts as well. There are comments about the distress that they had when they could not get the 9083 anymore. There is a comment on a Thales presentation, no smoking gun but stating a desire to avoid the EAR/ITAR.

Letter from BAE Selex: This is probably the strongest thing I have now. BAE essentially stated that they don't want to do business with us, because of the ITAR challenges. The verbal discussions were much stronger. They have thrown us out, and we can not get visits with them today. Same thing apparently happened to M/A-Com, one of our US competitors. Filtronic in the UK was specifically funded to make replacements to TriQuint parts.

I know it is not a lot to go on, but I hear it verbally all the time, so I am still searching for a written "we will never use you because of EAR or ITAR statement."

Thanks,

Rob Christ Sales Director, EMEA TriQuint Semiconductor
Konrad-Zuse-Platz 1 D-81829 München, Germany +49 89 99628 2604 Mobile: +49 170 5617 752
rob.christ@tqs.com

2004 HIGHLIGHTS

- PRICE must decrease and MOQ/MOV be limited
- PAYMENTS TERMS 90 days (End of month)
- WORLDWIDE PRICING applicable to THALES subcontractors
- ON-TIME DELIVERIES:
  - THALES treated as a "priority customer" in time allocation
- COMPONENT RISK MANAGEMENT
  - Export restrictions vs end-use application (ECCN & ITAR status)
  - Obsolescence policy
  - Market road-map visibility

STAY A PARTNER FOR THALES

Thompson, Jennifer

From: Teague, Graham
Sent: Tuesday, January 13, 2009 7:03 AM
To: Christ, Rob
Subject: WG: BAe, Scotland
Attachments: TGA9083.msg; MA03501D.pdf

I thought this was an interesting message.
BAE decide not to use the MA/COM art because it needs an export license.

GT

Von: Tony Norris [mailto:tony.norris@linkmicrotek.com]
Gesendet: Friday, February 18, 2005 6:46 PM
An: Behet, Markus TQE; Teague, Graham TQE
Cc: 'Stuart Hendry'; 'Bruce McGrath'; 'Allan Laing'
Betreff: BAe, Scotland

Markus/Graham,

I have been having long discussions with BAe Edinburgh recently about their MMIC strategy and various issues.

1) TGA9083
Neill called to ask our advice on the following.
They had used 2 pcs TGA9083 to build a module that had now been built into an Airborne Radar Demonstrator that they now wished to supply to the UK MOD. Did they need to apply for an Export Licence? I spoke to Carolyn and Graham about this. These units were supplied to BAe in Oct. '01 before the TGA9083 went on the US Munitions List. I spoke to Carolyn about it and following that sent the attached E Mail to Neill Cameron.

2) We also discussed Foundry opportunities and whether that was of interest to BAe. Neill said that they had to get a Technical Assistance Agreement (TAA) in place prior to anything happening as they would undoubtedly want to design High Power X Band Radar Products. This TAA was issued by US State or DoD. BAe had been told this by their legal group. This would also mean an Export Licence in advance of the wafers/die being shipped. I expressed my surprise that this was the case, so also asked Carolyn's opinion on this as well.
We decided to get it writing from Neill, which I am waiting for.
By the way, he also suggested that BAe's (Stanmore/Capability Green) Foundry work should have had a TAA in place.

3) I also found out more about Edinburgh's past and present GaAs activity.
The two key GaAs products in their Radar Systems are the TGA9083 and a Serial Control Input Phase Shifter/Attenuator/Buffer Amplifier MMIC
With the TGA9083 issue, which they got over by funding Filtronic to make a similar product.
The other they designed themselves on Bookham Foundry and owned the IP.
Filtronic have/are trying to design a similar part for BAe.
Recently Neill found the M/A-Com Part MA03501D, attached. This would be what they would need. He was told by M/A-Com that they would need an Export Licence for this part. So, they weren't interested.

BAe would use this part in excess of 100K pcs per year!

Could we supply or do we have a similar part?
Could we design it for them? Would we need to apply for an Export Licence?
If they were to use Foundry Service, would they need a TAA and Export Licence?

Appreciate your inputs.
As we discussed a visit to Edinburgh soon is needed.

Kind Regards

Tony Norris

Thompson, Jennifer

From: Wei, Simon
Sent: Saturday, January 24, 2009 10:11 PM
To: Zhang,German; Lin, Richard; Xiong, Ting
Subject: ??: End User Statement of Texas products

Hi Richard,

Besides Huawei case, we also have Jeson, Skyway and Guangyue 3 cases.

- Customer name: Jeson Wireless
- Product they were trying to make: 13-15GHz/18-23GHz PtP ODU
- Part number they considered: TGA2902-SG for 13-15GHz, TGA4022 for 18-23GHz
- Why specifically about the export categorization on the TQS part caused the customer to reject it? - They are 3A001.b.2.x part, and too much uncertainty about getting export license.
- Who's part did the customer choose? Do you have the part number? Why did they choose this supplier and where there any export restrictions on this competitor's part - Excelics ???/Eudyna EMM5832 were chosen for slight export control, and easy to get the part.
- Approximately how much was the total value of the opportunity we lost? - $400k USD /year
- When did this occur? - Q1/2007

- Customer name: Skyway Beijing
- Product they were trying to make: 7GHz/13-15GHz/18-23GHz PtP ODU
- Part number they considered: TGA2503-SM for 13-15GHz, TGA4525-SM for 18-23GHz
- Why specifically about the export categorization on the TQS part caused the customer to reject it? They are 3A001.b.2.x part, and too much uncertainty about getting export license even for sample and EVB.
- Who's part did the customer choose? Do you have the part number? Why did they choose this supplier and where there any export restrictions on this competitor's part - UMS CHA6664/ CHA5056 were chosen for slight export control, and easy to get the part.
- Approximately how much was the total value of the opportunity we lost? - $600k USD /year
- When did this occur? - Q2/2007

- Customer name: Guangyue Radio
- Product they were trying to make: 38GHz PtP ODU
- Part number they considered: TGA4522/TGA4521
- Why specifically about the export categorization on the TQS part caused the customer to reject it? They are 3A001.b.2.x part, and too much uncertainty about getting export license.
- Who's part did the customer choose? Do you have the part number? Why did they choose this supplier and where there any export restrictions on this competitor's part - Mimix XP1012/XP1018 were chosen for

slight export control, and easy to get the part.

- Approximately how much was the total value of the opportunity we lost? - $250k USD /year
- When did this occur? - Q1/2008

From: Zhang,German
Sent: 1/23/2009 (星期五) 2:59
To: Lin, Richard; Xiong, Ting; Wei, Simon
Subject: RE: End User Statement of Texas products

Hi, Richard

Happy new year!

The latest example is HW case, we encountered export restriction on TQS products and can not provide even one evaluation board/sample to HW, so HW can not evaluate our products and of course can not determine if they fit into their application, but Eudyna only requested HW to provide EUS(End user statement)and then can provide completely support from EVB/samples and volume shipment.

This made us very passive and is on the edge of design loss.

Details as below:

o Customer name

o Product they were trying to make

o Part number they considered

o Why specifically about the export categorization on the TQS part caused the customer to reject it?

o Who's part did the customer choose? Do you have the part number? Why did they choose this supplier and where there any export restrictions on this competitor's part

o Approximately how much was the total value of the opportunity we lost?

o When did this occur?

Simon will provide more related informaiton happened in other medium/small China-based customer to you later.

Best regards!

German

From: Lin, Richard
Sent: 2009年1月21日 0:14
To: Su, Chuan; Zhang,German; Xiong, Ting; Wei, Simon
Subject: RE: End User Statement of Texas products

Yes maybe it will make things easier for us.

One thing I'd like to ask you guys to help with is this:

- Please give me a few good examples of where export restriction on TQS products caused you to lose deals. Our new export compliance officer asked for this, and I expect she will be using it as data for her discussion with the Dept of Commerce.

o Customer name

o Product they were trying to make

o Part number they considered

o Why specifically about the export categorization on the TQS part caused the customer to reject it?

o Who's part did the customer choose? Do you have the part number? Why did they choose this supplier and where there any export restrictions on this competitor's part.

o Approximately how much was the total value of the opportunity we lost?

o When did this occur?

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/18/2009 1:16:26 PM
Subject: Fwd: RPTAC Comments to Parts and Components Inquiry

Ashley/Jennifer:

Please see the attached comments submitted by **Julie La Cross (CoChair, Practices and Procedures Work Group, RPTAC)** in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> "Julie La Cross" <jlacross@rim.com> 02/17/09 1:46 PM >>>
Ms. Watts, Please find attached comments from the Regulations and Procedures technical Advisory Committee for the January 5, 2009 NOI.

Thank you,

Julie La Cross

CoChair, Practices and Procedures Work Group

RPTAC

February 19, 2009

Parts and Components Inquiry Study

Office of Technology Evaluation, Room 2705

U.S. Department of Commerce

14th & Pennsylvania, NW

Washington, DC 20230

Subject: Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S. Origin Parts and Components in Commercial Products and the Effects of Such Decisions

Dear Ms. Watts:

The RPTAC appreciates the opportunity to comment on the Commerce Department's Notice of Inquiry for the Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S. Origin Parts and Components in Commercial Products and the Effects of Such Decisions. Recent efforts by Commerce, including the establishment of a new Technical Advisory Committee and the National Academy of Sciences, in a recently published report, seek to evaluate and refine the current US export controls, further indicating the need for change. We sincerely hope that many comments are generated as a result of this Request so that the Commerce Department can take a fully informed view of the current status and application of US export controls.

The decision on whether to use US origin parts and components in commercial products is a key factor in the design and development of new products.

It is common that during the design review phase, the origin of hardware commodities and software code is evaluated to determine if US origin [controlled] parts are present. For a foreign manufacturer, if the same items with comparable quality and cost are available from a non-US source, the foreign manufacturer will often choose the non-US source. It reduces the burden of compliance and the cost of doing business for the foreign manufacturer than sourcing US export-controlled parts. U.S. exporters face other disadvantages such as higher labor costs, production costs, and other regulatory restrictions not applicable to other production locations, so tighter U.S. export controls and reexport controls have a cumulative effect, often enough to tip the balance and lead a

company to design out U.S. content in favor of comparable products that do not face the same restrictions (buying from a more reliable supplier of products that can be sold worldwide in all markets without export licensing concerns).

Global Companies that manufacture using US origin parts and components have an additional compliance burden.

Companies have to create compliance programs to comply with U.S. controls in addition to local export controls for any US origin components. For example, global companies must also restrict sales territories as a result of US export controls where such restrictions don't exist on products without US origin controlled content. The US reexport controls that follow US controlled content are more stringent than any other countries' and add compliance costs and burdens for US and non-US producers. They also impose burdens on non-U.S. customers that purchase products with U.S. export control strings attached. EU and Japanese trade associations have told industry and U.S. government officials that their member export compliance personnel spend 80% of their time on U.S. reexport control issues, and 20% of their time on local export controls because the U.S. controls items more deeply (about 2/3rds of the CCL and 90% of U.S. exports are subject to unilateral controls as compared to multilateral controls). The U.S. controls impose unilateral export licensing requirements not only on unilaterally embargoed countries (requiring compliance with an incredibly complex overlay of OFAC as well as EAR and ITAR controls), but also restrict exports to the largest growing economy of China, which other countries do not restrict. ITAR controlled items cannot be sold at all to China, and EAR controlled items face much stricter U.S. controls than those of other countries.

US Origin Technology and the Rules of Origin

Most manufacturers focus on the Word Trade Organization Rules of Origin and bilateral free trade agreement rules of origin in order to take advantage of reduced duty rates from the trade agreements, not the content of US technology for export controls. Determining what products are U.S.-origin, or subject to direct product rules if not, is factually very difficult. Even exporters who understand and attempt to comply with US export controls may not give due consideration to these different concepts, essentially overlooking US export controls on their product.

The majority of electronic products are not of US origin.

Most large manufacturing centers are located in Asia and many of these are third-party assembly operations which utilize components from a variety of international sources to create a product. Controls on reexport of US controlled content are more likely to result in a lost sale for U.S. products if there are viable substitute goods.

De Minimis Rules still burdensome

The Interim Final Rule De Minimis U.S. Content in Foreign Made Items published on October 1, 2008, provided some clarity to Foreign Manufacturers who can now more

clearly comply with US reexport controls. We commend the Bureau of Industry and Security for publicizing this welcomed change. The application of U.S. reexport controls to a finished product assembled in a foreign country is a difficult concept for many foreign manufacturers to grasp. Determining the amount of US content in a product consisting of hundreds, if not thousands, of components is a difficult task for many manufacturers. The majority of foreign manufacturers will either ignore the requirement (because they are not familiar with it) or opt for not having to perform this calculation by eliminating US content.

Defense Industrial Base Activities

There is a continual bias against U.S. manufacturers producing parts and components that are used in the satellite and aerospace industries in particular. Foreign Manufacturers regularly insist on warranties and representations that the US parts are not subject to the ITAR, and are quite often unwilling to incorporate items listed on the CCL, especially after as the unilateral U.S. change of jurisdiction of satellite items from the EAR to the ITAR. (Other Wassenaar members treat commercial satellites and components as dual-use items, not munitions.) A quick search on the Internet of "ITAR free" yields hundreds of hits. European space companies, in particular, are very mindful of the applicability of US export controls, EAR and ITAR. Many non-US companies are not inclined to perform a de minimis analysis, even on EAR controlled items, and will not even consider U.S.-origin, ITAR controlled parts in their products. This trend has even spread to certain U.S. manufacturers and companies in other industries that now ask their suppliers to certify that their inputs are not U.S.-origin or are "ITAR free" for particular projects.

Wassenaar and Extraterritoriality

The lack of US content in foreign manufactured products does not relieve most manufacturers of compliance with export controls. The Wassenaar Arrangement provides a multilateral set of export controls designed to address critical products and technologies. Compliance with the extra-territoriality jurisdiction of US export controls has proven to be very difficult for foreign companies, and is virtually non-existent for most small foreign companies. The complexity of applying US export controls, local law, and the Wassenaar Arrangement is difficult for even the largest companies. Eliminating the overly complex US export controls from the analysis by not including U.S. origin components simplifies the export compliance risk analysis, potential liability, reliability of supply for worldwide sale, and administrative overhead.

We suggest that the Bureau of Industry and Security seeks input from Foreign Manufacturers who attend BIS education seminars in non-US locations. BIS should ask attendees: "If given a choice with having to comply with US export controls by using US origin goods in their products, or not having to comply with US exports controls by sourcing components elsewhere, what would their answer be?" In addition, BIS could solicit assistance from the US Foreign and Commercial Service resources deployed around the world to collect input from the non-US companies they are in contact with to collect information directly from the non-US purchasing community.

Thank you for your consideration of these comments. If you have any questions, please contact us by e-mail at john.nieberding@varianinc.com and jlacross@rim.com.

On behalf of the Department of Commerce, Regulations and Procedures Technical Advisory Committee:

Julie La Cross

John Nieberding

Co-Chairs, Practices and Procedures Working Group

cc: Hillary Hess

RPTAC members

February 19, 2009

Parts and Components Inquiry Study

Office of Technology Evaluation, Room 2705

U.S. Department of Commerce

14th & Pennsylvania, NW

Washington, DC 20230

Subject: Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S. Origin Parts and Components in Commercial Products and the Effects of Such Decisions

Dear Ms. Watts:

The RPTAC appreciates the opportunity to comment on the Commerce Department's Notice of Inquiry for the Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S. Origin Parts and Components in Commercial Products and the Effects of Such Decisions. Recent efforts by Commerce, including the establishment of a new Technical Advisory Committee and the National Academy of Sciences, in a recently published report, seek to evaluate and refine the current US export controls, further indicating the need for change. We sincerely hope that many comments are generated as a result of this Request so that the Commerce Department can take a fully informed view of the current status and application of US export controls.

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Thank you for your consideration of these comments. If you have any questions, please contact us by e-mail at john.nieberding@varianinc.com and jlacross@rim.com.

On behalf of the Department of Commerce, Regulations and Procedures Technical Advisory Committee:

Julie La Cross

John Nieberding

Co-Chairs, Practices and Procedures Working Group

cc: Hillary Hess

RPTAC members

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/18/2009 7:11:40 PM
Subject: Fwd: Parts and Components Inquiry

Ashley/Jennifer:

Please see the attached comments submitted by **Kenneth Hutton (Hyperion Catalysis International)** in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> "Hutton, Ken" <KHutton@hyperioncatalysis.com> 02/18/09 6:23 PM >>>
Parts and Components Study
Office of Technology Evaluation, Room 2705
U.S. Department of Commerce
14th Street and Pennsylvania Ave., NW.
Washington, DC 20230

VIA ELECTRONIC MAIL: publiccomments@bis.doc.gov
Dear Sir or Madam,

Thank you for the opportunity to provide the attached public comments in response to the Department of Commerce's January 5, 2009 Federal Register "Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S.- Origin Parts and Components in Commercial Products and the Effects of Such Decisions," 74 Fed. Reg. 263-64 (Jan. 5, 2009).

Respectfully,

Kenneth Hutton

Hyperion Catalysis International

617-354-9678

Hyperion Catalysis

Hyperion Catalysis International, Inc.
38 Smith Place Cambridge, MA 02138 USA
Tel 617.354.9678 Fax 617.354.9691
www.hyperioncatalysis.com

VIA ELECTRONIC MAIL: publiccomments@bis.doc.gov

February 18, 2009

Parts and Components Study
Office of Technology Evaluation, Room 2705
U.S. Department of Commerce
14th Street and Pennsylvania Ave., NW.
Washington, DC 20230

RE: Parts and Components Inquiry

Dear Sir or Madam:

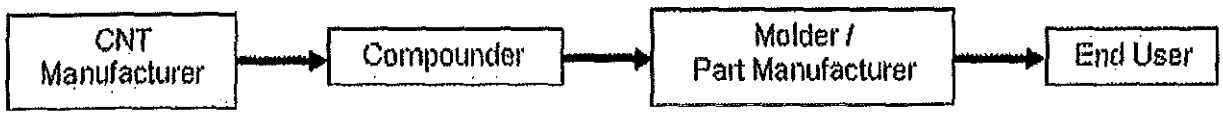
The following is in response to the Department of Commerce's January 5, 2009 Federal Register "Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S.- Origin Parts and Components in Commercial Products and the Effects of Such Decisions," 74 *Fed. Reg.* 263-64 (Jan. 5, 2009).

Hyperion Catalysis International, Inc. was founded in 1982 in Cambridge, Massachusetts, to develop forms and morphologies of carbon. Through the years, our commercial efforts have revolved around encapsulating Hyperion's flagship technology, trade named FIBRIL™ carbon nanotubes, into various composites including for electrostatic dissipation. As Hyperion has progressed in expanding its commercial offerings and global leadership position, numerous other entities throughout the world have also developed their own variations of carbon nanotube based materials.

During this time, many of the world's governments have committed significant resources to supporting research and commercialization of carbon nanotube materials. These foreign governments have fostered industry in carbon nanotube based materials, providing cash and other incentives to their domestic carbon nanotube producers, while not imposing the level of technology export controls that the U.S. has imposed on the Hyperion and its U.S. peers. In particular, the Bureau of Industry and Security has broadly interpreted ECCN 1C010.e to encompass a wide range of commercially-available carbon nanotube ("CNT") materials that are not known to have the physical characteristics indicated in the relevant control specifications.

Due to these controls, the resulting licensing requirements and license processing delays for many common manufacturing locations, numerous potential customers shy away from even considering Hyperion Catalysis or other U.S. suppliers for their material requirements. These customers instead purchase carbon nanotube based products embodying the same type of technology that U.S. export controls are ostensibly trying to protect from foreign interests from foreign producers in China, Japan, Europe and other countries worldwide.

Typical Supply Chain



Hyperion's immediate customer may be the compounder, molder or end user. In our electronics markets, most compounders, molders and end users have facilities in Asia in countries such as China, Taiwan, Malaysia, and Singapore. These customers have ready access to Chinese, Japanese, Korean, European and other global producers of carbon nanotubes and can easily operate without U.S. sources of supply of carbon nanotube based products.

The comparatively high burden of U.S. export controls impacts virtually all of Hyperion's non-U.S. customers and business opportunities.

Described below are situations that Hyperion has encountered:

Any evidence or information about the existence of advertising or marketing efforts that use the absence of U.S. origin components or exemption from U.S. export controls as a selling point.

o Non-U.S. Carbon nanotube manufacturers consistently promote their products to compounders, molders and end users as being outside the reach of U.S. export controls. One non-U.S. carbon nanotube manufacturer directly stated to Hyperion that it has a competitive advantage because it provides non-U.S.-origin carbon nanotube based materials to non-U.S. supply chains without the costs and delays associated with U.S. export control restrictions.

o Compounders, Molders and End Users have confirmed to Hyperion that non-U.S. carbon nanotube manufacturers are promoting the ability to avoid compliance with U.S. export controls as a competitive advantage over Hyperion.

Any information about possible customer preferences for products that do not contain U.S.-origin components, and whether such preference may be related to relevant U.S. export controls.

o Compounder 1, a global company headquartered in the U.S. with facilities in Asia, stated to Hyperion that it will not use Hyperion's U.S. export controlled products because there are foreign produced carbon nanotube products available that do not have export control restrictions.

o Compounder 1 also stated to Hyperion that many of their customers are specifically requesting that products do not contain raw materials with U.S. export control restrictions. Sales to Compounder 1 have declined significantly as they continue to grow their business utilizing non-U.S. nanotubes and allow U.S. export controlled products to decline as their product life cycles end.

o Compounder 2, another global company headquartered in the U.S. with facilities in Asia, stated to Hyperion they will only use carbon nanotube products without export control restrictions.

o Compounder 3, a third global company headquartered in the U.S. with facilities in Asia, expressed concern to Hyperion that U.S. export control restrictions place them at a competitive disadvantage when using Hyperion's products versus other compounders who use foreign based raw materials.

All three compounders listed above, recognize the excellent technology and leadership position that Hyperion has in the nanotube market and yet still choose to source like, or lesser quality, product from other non-export controlled sources just to avoid the issues related to the additional restrictions and documentation required by U.S. export controls.

o End Users 1 and 2, electronic component manufacturers, have expressed a preference to use materials that do not contain U.S. export controlled materials. Other End Users have specifically requested that compounders use materials that do not have any U.S. export control restrictions.

o Molder 1 gave preferential treatment in sourcing and evaluation to a non-U.S. origin material because it did not have export control restrictions.

Any information describing parts and components that manufacturers may elect not to use because of their U.S. origin and any information regarding the product into which such parts and components are incorporated.

o Hyperion products for which foreign sales are affected by the availability of non-controlled foreign competitors include, for example, MB6015-XX, MB9015-XX, MB8515-XX, MB9515-XX, and SR625.

o Hyperion's FIBRIL™ nanotube masterbatches and compounds are commonly used in trays, carriers, and other devices that are, in turn, used to manufacture, handle, and ship electronics components that require static dissipative measures during production, storage, or transit. Manufacturers are using masterbatches of similar, or lesser quality, to the Hyperion products listed above containing carbon nanotubes from producers based in China, Japan, Europe and other countries in these same types of static dissipative applications. These foreign producers have an advantage over Hyperion by providing the manufacturer with the ability to avoid U.S. export control compliance costs and delays.

Any information about sales lost by U.S. suppliers to non-U.S. competitors.

o Electronics-related applications manufactured in Asia are increasingly supplied through compounders operating in Asia. Hyperion continues to convince Electronics Original

Equipment Manufacturers (OEMs) and part fabricators to move from conventional carbon black conductive materials into products containing Hyperion's FIBRIL™ multi-walled carbon nanotubes as a means of improving part performance and value. This conversion results in a move from a non-export controlled material (carbon black) to an export controlled material (carbon nanotube based products). Most of these materials are both compounded and molded outside of the U.S. therefore requiring export licenses where applicable. Due to the issues with Hyperion's carbon nanotubes being export controlled, Hyperion is having to fight to maintain its existing market share and is at a competitive disadvantage when trying to compete with competitive carbon nanotube producers in China, Japan and Europe for the growth in this business.

Any information about specific commercial products that were designed or modified to explicitly exclude U.S. parts and components due to U.S. export controls.

o Compounder 4, a company in Asia, utilized non-U.S. carbon nanotube based products because of the time delay in receiving Hyperion's products due to the export licensing process.

Any information about decisions to locate or relocate production facilities outside the United States, including a description of which items (including relevant commodity classification information, such as Export Control Classification Number) would be produced abroad.

o Hyperion understands that Compounder 1, which had U.S. based product development and production facilities, relocated these efforts to its non-U.S. facilities and will use non-U.S. carbon nanotube based raw materials for its products classified under ECCN Number 1c010.e.1.

o Compounder 2 stated to Hyperion that it will not develop products (ECCN Number 1c010.e.1 at its U.S. based facility using export controlled materials from the broader heading ECCN 1c010, specifically Hyperion's masterbatches. Instead, Compounder 2 will use its non-U.S. facilities for development and production, with non-U.S. carbon nanotube based materials.

Any information about the possible economic impact (e.g., employment, outsourcing of specific expenditures such as research and development) to companies, industry segments or communities of any decision not to use U.S.-origin parts and components because of U.S. export controls, including any possible impact on the ability to support specific defense industrial base activities.

Hyperion and the other U.S. producers of carbon nanotube based products have provided high-paying manufacturing, research and development jobs in the United States for over twenty years. The carbon nanotube based products that are sold by Hyperion and other U.S. producers provide significant tax revenues for the federal government and the states where they reside. All of the instances noted above represent either former business that was lost or future business opportunities that are at risk of going to foreign competition due to U.S. export control requirements. Most worrisome is the ongoing dismantling of U.S. carbon nanotube product development and production capacity, which is occurring in many cases to ensure that next-generation carbon nanotube materials can be sold into global markets without the competitive disadvantage caused by the U.S. export control requirements. Instead of promoting U.S. production of materials in which the U.S. has held a competitive edge and ensuring that the U.S.

stays at the cutting edge of this field, U.S. export control requirements provide an advantage to foreign competitors (generally located in China and other countries for which the U.S. imposes licensing requirements for carbon nanotube materials) by helping them to become lower-cost, faster supplying foreign competitors. U.S. export controls are also simultaneously prompting the U.S. industry to relocate investment and resources into those countries, where indigenous or third country technical expertise can eliminate the need for U.S.-developed carbon nanotube technologies and have the potential to eliminate manufacturing, research and development jobs and tax revenue in the U.S..

If export controls are not lifted in the short term, U.S. based nanotube suppliers such as Hyperion will have more limited growth opportunities as much of the technology and manufacturing base for these materials will be in non-U.S. locations. In the meantime, Hyperion continues to fight for new business in the face of increasing non-export controlled alternatives. Customers increasingly purchase carbon nanotube based products embodying the same type of technology that U.S. export controls are ostensibly trying to protect from foreign interests from foreign producers in China, Japan, Europe and other countries worldwide. There will come a point in the near future were Hyperion's incumbent status, brand and product expertise will not be enough to overcome this situation.

Hyperion joins the U.S. nanotechnology industry in urging the Bureau of Industry and Security to re-evaluate the impact of the controls on carbon nanotube materials, in light of the continuing migration of global customers to non-U.S. sources and the exodus of U.S. carbon nanotube product development and production to locations that are not constrained by U.S. export controls.

Respectfully submitted,

Kenneth W Hutton

Kenneth Hutton
Hyperion Catalysis International, Inc.

From: *RPD PublicComments*
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/19/2009 12:34:01 PM
Subject: Fwd: BIS NOI - U.S. Origin Parts and Components in Commercial Products

Ashley/Jennifer:

Please see the attached comments from **James Grau (President and CEO, Cross Match Technologies, Inc.)** in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> "Lisa Johnson" <lisa.johnson@CrossMatch.com> 02/19/09 11:20 AM >>>
Please see the attached letter. Re: Request for Public Comment on the Effects of Export Controls on Decisions to Use or Not Use U.S. Origin Parts and Components in Commercial Products and the Effects of Such Decisions, Docket No. 0812221638-81639-01 respectfully submitted by James L. Grau, President and CEO, Cross Match Technologies.

Sincerely,

Lisa A. Johnson

Executive Assistant

Cross Match Technologies, Inc.

Phone: 561.493.7334

Mobile: 561.319.7381

eMail: lisa.johnson@crossmatch.com
<mailto:lisa.johnson@crossmatch.com>

CROSSMATCH®
TECHNOLOGIES

February 19, 2009

VIA ELECTRONIC MAIL [publiccomments@bis.doc.gov]

Parts and Components Inquiry
Office of Technology Evaluation
Room 2705
U.S. Department of Commerce
14th Street and Pennsylvania Ave., NW
Washington, DC 20230

Re: Request for Public Comment on the Effects of Export Controls on Decisions to Use or Not Use U.S. Origin Parts and Components in Commercial Products and the Effects of Such Decisions, Docket No. 0812221638-81639-01

Dear Sir or Madam:

Cross Match Technologies, Inc. ("Cross Match") appreciates this opportunity to provide these comments to the Office of Technology Evaluation (OTE) in response to the above-referenced Notice of Inquiry.

Cross Match employs approximately 175 people in Palm Beach Gardens, FL to develop, manufacture and sell biometric identification products such as fingerprint scanners and identity management software, and other products, such as iris and facial recognition systems. Cross Match's subsidiary in Jena, Germany employs approximately 110 people and also manufactures fingerprint scanners and identity management software. In addition, Cross Match provides services to its customers including training and implementation and custom software development.

Cross Match biometric identification products are used for a wide variety of applications such as computer access control, check cashing fraud prevention, secure area access control, welfare fraud prevention, driver's license verification, and border entry/exit control, in addition to use by law enforcement. Although widely used for civilian purposes, biometric identification equipment and identity management software are often classified as "crime controlled" for U.S. export licensing purposes (i.e., 3A981 and 3D980). Controlled devices include finger and palm print scanners, mobile fingerprint scanners and associated identity matching software. These controls are intended to ensure that U.S. origin police equipment is not exported to countries whose governments do not respect internationally recognized human rights.

However, biometric identification equipment using identical technology is available from many companies outside of the U.S. In many instances, U.S. based companies that design and manufacture biometric identification equipment and identity management software outside of the U.S. are not subject to export license restrictions. Below is a list of several foreign competitors that provide virtually identical technology, but these competitors are not subject to U.S. export laws:

FOREIGN MANUFACTURERS OF FINGERPRINT EQUIPMENT AND SOFTWARE:

- GREENBIT – Turin, Italy. Fingerprint scanners and identity management software.
- IRIS Corp. – Malaysia. Mobile fingerprint scanners.
- PAPILLON – Russia. Fingerprint and palm print scanners.
- SAGEM – France. AFIS and fingerprint systems provider.
- SUPREMA - Korea. Fingerprint scanners.
- TRICUBES – Malaysia. Mobile fingerprint scanners.

U.S. export licenses are required for "crime controlled" products in order to export to non-NATO countries including Latin and South America, Africa, the Middle East and Asia. The export license approval process generally takes between 30 and 90 days, sometimes longer. Until approval is granted, Cross Match cannot ship the product. Due to the lack of similar export controls imposed by other nations, Cross Match is at a competitive disadvantage for opportunities outside of the U.S. if we cannot meet a buyer's shipping deadlines, respond quickly to last-minute orders or requests for demonstration equipment.

Cross Match has been informed on numerous occasions by our foreign customers that they are actively exploring other options for these products in Europe and Asia due to U.S. export license requirements and the associated delays. Just last week, Cross Match was forced to decline a $100K purchase order for equipment to be delivered to Argentina because the buyer needed to have it within two weeks. In the fourth quarter of 2008, Cross Match similarly lost sales to customers in Mexico and Brazil due to our inability to ship products on a less than several months notice.

BIS reported in its 2007 Annual Report that it had processed nearly 20,000 export license applications that year, the highest number in over a decade. While BIS is to be commended for its ability to handle this daunting caseload, the length of license processing period encourages U.S. companies to file export license applications at the time a quote is provided to a potential customer, before the receipt of a purchase order which may never come. Ironically, this contributes to BIS' workload, and adds to the license processing time.

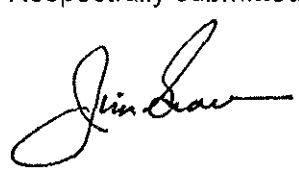
Another source of customer frustration is the fact that the "Service and Replacement of Parts" license exception is not available for crime controlled items. If a unit cannot be repaired and must be replaced, Cross Match must obtain another export license for the replacement crime controlled item(s). This is understandably frustrating to a customer who has been approved by BIS to receive the equipment in the first place, to then be told it will be at least six weeks before a replacement can be shipped.

As noted above, Cross Match has manufacturing facilities in Florida and in Germany. Certain Cross Match's biometric products made in Germany contain a "*de minimus*" amount of U.S. technology and can therefore be exported from Germany without obtaining a U.S. export license. Due to a number of factors, including lost sales stemming from export requirements, Cross Match is in the process of evaluating some consolidation of its manufacturing facilities to necessitate the elimination or sharp reduction of certain products at its Florida facility. Moving more research and development to Germany, as well as manufacturing, would also have the effect of reducing the number of jobs at our facility in Florida.

The net effect is that at a time when our country faces the greatest financial crisis in 80 years and the new administration is trying desperately to create U.S. jobs, unnecessary and ineffective export license restrictions causes Cross Match and other U.S. companies to shift jobs from the U.S. to other countries.

Cross Match hopes that the information we are providing will help BIS assess the impact of U.S. export controls on U.S. business, particularly in this competitive environment and given the wide availability of biometric identification products by foreign competitors.

Respectfully submitted,



James L. Grau
President and CEO
Cross Match Technologies, Inc.

Cc: Jennifer Watts, Office of Technology Evaluation, Bureau of Industry and Security
jwatts@bis.doc.gov

From: "Ulrika Stillman" <ulrika.stillman@ericsson.com>
To: <publiccomments@bis.doc.gov>
Date: 2/19/2009 11:02:03 AM
Subject: Parts and Components Inquiry

Comments on the impact of U.S. Export Controls on non-U.S. Origin end-products

Telefonaktiebolaget LM Ericsson is a Swedish company with a number of subsidiaries engaged in the sale and service of telecommunications and data communications systems throughout the world. The company has strict policies in place that are intended to ensure that its manufacturing, sales and other operations, whether conducted by U.S. or non-U.S. subsidiaries, comply with applicable U.S. export control and sanctions laws.

The costs and efforts for LM Ericsson associated with the U.S. re-export controls are in comparision with operating EU and Swedish export control regulations unreasonable costly and a big concern for us.The control of dual-use products through classification Wassenaar should be enough, the extra classification of products with respect to the U.S. lists creates a lot of extra work and efforts without any significant impact on compliance.

The more U.S. origin products, parts and components we have incorporated into our foreign manufactured commercial non-U.S end product, the higher the costs of control will be, the regulations will be more complicated since the non-U.S. end product then could become subject to the EAR (not fulfill de minimis).

We also find difficulties in that the regulations sometimes are contradictory and a clear answer not easily can be found.

Consequence of all these considerations is likely to be that we if possible design out US products, parts and components and in discussions on where to locate manufacturing, research and development preferably avoid U.S.A because of U.S export and re-export control reasons.

Yours sincerely

Ulrika Stillman

Ulrika Stillman
Director US Re-export

Group Function Legal Affairs

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Exhibit 1

QESTIONNAIRE

Category No. 1: Questions regarding the controls of US-origin items in your company

(a) Please answer the following questions a-0 through a-6, if you have ever procured or have considered procuring US-origin parts or components for their incorporation into your products.

(a-0) Your company has ever considered procuring or designing-in US-origin parts or components. (Please check "No" in the case you had no choice but using US-origin items for a technological reason, etc.)

Yes/No

(a-1) You have ever elected non-US items because the US-origin items were listed on the CCL and required a license from BIS for your exports of the products. (This includes the case you designed out the US-origin items.)

Yes/No

(a-2) You have ever elected non-US items even in the case that the US-origin items were listed on the CCL but no license was required since the items were non-controlled for the destination or a License Exception was applicable, because you considered you would possibly export the products in the future to other countries that require a license. (This includes the case you designed out the US-origin items.)

Yes/No

(a-3) You have simply elected non-US items disregarding the classification of the US-origin items, etc. because you thought it's more efficient and cost effective. (This includes the case you designed out the US-origin items.)

Yes/No

(a-4) You have ever elected non-US items even in the case that you came to know that the US-origin items were non-CCL items as a result of the classification you conducted or because the supplier so informed to you, considering that the US controls would possibly be intensified even on those non-controlled items. (This includes the case you designed out the US-origin items.)

Yes/No

(a-5) If you answered "Yes" to either of the questions a-1 through a-4 above, please outline the case as far as possible, including the following elements. (You may state more than one case for one question.)

(i) Generic name of the US-origin items. (You do not have to state any proprietary name of the items or manufacturer's name)

(ii) Name of your end-products that incorporate US-origin items

(iii) Export destinations

(iv) The reason for your choice of non-US items, and others if any

(a-6) With regard to the cases other than those described in the questions a-1 through a-4 above, please state if you had instances in which the US export controls influenced your decision whether to procure US-origin items, regardless of its final outcome.

(b) Please answer the following questions b-1 through b-4, if you have never encountered the cases of the questions in part (a) since you had no necessity at all of procuring US-origin items, or since you had no choice but using US-origin items you procured. This is a question to those who answered "No" to the question a-0.

Suppose you intend to procure US-origin parts and components while having another option to elect non-US items instead;

(b-1) You would elect non-US items in case the US-origin items were listed on the CCL and the intended export required a license. (This includes the case you would design out the US-origin items.)

yes/no

(b-2) You would elect non-US items even in the case that the US-origin items were listed on the CCL but no license was required since the items were non-controlled for the destination or a License Exception was applicable, because you would possibly export the products in the future to other countries that require a license. (This includes the case you would design out the US-origin items.)

yes/no

(b-3) You would simply elect non-US items disregarding the classification of the US-origin items, etc. because you think it's more efficient and cost effective. (This includes the case you would design out the US-origin items.)

yes/no

(b-4) You would still elect non-US items even if you came to know that the US-origin items were non-CCL items as a result of the classification you conducted or because the supplier so informed to you, considering that the US controls would be intensified even on those non-controlled items. (This includes the case you would design out the US-origin items.)

yes/no

Category No. 2: Questions regarding the control of US-origin items by your customers

The questions of category No. 1 asked you about the controls of US-origin items in your company. Here in category 2, we ask you about the control status of your customers to whom you sell US-origin items or products that contain US-origin items. Your "customers" in this case mean:

(i) Your overseas customers (excluding those in the US) in case you export your products from Japan, or
(ii) Your domestic customers in case you sell your products in Japan knowing that those will be exported from the customers.

(a) It seems your customers are not implementing any controls based on the US regulations, since you have never been asked from them whether those are US-origin or not.

Yes/No

(b) It seems your customers are not implementing any controls based on the US regulations, since you have never been asked from them whether those are US-origin or not.

(b-1) Your customers have refused to buy your products because they are of US-origin.

Yes/No

(b-2) Your customers have asked you to change your US-origin products to those of non US-origin.

Yes/No

(c) If you answered "Yes" to either of the questions b-1 and b-2 above, please outline the case as far as possible, including the following elements. (You may state more than one case for one question.)
(i) Generic name of the US-origin items. (You do not have to state any proprietary name of the items or manufacturer's name)
(ii) Name of your end-products that incorporate US-origin items
(iii) Export destinations
(iv) The reason for your choice of non-US items, and others if any

Category No.3: Questions regarding the location of your company's overseas manufacturing sites

(a) Do you have facilities in non-US countries where you manufacture any list-controlled items?

Yes/No

(b) Please answer the following questions (b-1) through (b-3), if you answered "Yes" to the above question (a).

(b-1) You have ever considered establishing your manufacturing sites in the US.

Yes/No

(b-2) You have considered the US as a country of your manufacturing sites, but gave no consideration on each country's export control laws and regulations.

Yes/No/n.a.

(b-3) The US was one of the options. One reason for ruling it out was the existence of its strict export controls.

Yes/No/n.a.

Category No.4: Questions regarding the impact on the economy

(a-1) Do you think that the amount of US-origin items you procure will increase if the extraterritorial application of the US regulations is removed?

(a-2) Please state, if possible, the ballpark amount of your procurement of US-origin items per year.

(b-1) Do you incur additional costs for complying with the US export control regulations?

Yes/No

(b-2) If so, please state their estimated percentage to the whole cost of your corporate export controls.

Category No.5: General questions

(a) Have you ever encountered any advertising or marketing efforts by a third party that use the absence of US-origin components or exemption from US export controls as a selling point?

Yes/No

(b) If you answered "Yes" to the above question (a), please state the details as far as possible.

Category No.6: Questions regarding your thoughts about the US re-export controls

Please check the agreeable response to each one of the five comments stated below.

(a) The US Government should stop the extraterritorial application of its export controls since it's a violation of the International Law.

(1) We agree. (2) We'd rather agree. (3) Difficult to judge. (4) We'd rather disagree. (5) We disagree.

(b) For a reason of diversion concerns, the extraterritorial application of the US export controls is rather necessary to the countries who have no export control laws and regulations, but not necessary to Japan where export controls are implemented as strictly as other member countries of the international export control regimes.

(1) We agree. (2) We'd rather agree. (3) Difficult to judge. (4) We'd rather disagree. (5) We disagree.

(c) The current system would rather exclude US-origin items—even non-sensitive ones—from non-US companies' transactions simply because they are of US-origin.

(1) We agree. (2) We'd rather agree. (3) Difficult to judge. (4) We'd rather disagree. (5) We disagree.

(d) The extraterritorial application of the US export controls is giving not only a negative impact on the US economy but also a negative image of the US itself to foreign countries.

(1) We agree. (2) We'd rather agree. (3) Difficult to judge. (4) We'd rather disagree. (5) We disagree.

(e) The extraterritorial application of the US export controls is rather necessary because export controls are still insufficient in many countries.

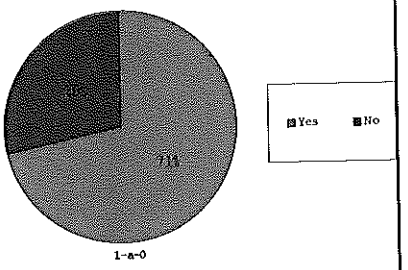
(1) We agree. (2) We'd rather agree. (3) Difficult to judge. (4) We'd rather disagree. (5) We disagree.

(f) Please state any other comments, if any, in regard to the US export controls.

Exhibit 2

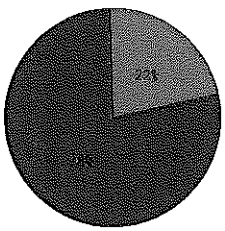
Survey results for Category No.1 to No.6

Category No.1
Questions regarding the controls of US-origin items in your company
(a-0)
Your company has ever considered procuring or designing-in US-origin parts or components.



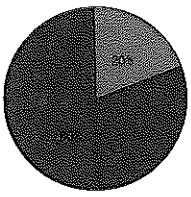
1-a-0

Category No.1
Questions regarding the controls of US-origin items in your company
(a-1)
You have ever elected non-US items because the US-origin items were listed on the CCL and required a license form BIS for your exports of the products. (This includes the case you designed out the US-origin items.)



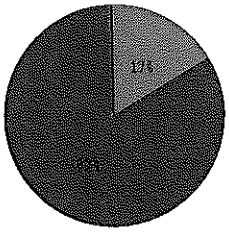
1-a-1

Category No.1
Questions regarding the controls of US-origin items in your company
(a-2)
You have ever elected non-US items even in the case that the US-origin items were listed on the CCL but no license was required since the items were non-controlled for the destination or a License Exception was applicable, because you considered you would possibly export the products in the future to other countries that require a license. (This includeds the case you designed out the US-origin items.)



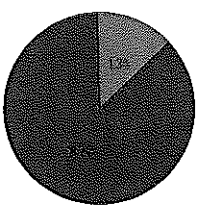
1-a-2

Category No.1
Questions regarding the controls of US-origin items in your company
(a-3)
You have simply elected non-US items disregarding the classification of the US-origin items, etc. because you thought it's more efficient and cost effective. (This includes the case you designed out the US-origin items.)



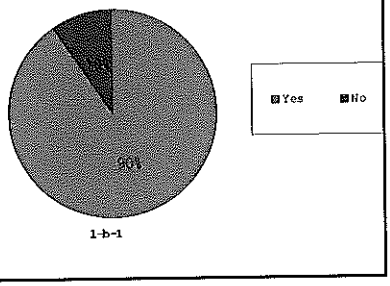
1-a-3

Category No.1
Questions regarding the controls of US-origin items in your company
(a-4)
You have ever elected non-US items even in the case that you came to know that the US-origin items were non-CCL items as a result of the classification you conducted or because the supplier so informed to you, considering that the US controls would possibly be intensified even on those non-controlled items. (This includes the case you designed out the US-origin items.)



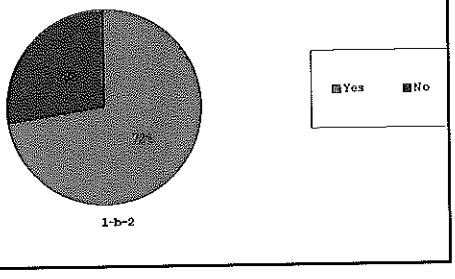
1-a-4

Category No 1
Questions regarding the controls of US-origin items in your company
(b-1)
You would elect non-US items in case the US-origin items were listed on the CCL and the intended export required a license. (This includes the case you would design out US-origin items)



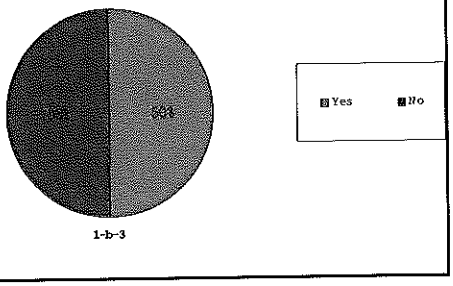
1-b-1

Category No 1
Questions regarding the controls of US-origin items in your company
(b-2)
You would elect non-US items even in the case that the US-origin items were listed on the CCL but no license was required since the items were non-controlled for the destination or a License Exception was applicable, because you would possibly export the products in the future to other countries that require a license. (This includes the case you would design out the US-origin items)



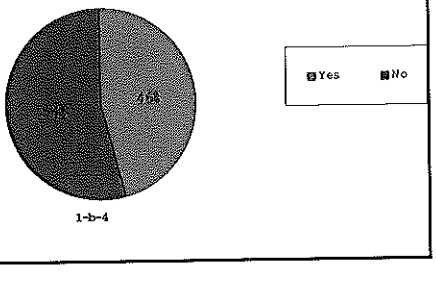
1-b-2

Category No 1
Questions regarding the controls of US-origin items in your company
(b-3)
You would simply elect non-US items disregarding the classification of the US-origin items etc. because you think it's more efficient and cost effective. (This includes the case you would design out the US-origin items)



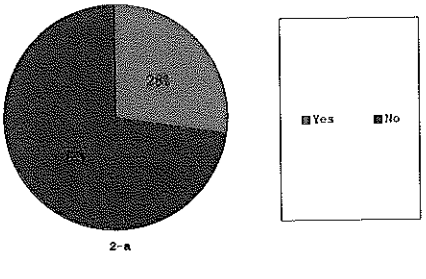
1-b-3

Category No 1
Questions regarding the controls of US-origin items in your company
(b-4)
You would still elect non-US items even if you came to know that the US-origin items were non-CCL items as a result of the classification you conducted or because the supplier so informed to you, considering that the US controls would be intensified even on those non-controlled items. (This includes the case you would design out the US-origin items)



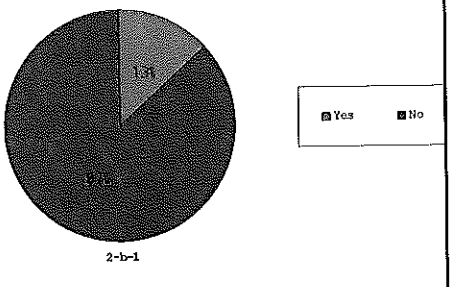
1-b-4

Category No 2
Questions regarding the controls of US-origin items by your customers
(a)
It seems your customers are not implementing any controls based on the US regulations, since you have never been asked from them whether those are US-origin or not.



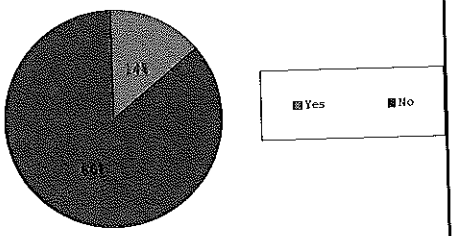
2-a

Category No 2
Questions regarding the controls of US-origin items by your customers
(b-1)
Your customers have refused to buy your products because they are of US-origin.



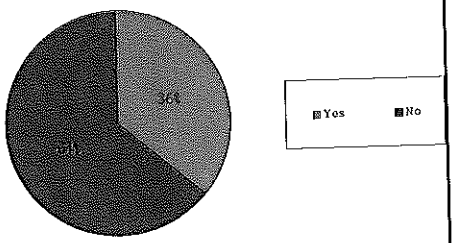
2-b-1

Category No 2
Questions regarding the control of US-origin items by your customers
(b-2)
Your customers have asked you to change your US-origin products to those of non US-origin.



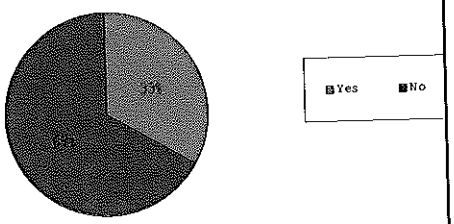
2-b-2

Category No 3
Questions regarding the location of your company's overseas manufacturing sites
(a)
Do you have facilities in non-US countries where you manufacture any list-controlled items?



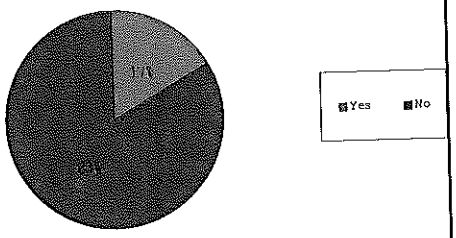
3-a

Category No 3
Questions regarding the location of your company's overseas manufacturing sites
(b-1)
You have ever considered establishing your manufacturing sites in the US.



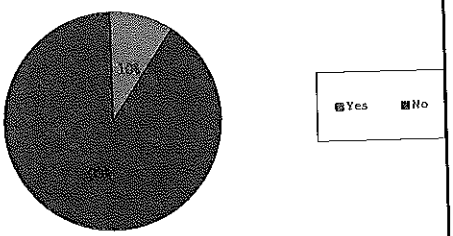
3-b-1

Category No 3
Questions regarding the location of your company's overseas manufacturing sites
(b-2)
You have considered the US as a country of your manufacturing sites, but gave no consideration on each country's export control laws and regulations.



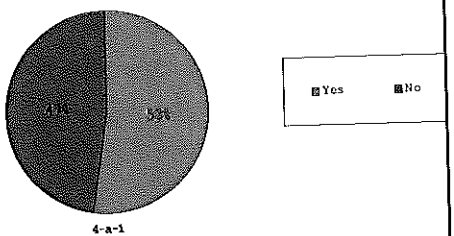
3-b-2

Category No 3
Questions regarding the location of your company's overseas manufacturing sites
(b-3)
The US was one of the options. One reason for ruling it out was the existence of its strict export controls.



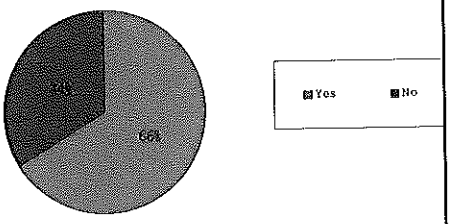
3-b-3

Category No 4
Questions regarding the impact on the economy
(a-1)
Do you think that the amount of US-origin items you procure will increase if the extraterritorial application of the US regulations is removed?



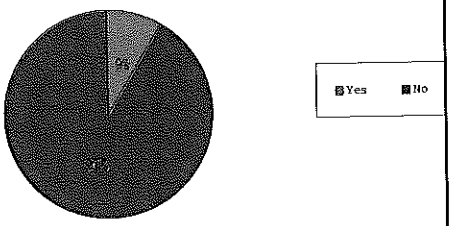
4-a-1

Category No.4
Questions regarding the impact on the economy
(b-1)
Do you incur additional costs for complying with the US export control regulations?



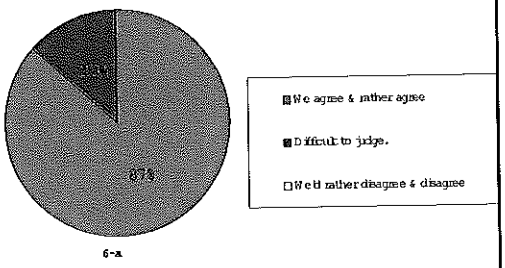
4-b-1

Category No.5
General questions
(a)
Have you ever encountered any advertising or marketing efforts by a third party that use the absence of US-origin components or exemptions from US export controls as a selling point?



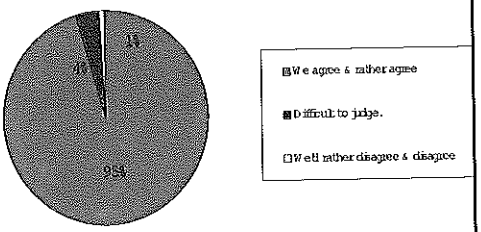
5-a

Category No.6
Questions regarding your thoughts about the US re-export controls
(a)
The US Government should stop the extraterritorial application of its export controls since it's a violation of the International Law.



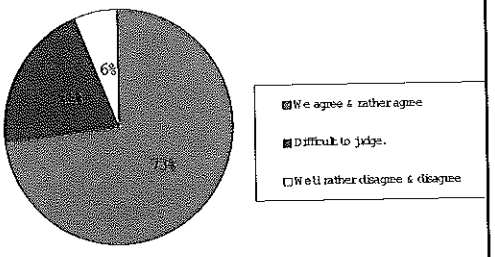
6-a

Category No.6
Questions regarding your thoughts about the US re-export controls
(b)
For the reason of diversion concerns, the extraterritorial application of the US export controls is rather necessary to the countries who have no export control laws and regulations, but not necessary to Japan where export controls are implemented as strictly as other member countries of the international export control regimes.



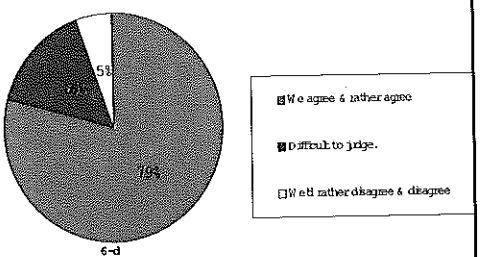
6-b

Category No.6
Questions regarding your thoughts about the US re-export controls
(c)
The current system would rather exclude US-origin items -even non-sensitive ones- from non-US companies' transactions simply because they are of US-origin.



6-c

Category No.6
Questions regarding your thoughts about the US re-export controls
(d)
The extraterritorial application of the US export controls is giving not only a negative impact on the US economy but also a negative image of the US itself to foreign countries.



6-d

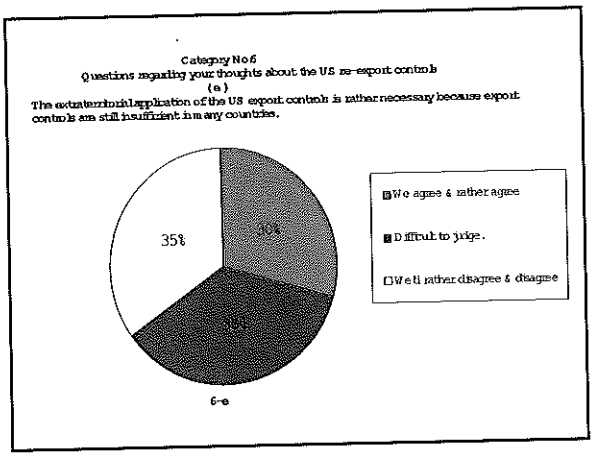

Category No 6
Questions regarding your thoughts about the US re-export controls
(e)
The extraterritorial application of the US export controls is rather necessary because export controls are still insufficient in many countries.
35%
6-e
We agree & rather agree
Difficult to judge.
We'll rather disagree & disagree

Exhibit 3

Comments in response to questionnaire Category No.1 (a-5)

Question:

(a-1) You have ever elected non-US items because the US-origin items were listed on the CCL and required a license from BIS for your exports of the products. (This includes the case you designed out the US-origin items.)

(a-2) You have ever elected non-US items even in the case that the US-origin items were listed on the CCL but no license was required since the items were non-controlled for the destination or a License Exception was applicable, because you considered you would possibly export the products in the future to other countries that require a license. (This includes the case you designed out the US-origin items.)

(a-3) You have simply elected non-US items disregarding the classification of the US-origin items, etc. because you thought it's more efficient and cost effective. (This includes the case you designed out the US-origin items.)

(a-4) You have ever elected non-US items even in the case that you came to know that the US-origin items were non-CCL items as a result of the classification you conducted or because the supplier so informed to you, considering that the US controls would possibly be intensified even on those non-controlled items. (This includes the case you designed out the US-origin items.)

(a-5) If you answered "Yes" to either of the questions a-1 through a-4 above, please outline the case as far as possible, including the following elements. (You may state more than one case for one question.)

(i) Generic name of the US-origin items. (You do not have to state any proprietary name of the items or manufacturer's name)

(ii) Name of your end-products that incorporate US-origin items

(iii) Export destinations

(iv) The reason for your choice of non-US items, and others if any

Comments:

1.

(i) High frequency device

(ii) Electronic measurement equipment

(iii) US, Europe and Asian countries

(iv) Because the US-origin items was controlled by the ITAR that is stricter than the EAR and not recommendable for commercial use.

2.

(i) Semiconductor devices and image processing software

(ii) Broadcasting system

(iii) Countries except those subject the U.S. control

(iv) N/A

3.

(i) Super engineering plastics

(ii) Pellet

(iii) China

(iv) Exported using the License Exception APR

4.

(i) Interface board for analysis devices
(ii) Analysis devices
(iii) Syria
(iv) Judging this product as not exportable, we have adopted a German product that has the same function as a substitute.
* There are other products for which we have adopted alternative products.

5.

(i) Sensor, communication equipment, Ics, etc.
(ii) Geophysical instruments
(iii) All countries except Cuba and North Korea
(iv) Our destination included some E:1 countries

6.

Whenever we use any US-origin parts and components in our products, we make the U.S. contents less than ten percent. Therefore, it is our design policy not to use U.S.-origin items as far as possible.

7.

Example 1

(i) Fiber-optic thermometer, vacuum pump, etc
(ii) Electric power substation equipment
(iii) Middle East and Australia
(iv) Adopted U.S. origin items

Example 2

(i) Service parts (barrel and LAN cable)
(ii) Biaxial kneader /process controller for biaxial kneader
(iii) China and Southeast Asia
(iv) Barrel: We gave up purchasing from the original U.S. manufacturer after we determined that the item was classified under ECCN 1B118 (No license exception is available for 1B118 items). We made this determination by ourselves since the U.S. manufacturer did not respond to our request for classification information. We elected to procure a similar product manufactured by our company although a longer lead-time was necessary.

LAN cable: We elected to purchase similar product from a Japanese manufacturer in order to eliminate burdensome internal compliance procedures required for U.S.-origin items as well as limitations under the EAR.

Example 3

(i) Software
(ii) Medical equipment
(iii) Cuba
(iv) To eliminate U.S. export / re-export compliance risks.

Example 4

(i) Encryption items
(ii) Office equipment
(iii) Worldwide

(iv) The product was a mass-sales product intended for worldwide market and it had to be "free" from U.S. export/re-export restrictions.
To that end, we placed our first priority in minimizing or limiting the use of U.S.-origin items, even if in case such items had better performance and offered at competitive prices. Even after publication of the new encryption rule and the new de-minims rule in October 2008, we remain hesitant to use U.S.-origin items since definitions for certain key terms remain unclear.

8.
(i) Carbon fiber (ECCN: 1C010.b)
(ii) Thread, prepreg, preform, mold products
(iii) South Korea and China
(iv) Most of our customers did not know how to deal with the U.S. re-export control, and sometimes rejected to buy our products. Moreover, it took more than six month for getting license from the BIS, and our origin customer cancelled the order during the period.

9.
(i) Carbon Fibers
(ii) Prepregs and Fabrics made of Carbon Fibers
(iii) Asian Countries
(iv) 1. We must apply an export license in Japan. It is very cumbersome and complicated for us to apply an U.S. export license additionally.
2. It is very difficult to explain our customers that the origin of these products is the U.S. or to instruct them the U.S. reexport control systems.

10. As to electronic parts, we use non-U.S. products as far as possible.

11. Case:(a-1, a-3)
(i) U.S.-origin item: Semiconductors and software
(ii) Foreign product: Telephone Exchange System
(iii) Primary destination: Iran, Iraq, PRC
(iv) Reason for not adopting U.S.-origin items:
U.S. export licenses may be required.
It was too much troublesome to identify ECCNs for each components and software and to calculate the U.S. contents value.

Case:(a-1)
(i) U.S.-origin item: High-power FET
(ii) Foreign product: TV transmitters
(iii) Primary destination: Cuba
(iv) Reason for not adopting U.S.-origin items:
Because all U.S.-origin items were controlled for Cuba, we had to re-design the equipment not to include any U.S. components.

Case:(a- 1 ,a-2,a-3,a-4)
(i) U.S.-origin item: RAD (radiation-hardened) components
(ii) Foreign product: Satellite RF communication equipment
(iii) Primary destination: Europe, PRC, Russia
(iv) Reason for not adopting U.S.-origin items:
It takes quite some time to procure RAD hard components from the U.S. because of the license

requirement from the State Department, and most often this makes it impossible to meet the delivery requirement of the customers whose missions have definite deadlines regardless of the U.S. controls.

Case:(a-2)

(i) U.S.-origin item: Software

(ii) Foreign product: Software

(iii) Primary destination: Europe, U.S. and Asia

(iv) Reason for not adopting U.S.-origin items:

We always try to use open source software based and developed in other countries than the U.S., as long as we can, because of the U.S. export controls.

Case:(a-1, a-2)

We replaced forms design software with U.S. encryption, which was subject to the U.S. reexport control, with Japanese software.

Case:(a-1)

We had to employ U.S. detector s for our infrared cameras in the initial development stage. Now that there are Japanese detectors available on the market today that can satisfy our requirements, we choose Japanese detectors for our products, which can be exported to many European (and some other) countries with our E3"general export license" from the Japanese government.

12.

(i) Semiconductors, software(including OS), LSI chips, and components(e.g. sensors),

(ii) Semiconductors, computers, software for computers, accessory equipment for computers, thin client software, browser software, Software for TV conference, and manufacturing facilities

(iii) China, Taiwan, Israel, India, Philipine,

(iv) US exporters and the relevant companies did not provide us with the export control classification (i.e. ECCN) of the US origin products due to their lack of understanding of the EAR even if we requested the information on the classification.

Although the entire products incorporating US origin products are not subject to the EAR under de minimis rule of the EAR, reexports of the incorporated US origin products to certain destinations for maintenance would require the license. To avoiding customers' necessity to cope with US reexport control (e.g. necessity to obtain license).

13.

(i) Encryption of software

(ii) Software

(iii) U.S., Europe, and China

(iv) To avoid bearing additional costs to deal with the U.S. re-export control and to enable to export without any additional restrictions.

14.

(i) High heat-stable thermoplastic liquid crystal copolymers

(ii) Lens holders for digital cameras for civil uses

(iii) China

(iv) Although the customer designate US origin high heat-stable thermoplastic liquid crystal copolymers, we are now preparing for our proposal to supply the Japanese origin ones in order to avoid the burdens of US reexport control.

15.

(i) IC Cards, Software

(ii) Fault diagnosis device for automobiles

(iii) Sales agents in Syria

(iv) Some IC cards and software contained US origin non-controlled products/software.
One of the specifications of the fault diagnosis device for automobiles was to monitor the results of the fault diagnosis by using Windows PC.

16.

(i) Software

(ii) Telephone Exchange Equipment

(iii) Iran

(iv) Software, which was not of U.S. origin, or which did not contain any U.S. content, was adopted, so as for the equipment not to be put under the legal responsibilities of the EAR

17.

(i) US Origin Item : Light Source (bulb)

(ii) Analytical Device

(iii) Worldwide

(iv) To make the foreign made product less than 10 % in US content, Japan made light bulb was taken even though Japanese one is more expensive

(i) US Origin Item : Compact Flash Card

(ii) Analytical Device

(iii) Worldwide

(iv) To make the foreign made product less than 10% in US content, Japan made CF card was chosen instead of US made one.

18.

(i) Filter element

(ii) measurement equipment for flue gas, (iii)Syria, (iv)Although the end use and end user were not problematic in terms of catch all control, the filter element was US origin and the destination was Syria to which even the reexport of EAR99 would require the license.

19.

(i) Components for transportation equipment, which are not manufactured in Japan

(ii) Transportation equipment

(iii) All over the world, such as North America, South America, Europe, Asia, China, Middle East, etc.

(iv) When non-US companies manufacture the components the specifications of which are the same as or compatible with the US origin ones, we are adopting such non-US origin components instead of the US origin ones.

20.

(i) Sensors

(ii) Imaging equipment

(iii) Japan

21.

(i) Automobile parts
(ii) Cars
(iii) Iran
(iv) In order to avoid any potential risk of EAR violation for self-protection purposes

22.

(i) Software
(ii) Elevator monitoring system
(iii) Iran
(iv) The export of the system to Iran required a license from BIS because of the U.S.-origin software. We therefore changed it to non-U.S. software.

23.

Case-1: Destination: Iran

We have a type of Japan-made explosion-proof limit switch (a limit detecting switch in explosion-proof housing) incorporating US-origin micro-switch (a kind of miniature switch). Though the US-origin micro-switch is classified into an EAR99 non-listed item, we import the US-origin micro-switch every time when we receive the limit switch order due to non-stock item in our factory.

In order for us to avoid applying License to US Government, we asked a Japanese customer to change the required specifications and design of their equipment so that the explosion-proof limit switch incorporating a Japan-made micro-switch is accepted.

Case-2: Destination: Iran

We stopped sales of a plant maintenance tool; a PDA (Personal Data Assistance) based palmtop computer with Windows CE as Operating System, whose ECCN is classified into 5D002 ("Unrestricted" software, which is eligible for "ENC" License Exception). We even stopped to file One-Time Report with de minimis Calculation to BIS, commingling with Japanese made application program. Instead, we offered a specially designed tool without Windows CE, not subject to EAR, though old type and less functional.

24.

(i) Printers, LAN related peripheral equipment
(ii) Plant control systems
(iii) Iran
(iv) To avoid US regulations.

25.

Regarding any items to purchase from the other companies and provide to customers, we are avoiding US origin items irrespective of whether or they are controlled

Exhibit 4

Comments in regard to Category No.1 (a-6)

Question:

(a-1) You have ever elected non-US items because the US-origin items were listed on the CCL and required a license from BIS for your exports of the products. (This includes the case you designed out the US-origin items.)

(a-2) You have ever elected non-US items even in the case that the US-origin items were listed on the CCL but no license was required since the items were non-controlled for the destination or a License Exception was applicable, because you considered you would possibly export the products in the future to other countries that require a license. (This includes the case you designed out the US-origin items.)

(a-3) You have simply elected non-US items disregarding the classification of the US-origin items, etc. because you thought it's more efficient and cost effective. (This includes the case you designed out the US-origin items.)

(a-4) You have ever elected non-US items even in the case that you came to know that the US-origin items were non-CCL items as a result of the classification you conducted or because the supplier so informed to you, considering that the US controls would possibly be intensified even on those non-controlled items. (This includes the case you designed out the US-origin items.)

(a-6)With regard to the cases other than those described in the questions a-1 through a-4 above, please state if you had instances in which the US export controls influenced your decision whether to procure US-origin items, regardless of its final outcome.

Comments:

1. We are very careful to determine whether bearing shield grease is US-origin item or not.

2. Marine diesel engine, gas turbine power generator and others.
   (i) Diesel engine, gas turbine power generator and control equipment
   (ii) Ship
   (iii) In case an end-user was in the terrorist supporting country, although a customer was not.
   (iv) Alternative Japanese equivalent items were studied to replace the US items.

3. In case of our company's products, unit prices of parts to procure from others are relatively low. Therefore, we have never forgone US parts because of the US reexport control, but with a future shift of product lines, it is possible that we forgo US parts.

4. Too many government authorities are involved in export control, it is one reason to take unnecessary time for the classification. One window system is better.

5. We have established a branch office in the USA. Due to US re-export control, production/sales activities of this office are limited to the USA only without exporting anything to Japan.
   If the US re-export control is abolished, it will be possible for this office to increase export and to optimize its production/sales structure from the global point of view.

6. As to certain models, in the past, we had purchased a U.S.-origin component from a U.S. company for

incorporation into such models in Japan.
The component was listed on the CCL, and a license from BIS was required for export and reexport of the components and end products incorporating the component.
The increased time and cost required to obtain the necessary licenses were among the various factors we considered in making our decision to substitute a non-U.S. component of similar specifications in subsequent models.

7. We have the following experience
   1) It took a long time/a lot of work to confirm whether BIS authorization is unnecessary for some encryption items. It caused the delay of delivery and damaged our relationship with the customer.
   2) Several times US manufacturers informed us of the wrong ECCN for the computers and encryption items and we spent considerable effort to correct those which also caused the delay of delivery and embarrassed us in front of our customers.

8. We applied for export licenses for some products which contain US-origin items to Saudi Arabia. The authorization from BIS was not issued even though four months passed after application. We separated the product by non-US items and US-origin items and applied for a new export license for non-US items to METI to avoid further delay. After that we got authorization from BIS and we had to apply for other license for US items only to METI.
   Due to the delay of BIS authorization ;
   1) We had to apply for export license to METI three times.
   2) We suffered a delay of 5 months.

9.
   1) We used US origin parts for data recording instrument. Our basic rule is not to exceed 10 % of the value (in worst case 25%) to avoid DE MINIMUS RULE.
   2) We used US origin 'Oscillator' for clock generator. We changed design of repairing parts so that the value of the Oscillator in those parts is below DEMINIMUS RULE.

10. To support our production, we procure electronic components such as integrate circuits, memory chips from several sources including U.S. suppliers. It is impractical to judge which final products incorporate U.S. origin items, as this would be too costly and time consuming. In order to eliminate U.S. export compliance risks, we had to adopt a conservative approach to deem all final products as "U.S.-origin items" regardless of incorporation or non-incorporation of U.S.-origin items.

11. We are now planning to downgrade US origin component from 1C010b to 1C990 so that we could get more option to export.

12. To avoid US re-export control, we use Japanese parts (like IC) and avoid US-origin item.

13. Though we have no experience to change US-origin item to avoid US re-export control, it is true that we could save time and money for the classification if the parts are clearly non US-origin items.

14.
   1) In some cases, we chose not to use semiconductors and software of U.S. origin.
   2) We prefer to use non-U.S. items, if they are suitable, because we would be required to take time to examine the U.S. contents value to determine if the product is subject to the EAR in case of

products incorporating U.S. components.

- We do not use U.S.-origin civil use items, however excellent they may be, for "terrorist supporting countries" because of the U.S. embargo.
- We often choose non-U.S. encryption items, as long as they are suitable, because the U.S. encryption control is more often strict and rigid compared to international controls.
- We can thus reduce the risk of violating export-related controls by choosing non-U.S. origin items, as long as there are equivalent items available from other sources.

3) We often find it difficult to correctly calculate U.S. contents value because the definition of "U.S. origin items" are not clearly stated in the EAR.

- Not all U.S.-brand products are necessarily of U.S. origin. For example, some devices are "made in PRC" with a U.S. manufacturer's brand name.
- Certain products may be produced in the U.S. today but in other countries tomorrow for meeting the demands for lower production cost.

15.

ECCN cannot be obtained for lack of awareness about EAR on the vender side,
so we have to estimate ECCN from the item on Export Trade Control Order attached table1(Japanese low), and request confirmation of it to the vender.
There was such a case about 10 times a year. And the data of some products is not clear yet.
Wrong information about ECCN is offered frequently too.
There are many cases that information about de minimis level cannot be obtained.
So we manage some articles after conjectured and determined de minimis level in-house.

16. We once had an export of a US-origin product (a hardware key), that we had procured through a domestic distributor, to a third country.
The time it took to obtain the necessary documents and go through the required internal export control procedures proved to be too lengthy for us, and we were forced to delay the export on that occasion. In the future, to avoid such problems, we will choose non-US-origin items wherever possible.

17. There were many cases where we could not obtain the export control classification (i.e. ECCN) of the US origin products even if we requested the US exporters and the relevant companies (e.g. manufacturers in Japan, manufacturers in non-US countries other than Japan) to provide us with the information on the classification.
Therefore, we think it necessary for US to stipulate US exporters' legal obligation to inform importers of the export control classification (i.e. ECCN) of the items to be exported in the EAR.

18. Excepting the following two cases:
    a. where there is no other alternative to using a US-origin product (a rare case that happens once or twice a year)
    b. where a certain US-origin item has been used continuously for many years and where the export control compliance burden is less than the burden that would be incurred in replacing the part in question (we have a handful of such cases every year)
    We feel that there is no need to go to the trouble of purchasing a US-origin item, that falls under the regulatory jurisdiction of the EAR (and the accompanying compliance burdens), especially given that there are plentiful made-in-Japan alternatives available on the market.

19. We have no issues with our primary procurement items.

20. We export Japanese-made automobiles to Syria, Sudan, and (from 2009) to Iran. A small number of the parts are of US-origin (non-controlled). As a percentage of the whole vehicle, these US-origin parts amount to less than 1%, and therefore does not infringe upon the EAR re-export rules.
However, certain parts and assembled units, when exported separately, would cross the de minimis threshold. Such parts account for 0.3% of all parts.
Our company takes steps to comply with US regulations concerning the re-export of US-origin parts to countries listed on the Country Group E list. However, from a customer service/customer satisfaction perspective, this is not a desirable situation for us.
In the future, we are thus considering to cease the use of US-origin parts (including non-controlled items) altogether in our automobiles.

21. Marketing Division requests R&D division to make US content of the product as low as possible.

22. We had a case where we were planning to export polarization-maintaining optical fiber (PM fiber) of US-origin to China. Although PM fiber is generally used in communications equipment, and despite the PM fiber in question not having undergone any configuration changes (e.g. for use with sensors), we had people (internally) that questioned:
    a. whether it would be necessary to obtain clear evidence that the PM fiber in question was not the controlled optical fiber for sensors that would fall under US re-export restrictions.
    b. Whether we should insist on a letter of assurance that the PM fiber would not be used in connection with military activity from the end-user in China.

    We ended up spending an inordinate amount of time and cost addressing these two issues.

23. In general, we export products that fall below the de minimis threshold, but for a small number of countries, we are prevented from providing spare parts due to the restrictions imposed by the US re-export regulations.

24. We have following examples;
    1) The export of US-origin item as the repair parts for the products we had sold before. If the Japanese manufacturer is not familiar with the EAR, they even hesitate to contact the US manufacturer, and could not provide us the ECCN. Even if the Japanese manufacture knows the EAR, it is rather rare to get timely answer from the US manufacturer. It was very time consuming work for the Japanese manufacturer and sometime this may cause delay of shipment.
    2) The definition of "2nd incorporation of US origin item" is not clear. BIS should make 2nd incorporation of US origin item out of control. BIS should make clear announcement together with the clear definition of "2nd incorporation", It is very difficult to get exact data/information of US content of the component and it makes the calculation of "de minimus rule" almost impossible.
    3) We usually ask a manufacturer not to use US origin parts with ECCN if the final product may be exported to the US sensitive nations. Also we ask a manufacturer to do effort not to use US origin parts of EAR99 also.
    4) We have experience that US origin parts were replaced by Japanese equivalent for the shipment to CHINA.
    5) We heard that a part of software on digital still camera was replaced by Japanese origin software before starting export business.
    (The digital camera had been designed for Japanese market only)

25. Since no substitutes for the US-origin items are available so far, we reluctantly continue to adopt US-origin items. From the viewpoint of business expansion, however, we have been looking for appropriate substitutes. In some products, we try to use non US-origin items as long as they are equivalent to the US items in quality.

26. We have had numerous cases where we took steps to confirm whether or not an item would be subject to the re-export regulations of the US before proceeding with a business transaction. Until now, we have not had any problematic cases, however, if we were to find a case in the future where we have a US-origin item that is classified and subject to the re-export regulations, we will more than likely take efforts to procure a suitable made-in-Japan alternative.

27. We purchased products with incorporated encryption ICs, which were subject to EAR, from a Japanese company temporary with the aim of export, and then inquired to the US encryption IC maker about the possibility of application of Part 740.17 ENC to the item, which of ENC (b) (2) or (b)(3) was applicable, and the CCATS number for the item.
The Japanese company also inquired to them whether ENC was applicable to the item.
The US maker gave us no adequate responses to any of our inquiries.
We thought about making a classification request to BIS or applying for individual license. Considering the cost-effectiveness and the waiting time for BIS response, however, we judged that such application would be impractical and cancelled our plan to export the above product. Since then, we have never purchased similar items with the aim of export.
Above is the case in which US re-export control prevented us from exporting the product, for which an encryption license was available by Japanese law.

28.
Case-1: We declined the offer of maintenance and renewal project of the existing control system installed in a plant in Philippines, due to its recent and majority acquisition by Iranian State-owned companies. Before the acquisition, the owners of the Filipino company are from Non-E:1 countries, and US contents did not exceed the de minimis Level. After the acquisition, we assumed that the company is of Iranian Government, the US contents of our system products is supposed to be exceeded the 10% de minimis Level, thus subject to EAR. We further took that OFAC control will strictly apply. US contents spread widely in this specific system , and made it difficult for us to work for ECCN classification and license application. Thus, we declined.

Case-2: To calculate de minimis level of our product, we have to often ask parts vendors to provide US-content data and it forces them extra works. We sometimes struggle for getting their understanding of the outline and contents of US Laws and Regulations to be applied outside of U.S.A.

29. We often have to spare a lot of time and energy for negotiating certain modifications or preparations of contracts with our vendors regarding interpretation of EAR, because of its complexity, ambiguity and difference from Japanese regulations, specifically the concept of direct products, de minimis rule, restrictions on sanctioned countries, etc.
Subject items: LSI, telecommunication software, etc.

30. Considering the rigidness of US re-export control, we make it a rule not to adopt any parts on CCL as long as we can find their substitutes, which are not US-origin.

Exhibit 5

Comments in response to questionnaire Category No.2 (c)

Question:

The questions of category No. 1 asked you about the controls of US-origin items in your company. Here in category 2, we ask you about the control status of your customers to whom you sell US-origin items or products that contain US-origin items. Your "customers" in this case mean:

(i) Your overseas customers (excluding those in the US) in case you export your products from Japan, or

(ii) Your domestic customers in case you sell your products in Japan knowing that those will be exported from the customers.

(b) It seems your customers are not implementing any controls based on the US regulations, since you have never been asked from them whether those are US-origin or not.

(b-1) Your customers have refused to buy your products because they are of US-origin.

(b-2) Your customers have asked you to change your US-origin products to those of non US-origin.

(c) If you answered "Yes" to either of the questions b-1 and b-2 above, please outline the case as far as possible, including the following elements. (You may state more than one case for one question.)

(i) Generic name of the US-origin items. (You do not have to state any proprietary name of the items or manufacturer's name)

(ii) Name of your end-products that incorporate US-origin items

(iii) Export destinations

(iv) The reason for your choice of non-US items, and others if any

Comments:

1. "Our customers" are classified into 2 categories. One is overseas affiliates and the other is end-users. Overseas affiliates control US origin items, but we are not sure about end-users. Some of the end-users ask us about US originality, though. For those who ask us about US originality, both of the answers to questions (b-1) (b-2) are NO.

2.

(i) U.S.-origin item: Carbon fibrous or filamentary materials (ECCN: 1C010.b.)

(ii) Foreign product: Yarn, resin-impregnated or pitch-impregnated fibers (prepregs), metal or carbon-coated fibers (preforms), carbon fiber preforms, and composite structures

(iii) Primary destination: Republic of Korea, PRC

(iv) Reason for not adopting U.S.-origin items:

Certain customers declined to purchase U.S.-origin items because they did not have resources or know-how to apply for and obtain U.S. export licenses depending on the destinations, in addition to obtaining export approvals from their own government. Some customers opted for Japanese products (made by our company) instead. Not many customers understand U.S. reexport controls and can comply with them. We once applied for a reexport license with BIS and it took more than half a year from the preparation of the application to the license approval, which resulted in the cancellation of the supply contract due to the longer-than-expected delivery. Since then, we have had to choose Japanese products instead of U.S. products in our contracts, depending on the destination.

3.
(i) Carbon Fibers
(ii) Prepregs and Fabrics made of Carbon Fibers
(iii) Asian Countries
(iv) It is very cumbersome for our customers to apply an U.S. export license.

4. One of our products that incorporated U.S.-origin electronic components required a license from the U.S. government for reexport or transfer. Larger companies were more likely to understand the situation regarding the U.S. reexport control issue while small and medium companies tended to shun away from the complexity of reexport compliance requirements.
When it took several months to obtain a license from the U.S. government, and without being given reasonable explanation while waiting for the approval, we had no way of responding to the customer in a responsible way and had some orders cancelled. These orders were cancelled not because the products are U.S.-origin but because of the U.S. government controls.

5. Components for computers, software(including OS) contained in computers
(i) Video cameras, compuetrs
(ii) Iran
(iii) The customers hope to avoid the US reexport control.

6.
(i) U.S.-origin item: IC cards and software
(ii) Foreign product: Automobile diagnostics systems
(iii) Primary destination: Syria (distributors)
(iv) Reason for not adopting U.S.-origin items:
(v) IC cards and software had some U.S.-origin components (EAR99) inside. In addition, the diagnostics systems were designed to monitor the diagnostic result on Windows-operated PCs.

7.
(i) US Origin Item : Light Source (bulb)
(ii) Analytical Device
(iii) Worldwide
(iv) To make the foreign made product less than 10 % in US content, Japan made light bulb was taken even though Japanese one is more expensive

(i) US Origin Item : Compact Flash Card
(ii) Analytical Device
(iii) Worldwide
(iv) To make the foreign made product less than 10% in US content, Japan made CF card was chosen instead of US made one.

8.
(i) U.S.-origin item: Solvent for oil extraction
(ii) Foreign product: Oil Content Analyzer
(iii) Primary destination: Iran
(iv) Reason for not adopting U.S.-origin items:
Reexports of U.S.-origin items to Iran are strictly controlled for many reasons including the AT control. In order to meet the required delivery term, we had to substitute the U.S.-origin item with

a Japanese equivalent, because we had no time to determine the ECCN and the license requirement of the U.S. product after failing to get relevant information from the supplier.

9.

(i) U.S.-origin item: Components for Japanese products. The components are not available from Japanese manufacturers and are imported from U.S. suppliers.

(ii) Foreign product: Repair parts for exported products

(iii) Primary destination: Middle East

(iv) Reason for not adopting U.S.-origin items:

We substituted the U.S. components, which are subject to the EAR, with equivalent or interchangeable components of non-U.S. origin. We did not export the repair parts subject to the U.S. control which could not be procured from U.S.

10.

(i) U.S.-origin item: Rotation speed control device

(ii) Foreign product: Power generating plant

(iii) Primary destination: Iran

(iv) Reason for not adopting U.S.-origin items:

There is no alternative to the U.S.-origin items at this moment.

11.

Case-1: Destination: Iran We have a type of Japan-made explosion-proof limit switch (a limit detecting switch in explosion-proof housing) incorporating US-origin micro-switch (a kind of miniature switch).

Though the US-origin micro-switch is classified into an EAR99 non-listed item, we have to import the US-origin micro-switch every time when we receive the limit switch order due to non-stock item in our factory.

In order for us to avoid applying License to US Government, we asked a Japanese customer to change the required specifications and design of their equipment so that the explosion-proof limit switch incorporating a Japan-made micro-switch is accepted.

12.

Most of our products are non-U.S. origin items.

When we once had an inquiry from a major electronic manufacturer for a measuring equipment, specifying a certain type which happened to be subject to the EAR due to its U.S.-origin components, we gave the company an export control status report of the equipment.

The equipment was not controlled on the Japanese export control list but was controlled under an ECCN XX9XX. Subsequently, the company cancelled the inquiry and asked for and actually ordered an equipment that is not subject to the U.S. control.

Nowadays, we are more and more requested to submit export control information on the U.S. reexport controls as well as Japanese controls for our products in the inquiry, especially from electronic manufacturers.

For your information, the destination for the above case was not disclosed to us because the company stated it needed the control information just for their internal control purpose, but we suppose most of our customers deal with their customers worldwide.

Exhibit 6

Comments in response to questionnaire Category No.4 (a-2) and (b-2)

Comments in response to questionnaire Category No.4 (a-2)

The question asks the ballpark amount of the procurement of US-origin items per year, if the extraterritorial application of the US regulations is removed.

Result:

53% of companies replied their procurement of US-origin items will be increased (question 4-a-1), however most companies except 4 companies could not state even the ballpark amount.

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2-companies :	100 million Yen (Approx.) per year
One company:	40 million Yen
One company:	10 million Yen

Comments in response to questionnaire Category No.4 (b-2)

The question asks any additional amount incurred for complying with the US export control regulations(4-b-1) and estimated percentage to the whole cost of corporate export controls.(4-b-2)

Result:

The estimated percentage to the whole cost and the number of companies is shown below.

The estimated percentage	The number companies (Total: 52)
0% ~ 10%	24
11% ~ 20%	10
21% ~ 30%	13
31% ~ 40%	3
41% ~	2

Exhibit 7

Comments in response to questionnaire Category No.5 (b)

Question:

Have you ever encountered any advertising or marketing efforts by a third party that use the absence of US-origin components or exemption from US export controls as a selling point?

If you answered "Yes" to the above question , please state the details as far as possible.

Comments:

1.

We received a product brochure for thermo-viewer, which clearly indicated that the product is not subject to the U.S. export regulations.

A software vendor explained to our software engineering section that their products do not incorporate or commingle any U.S.-origin software.

2. We once received an offer of certain Operating System that is free of U.S. technology. The explanation was that it was intended that way to make the OS not subject to the any U.S. export controls. Certain companies in Europe and U.S. make it a selling point that their products (components and satellite equipment incorporating such components) are ITAR free.

<Example> http://ams.aeroflex.com/ProductFiles/News/LVDSResistorProd.pdf

We now offer U.S. Commerce controlled LVDS products to selected foreign countries.

This means that for a 300krad (Si) product an export license will not be required in most instances, saving the customer 8-12 weeks for a U.S. State Department export license.

A product brochure stresses that the product employs Japanese sensors and does not require an Export License (from the U.S. government).

<Example> (In Japanese only)

http://www.nec-avio.co.jp/jp/products/ir-thermo/lineup/h2640/index.html

3. When UK companies conducted presentations for the sales promotion to us, they often emphasized no burdensome procedures for imports and exports are required in case of the UK products compared with US origin products, which are subject to the US export/reexport control regulations that are easily influenced by political situations.

4. Outsourcing hardware. Our spec for the supplier was "less than 10% US origin content" to make the product free from EAR regulation.

5. High performance monitoring camera: The company has production facilities both US and EU. They emphasis the product from EU facility does not include any US origin component so that EU exporter could export easily with CGEA

6. Some vendors usually import from their parent companies in the United Sates and supply US-origin products to the customers in Japan. They told us that when they were asked by their customer to supply such US-origin products that require reexport License from US Government due to destination of US sanction countries, they promoted us they were capable to alternatively offer equivalent products made in Japan or Europe (not subject to EAR) therein.

7. Sales promotion by certain vendors for electronic measuring equipment

Exhibit 8

Comments in response to questionnaire Category No.6 (f)

Question:
Please state any other comments, if any, in regard to the US export controls.

Comments:

1. The extraterritorial application of the U.S. export control regulations, we believe, is apparently an excess of authority; the regulations should be applied only within the U.S. territory.
   Because of the extraterritoriality, our company is increasingly losing businesses chances and bearing extra costs these years.
   We would request the U.S. Government to withdraw the re-export control simply because dual-use goods and technologies produced in the EU and Asian countries are no less advanced than those produced in the United States.

2. Our company is a Japanese subsidiary of a U.S. company of semiconductor manufacturing equipment. Both design and procurement are done by the U.S. parent company for us; therefore, the U.S. re-export control barely affects our operations.

3. We would say it's more than enough as far as U.S. exporters comply with the EAR or ITAR. In principle, the U.S. Government should abandon the extraterritorial application of the U.S. export control.
   If not, however, it should at least exclude member nations of the multilateral export control regimes from the countries subject to the control.

4. If the U.S. Government applies its export controls extraterritorially, it must at least take steps as follows:
   (1) Translation of the U.S. regulations and other related documents into our language.
   (2) Quicker issuance of licenses.
   (3) Face-to-face consultation in our language.
   (4) To make it mandatory for U.S. exporters to inform ECCNs to foreign importers.

5. We are a Japanese affiliate of a U.S. company, and are regarded as a U.S. person according to the U.S. regulations. Our company is, therefore, complying with the applicable U.S. laws and regulations too. But personally, as Japanese nationals, we are doubtful about the U.S. way of applying its export control regulations to non-U.S. countries.

6. Since its definition itself is unclear, "U.S.-origin" or "de minimis" should not be used as a condition for the licensing requirements.

7-1. Because of the U.S. re-export control, our company is currently suffering the following problems.
   (1) Extra management costs that are increasing year by year
   (2) Losing business opportunities
   (3) Losing customers' trust because of delayed delivery and failed customer services

Our company is consuming considerable amount of manpower for calculating de minimis, checking ECCNs and responding to the inquiries from other companies. It's also a big burden that we must place staff members specialized in the U.S. laws and regulations. In addition, we are always facing risks of losing business opportunities as well as customers' trust, especially because the U.S. Government quite strictly controls exports to specific countries of concern. We have recently had a grave problem, for example, that the operation of our product exported lawfully to an E1 country stopped all of a sudden for a lack of service parts. Actually, we couldn't supply the parts to the country because those were U.S.-origin items.

7-2. Also, we have other problems related materials sourcing. Our company decides procurement sources based on Quality, Cost and Delivery (QCD), and never decides source companies based simply on the countries of origin. Due to extra management costs and losing business opportunities, however, the cases in which we choose non-U.S. sources tends to increase in the future, if the QCD level is equal between U.S. and non-U.S. companies. Note that extra costs that incur due to the U.S. re-export control are especially high in design and production control sections. Of course, we will not elect U.S.-origin products if those are very sensitive, high-priced and strictly controlled items.

7-3. Therefore, we strongly request the U.S. government to consider:

(1) First, excluding member nations of the international export control regimes from the countries subject to the U.S. re-export control.

(2) Eliminating the control on products for specific applications including medical equipment, some of which are now not exportable even if they are low-utility items classified as EAR 99.

(3) Reducing the controls to those within the scope regulated by the international export control regimes.

(4) Making it mandatory for U.S. exporters to inform ECCNs to foreign importers so that the extra burden can be reduced.

8. The U.S. re-export control is absolutely unjustifiable because, we believe, it not only is a violation of the international law but also imposes dual burden on non-U.S. exporters. While U.S. exporters are required only to comply with the U.S. export control regulations, non-U.S. exporters are required: (1) to comply with their national regulations, (2) to judge if the export transaction is subject to the U.S. regulations or not, and (3) to comply with the U.S. regulations if so judged. Especially in regard to the item (2), we cannot make the judgment correctly unless there exists an effective system of giving necessary information like ECCNs and others without failure to the importers.
In reality, however, there's no such system at all, and we are all forced to make extra efforts ourselves to get such information from U.S. suppliers, who are sometimes reluctant, or even unable, to respond. Or the information we get from them is sometimes unreliable. This directly means that the U.S re-export control is an unfair system for non-U.S. exporters. Therefore, we naturally try to avoid using U.S.-origin items as far as possible regardless of their sensitivity.

9. Nobody will doubt that an exporter of a country must comply only with its national export control laws and regulations, and should not be required to comply with those of any other countries. The extraterritorial application of the U.S. export control regulations is not simply a matter of whether we elect U.S.-origin items or not, but is forcing exporters of all non-U.S. countries to make unnecessary efforts to learn and understand the regulations themselves. The U.S. Government must be aware that for a non-U.S. company, just promoting awareness of the U.S. re-export control among its employees

incurs non-negligible costs. Imagine what would happen if every country starts applying its national export control laws and regulations to all other countries in the world.

10. If the U.S. Government intends to apply its re-export control to other countries, it must, first of all, promote awareness of the control among its own people so that it can be implemented efficiently and effectively.
Presently, there are few U.S. suppliers who can reply the ECCNs of their own products to our inquiries. Moreover, the U.S. Government should realize that many of the small- and medium-sized companies in the U.S. are even not aware of "EAR" or "ECCN."
Why do we Japanese companies have to teach the U.S. export control laws and regulations to American companies? As long as the U.S. Government applies its export control laws and regulations extraterritorially, it must take full responsibility for teaching its own people how those are regulated, including its instruction to inform relevant ECCNs to their foreign importers.

11-1. We don't think the U.S. authority should control short-distance communication technologies like bluetooth and WLAN that are widely available now in the world. We believe those should be classified just EAR 99.

11-2. We are sometimes doubtful if U.S. companies themselves are knowledgeable about their own regulations. They are even uncertain about classification of their own products.

11-3. The extraterritorial application of the U.S. export control laws and regulations are unacceptable, unless implemented within a framework of government-to-government agreement.

11-4. The unilateral application of the U.S. export control laws and regulations to other countries is, in a sense, a violation of the international law.

11-5. Should there be any necessity to include an extraterritoriality in the international framework of export controls, the items subject to the extraterritorial control should be limited to arms or other high-tech items, eliminating the condition of whether the items are U.S-origin or not. (We don't agree that U.S. products are the most advanced in the world.) In that sense, we suggest that how such extraterritorial elements of the control should be dealt with must be decided at the place of the Wassenaar Arrangement (WA). (We understand such is part of the list control.)

11-6. For us Japanese exporters, it is quite doubtful if the U.S. re-export control is really effective as a means of preventing any illicit diversions of U.S.-origin items.

11-7. Control on re-exports to the exporter's overseas affiliates, or intra-company transfers, should be relaxed.

11-8. The U.S. re-export control should not be applied blindly to the whole world without considering each country's security status. At least, member countries of the multilateral export control regimes should be excluded from the control.

11-9. The biggest burden on non-U.S. companies in complying with the U.S. re-export control is to get the information of relevant ECCNs from U.S. suppliers. If the U.S. Government intends to continue its re-export control, it must at least make it mandatory for U.S. exporters to inform the ECCNs to their

foreign importers.

11-10. To comply with the U.S. re-export control, we must also consider the element of the "deemed re-export." If we reject to employ any person for a reason of his/her nationality relating it to the U.S. control, then the person would come up with a bad impression about the country.

11-11. The U.S. export control laws and regulations are too much complicated to understand. Especially, the de minimis is a daunting rule because we are still struggling to find out how we should implement it correctly.

12. Having fully owned subsidiary companies for sales and manufacturing in Germany and the United States, we are operating our businesses globally supplying products to each other as necessary. Whenever we source abroad carbon fiber products (part of our product range) we check if they are controlled or not by the applicable export control laws of the country, taking it into consideration that such products are basically list controlled in Japan. In addition, we conduct the required classification ourselves referring to the technical data we received from the overseas suppliers. Especially, if they are U.S.-origin items, we inform every customer that the products are controlled by both the Japanese and the U.S. laws in order to avoid any illicit diversions. However, most customers, domestic or overseas, are reluctant to buy the U.S.-origin products, or reject to buy them, for a reason of the U.S. re-export control, in which case we must offer products of other origin instead. We have some experiences in the past that it took more than six months to obtain licenses from the BIS, during which our foreign customers cancelled their orders. Also, it's a big problem when we are required by the U.S. authority to obtain certification documents from our importers, because it usually takes quite a long time, and they even reject our requests some times. For those reasons, we are now considering to downgrade the specifications of the U.S.-origin products to cross them out in our list of controlled items.

13. Since we are a trading firm, it is basically not possible to change the products' source country from the United Stets to other countries once specified by our customers.
It is natural, however, that our foreign customers will have wider choices if the U.S. re-export control disappears. Similarly, our sales staff will become more positive to sell U.S.-origin products to our customers, domestic and overseas.

14. Honestly, it is quite difficult for us to understand a country's unilateral regulations written in English.

15-1. Most of the Japanese exporters are faithfully complying with the U.S. re-export control regulations, and are confirming even with domestic suppliers whether the product is U.S.-origin or not, or if it is a direct product of any U.S. technology.

15-2. The additional burden of complying with the U.S. re-export control should be eliminated since Japan is already implementing its national export controls as strictly as the country.

16. We have no options of source countries for parts and components when developing our leading edge products, in which case the applicable technology, not country of origin, comes to the top of the priority list. In our opinion, it is meaningless to apply the U.S. re-export control to those countries in which export controls are poorly implemented. To the contrary, however, it is also meaningless to apply them to those countries like Japan that are already advanced in establishing own export control systems. However, if the U.S. Government still insists on maintaining the extraterritorial application of its export control laws and regulations, it should at least simplify and streamline the regulations so that

everybody can understand them without any difficulties.

17. In addition to do it based on the Japanese law, we conduct classification on all our products based on the EAR, which is a dual burden on our company.

18. So far we have had no particular troubles in exporting our products that are U.S.-origin or include U.S. contents. Rather, we sometimes have difficulties in classifying those that are direct products of U.S. technology.

19. Countries that are members of the international export control regimes should be excluded from the U.S. re-export control.

20. For our company, it's a time and cost consuming task to implement the extra controls on exports or procurement of products that contain U.S.-origin items or those that are direct products of U.S. technology. What is most problematic in such transactions is that U.S. suppliers sometimes have no ability to classify their own products, or the ECCNs given by them are unreliable or incorrect. It is strongly requested, therefore, that the U.S. authority establish an effective system to provide relevant ECCNs or USML category numbers from American suppliers to foreign importers.

21. If the U.S. Government really wishes to push through its own export control laws and regulations to other countries, it must at least simplify and streamline the regulations and provide useful services to help non-U.S. exporters implement them easily.

22. The U.S. Government should spend its energy not to apply its own re-export control to other countries, but to build up an appropriate international framework of export controls that must be implemented equally by all countries in the world, where the level of export controls still varies from country to country.

23. Japan already has its national export control law and regulations, and no additional control, whether it is U.S. re-export control, is necessary. However, suppose the U.S. Government still wants to maintain the re-export control for any reasons, it should make it simple enough for everybody to comply with. The present U.S. regulations are too tangled and complicated to understand.

24. Once imported to Japan, the goods, technology, or software comes under the jurisdiction of Japan, not of any third countries. It's pure and simple.

25. Our company has just started implementing our controls to comply with the U.S. re-export control. At this moment we are just responding to the requests from our business partners to issue a Letter of Assurance in relation to the U.S. control.

26. Some of our products include U.S. contents. The largest problem for us in complying with the U.S. re-export control is the de minimis calculations. To identify U.S.-origin items out of thousand of parts and components contained in our product requires countless time and money. It's our strong desire that countries that are excellent in export control compliance be excluded from the U.S. re-export control. Moreover, we are now receiving increased number of inquiries related to the EAR from our business partners, and they make such inquiries not only associated with actual exports but also for their internal control purpose only, which is adding rather meaningless costs to our company. Also, the U.S.

Government should realize the fact that we frequently get into troubles that our suppliers can't answer whether their parts and components are U.S.-origin items or not, or answer relevant ECCNs themselves.

27-1. Recent revisions to the EAR make us feel that the regulations are becoming worse. The long-awaited change in the de minimis rule dated on October 1, 2008, for example, turned out to be undigested, and the introduction of the new concept of "bundled software" has made us foreign exporters even confused. We dare say that it would have been much better if the BIS had done nothing in this respect.

27-2. Another example is the revision announced in the Federal Register, 74FR770, of January 8, 2009. With this revision, a new Note was added in respect to the end-user based control related to Burma in Section 744.22 of the EAR, saying, "Entities owned more than 50% by SDNs are themselves SDNs, even if not listed." BIS referred to the OFAC Guidance dated February 14, 2008 as a ground for this addition. But it is impossible for us non-U.S. persons to reach the Guidance itself unless we go through cumbersome steps of net searching. If the authority refers to any "Guidance," it must, of course, be publicly accessible without any difficulties. In addition, before saying "even if not listed," the BIS should publish "Entities owned more than 50% by SDNs" as "SDN (BURMA)."

27-3. Whether the items are Japanese- or U.S.-origin, we will stop any exports if we have come up with any concerns about their end-uses or end-users. But we must point to the fact—an essential part of security export control—that the circumstances of our customers, who are third parties in third countries, will change as time passes. We, in the Export Control Division of our company, are responsible not only for preventing our products from going to any evil hands but also for preventing ourselves getting involved in any legal troubles. Besides conducting necessary screening on each export transaction, we must, therefore, have a proper program for making ourselves ready to cope with any emergencies. In this regard, while we may consult with the Japanese authority METI, nobody in Japan wants to face any emergency issue that involves himself/herself in a situation of consulting with the U.S. Government. Therefore, as a simple mechanism, an increasing number of Japanese companies will try to avoid using U.S.-origin products.

28-1 Countries that are implementing rigorous export controls based on national laws and regulations should be excluded from the U.S. re-export control.

28-2. If the U.S. Government really wants to prevent non-U.S. companies from illicitly diverting U.S.-origin goods and technologies, it should implement the required control not extraterritorially but within the framework of the agreements made in the international export control regimes.

28-3. At least the U.S. Government should simplify its regulations and provide useful services to help non-U.S. companies comply with them easily.

29. Our company has so far had no cases of electing non-U.S. products for a reason of the U.S. re-export control. But from now on, we will consider it as an important factor in selecting foreign parts and components, because our company is now consuming increasing amount of time and money for dealing with the U.S. regulations.

30. If the U.S. Government forces other countries to comply with its export control laws and regulations

extraterritorially, it must at least provide useful written guidance and face-to-face consulting services, both in each country's language. The U.S. authority must realize that in Japan CISTEC holds the U.S. re-export control seminar at least five times each year. At each seminar an audience of several hundred people gets together at the place. That involves quite a big money.

31. Most of the advanced countries are implementing export controls in accordance with the agreements made in the international export control regimes. Each country's export control regulations, therefore, should be decided within the international control framework. However, if the U.S. Government wants to apply its own regulations to other countries, it must first reform the complicated multi-agency regulatory system, where different sets of regulations are involved, into one single set of regulations that should be administered under one single authority. Further, the U.S. authority should provide useful guidance written in Japanese if it forces us Japanese companies to comply with the regulations. Also, the U.S. government's administration within the own country seems very weak contrary to its strong outreach activities promoting foreign exporters' awareness. Suffice it to say as evidence that U.S. suppliers, in many cases, can't answer relevant ECCNs of their own products to our inquiries. Therefore, under these circumstances, we'd better keep ourselves away from the U.S. re-export control by not using U.S.-origin products, nor exporting any products that include U.S. contents. Otherwise we can't be hundred percent clean under the U.S. regulations.

CISTEC

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February 19, 2009

The U.S. Department of Commerce
Bureau of Industry and Security

Attention: Mr. Christopher R. Wall, Assistant Secretary of Export Administration

Dear Mr. Wall,

Subject: Parts and Components Inquiry

We the Center for Information on Security Trade Control (CISTEC), a non-profit organization in Japan, are very pleased to submit herewith our comments in response to your parts and components inquiry made in the Federal Register 74 FR 413 dated January 5, 2009. Over the past years, as you may be aware, CISTEC has been constantly sending a delegation to BIS to exchange views mainly on the issue of extraterritorial application of the U.S. export control regulations. We would therefore take this as the right opportunity to present our views once again, with live data this time, for your due perusal.

To respond to your request, we conducted a quick survey making a questionnaire based on your inquiries. We sent it to our 352 member companies and received answers from 116 respondents, who are all leading companies in Japan operating businesses worldwide. The responses shown here do represent the majority opinions of Japanese industry. The answers, together with the questionnaire, are all translated into English, graphed out and attached to this letter for your reference and analysis.

The individual facts, comments and opinions collected here are direct voices of your "CUSTOMERS," and, therefore, we sincerely hope that you take those into serious consideration when you review your policies.

But before going into the details attached, please read the key points we summed up as below:

1. When actually required in the past to elect either non-U.S. or U.S.-origin items;

(1) 17% of the respondents answered that they straightaway elected non-US items disregarding the classification of the U.S.-origin items because they thought it's more efficient and cost effective. (Question 1-a-3)

(2) 13% of the respondents answered that, in order to avoid any legal risks, they elected non-US items even if they knew that the U.S.-items were non-controlled. (Question 1-a-4)

Please refer to the answers to Questions 1-a-5 and 2(c), which are a collection of lost businesses to America.

2. When required in the future to elect either non-U.S. or U.S.-origin items;

(1) 90% of the respondents answered that they would elect non-U.S. items in case the U.S.-origin items were controlled and required a license. (Question 1-b-1)

(2) 50% of the respondents answered that they would straightaway elect non-U.S. items disregarding the classification of the U.S.-origin items because they think it's more efficient and cost effective. (Question 1-b-3)

The above results imply a trend that the stricter the U.S. export control regulations become, the more non-U.S. exporters elect non-U.S. parts and components for their products.

3. The free opinions received as responses to Question 6-f can be summarized as below.

(1) The U.S. Government should abandon the extraterritorial application of its export control regulations since it's a violation of the international law and moreover imposes dual burden on non-U.S. exporters.

(2) Or otherwise it should be rearranged and be maintained within the framework of the international export control systems so that its unilateral aspect can be eliminated.

(3) If, however, the U.S. Government still insists on keeping the extraterritorial application as it is now, it must at least take the following steps immediately.

a) The member nations of the multilateral export control regimes should be excluded from the countries subject to the control because those countries, including Japan, are considered implementing national export controls no less strictly than the U.S.

b) It must be made mandatory for U.S. exporters to inform relevant ECCNs to their foreign importers.

c) Useful guidance must be published and face-to-face consultation service must be provided, both in our language.

d) The complicated regulations of the EAR must be simplified and streamlined so that everybody can understand them without difficulties. Moreover, the present multi-agency regulatory system, where different sets of regulations are intertwined, must be reformed into one single set of regulations that should be administered under one single authority.

4. Conclusion

On the basis of the attached comments from Japanese companies, we would like to make the following requests to your BIS, as we did in our official letter dated September 7, 2007 to Mr. Mario Mancuso, the then Under Secretary for Industry and Security, U.S. Department of Commerce.

4.1 *Our ultimate requests*

First of all, we must respectfully stress that the current extraterritorial way of applying the U.S. export control regulations is seriously influencing your own economy in disproportionate to contributing to national security. We believe BIS should make 'good foreign exporters', who are your customers and never a threat for national security, to easily and properly choose and purchase US-origin items.

Therefore, we would like to request BIS to exempt countries which are members of all of export control treaties/multilateral regimes and also have established appropriate export control laws/systems (e.g. Japan) from U.S. re-export control, as requested in "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 15, 2008.

Alternatively, it would be also appreciated if BIS would create a new and much broader license exception for reexports from countries which meet the above-mentioned criteria in the EAR (US Export Administration Regulations), as requested in "Recommendations for Modernizing Export Controls on Dual Use Items" dated March 6, 2007 of the "Coalition for Security and Competitiveness" formed by the U.S. leading industrial associations, such as NAM, AeA, and so on.

4.2. Our requests as a transitional measure

As a transitional measure, we would like to request BIS to stipulate as soon as possible in the EAR the US exporters' legal obligation to provide the importers with the export control classification information (e.g. ECCN), as requested in the above-mentioned "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 15, 2008.

In this regard, we must point to the fact that many of the respondents indicate that a good percentage of U.S. companies are even unable to classify their products themselves or reluctant to provide the classification information to the importers mainly due to the lack of the above-mentioned legal obligation, and that it is causing considerable amounts of extra time and money to each company in Japan. This is one of the main reasons of Japanese companies' avoidance of the purchase or adoption of US origin items.

CISTEC

It is our strong desire that our comments presented here be a good help for your policy review.

Sincerely,

Tsutomu Oshida

Tsutomu Oshida
Executive Managing Director, CISTEC

Attachments:

Exhibit 1: The questionnaire
Exhibit 2: Survey results for Category No.1 to No.6
Exhibit 3: Comments in response to questionnaire Category No.1 (a-5)
Exhibit 4: Comments in response to questionnaire Category No.1 (a-6)
Exhibit 5: Comments in response to questionnaire Category No.2 (c)
Exhibit 6: Comments in response to questionnaire Category No.4 (a-2) and (b-2)
Exhibit 7: Comments in response to questionnaire Category No.5 (b)
Exhibit 8: Comments in response to questionnaire Category No.6 (f)

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/19/2009 12:34:52 PM
Subject: Fwd: Public Comments on Parts and Components Inquiry

Ashley/Jennifer:

Please see the attached comments and supporting materials from **Tsutomu Oshida (Executive Managing Director, Center for Information on Security Trade Control / CISTEC)** in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> "Kiyotaka Sakurazawa" <k-sakurazawa@cistec.or.jp> 02/19/09 4:30 AM >>>

February 19, 2009

The U.S. Department of Commerce
Bureau of Industry and Security

Attention: Mr. Christopher R. Wall, Assistant Secretary of Export Administration

Dear Mr. Wall,

Subject: Parts and Components Inquiry

We the Center for Information on Security Trade Control (CISTEC), a non-profit organization in Japan, are very pleased to submit herewith our comments in response to your parts and components inquiry made in the Federal Register 74 FR 413 dated January 5, 2009. Over the past years, as you may be aware, CISTEC has been constantly sending a delegation to BIS to exchange views mainly on the issue of extraterritorial application of the U.S. export control regulations. We would therefore take this as the right opportunity to present our views once again, with live data this time, for your due perusal.

To respond to your request, we conducted a quick survey making a questionnaire based on your inquiries. We sent it to our 352 member companies and received answers from 116 respondents, who are all leading companies in Japan operating businesses worldwide. The responses shown here do represent the majority opinions of Japanese industry. The answers, together with the questionnaire, are all translated into English, graphed out and attached to this letter for your reference and analysis.

The individual facts, comments and opinions collected here are direct voices

of your
"CUSTOMERS," and, therefore, we sincerely hope that you take those into serious
consideration when you review your policies.

But before going into the details attached, please read the key points we summed up
as below:

1. When actually required in the past to elect either non-U.S. or U.S.-origin items;

(1) 17% of the respondents answered that they straightaway elected non-US items
disregarding the classification of the U.S.-origin items because they thought it's
more efficient and cost effective. (Question 1-a-3)

(2) 13% of the respondents answered that, in order to avoid any legal risks, they
elected non-US items even if they knew that the U.S.-items were non-controlled.
(Question 1-a-4)

Please refer to the answers to Questions 1-a-5 and 2(c), which are a collection of
lost businesses to America.

2. When required in the future to elect either non-U.S. or U.S.-origin items;

(1) 90% of the respondents answered that they would elect non-U.S. items in case
the U.S.-origin items were controlled and required a license. (Question 1-b-1)

(2) 50% of the respondents answered that they would straightaway elect non-U.S. items
disregarding the classification of the U.S.-origin items because they think it's more
efficient and cost effective. (Question 1-b-3)

The above results imply a trend that the stricter the U.S. export control regulations
become, the more non-U.S. exporters elect non-U.S. parts and components for their products.

3. The free opinions received as responses to Question 6-f can be summarized as below.

(1) The U.S. Government should abandon the extraterritorial application of its
export control regulations since it's a violation of the international law and
moreover imposes dual burden on non-U.S. exporters.

(2) Or otherwise it should be rearranged and be maintained within the framework of
the international export control systems so that its unilateral aspect can be eliminated.

(3) If, however, the U.S. Government still insists on keeping the extraterritorial
application as it is now, it must at least take the following steps immediately.

a) The member nations of the multilateral export control regimes should be excluded
from the countries subject to the control because those countries, including Japan,
are considered implementing national export controls no less strictly than the U.S.

b) It must be made mandatory for U.S. exporters to inform relevant ECCNs to their
foreign importers.

c) Useful guidance must be published and face-to-face consultation service must be
provided, both in our language.

d) The complicated regulations of the EAR must be simplified and streamlined so that
everybody can understand them without difficulties. Moreover, the present multi-agency
regulatory system, where different sets of regulations are intertwined, must be reformed
into one single set of regulations that should be administered under one single authority.

4. Conclusion

On the basis of the attached comments from Japanese companies, we would like to make
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U.S. export control regulations is seriously influencing your own economy in disproportionate
to contributing to national security. We believe BIS should make 'good foreign exporters',
who are your customers and never a threat for national security, to easily and properly choose
and purchase US-origin items.

Therefore, we would like to request BIS to exempt countries which are members of all of export control treaties/multilateral regimes and also have established appropriate export control laws/systems (e.g. Japan) from U.S. re-export control, as requested in "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 15, 2008.

Alternatively, it would be also appreciated if BIS would create a new and much broader license exception for reexports from countries which meet the above-mentioned criteria in the EAR (US Export Administration Regulations), as requested in "Recommendations for Modernizing Export Controls on Dual Use Items" dated March 6, 2007 of the "Coalition for Security and Competitiveness" formed by the U.S. leading industrial associations, such as NAM, AeA, and so on.

4.2. Our requests as a transitional measure

As a transitional measure, we would like to request BIS to stipulate as soon as possible in the EAR the US exporters' legal obligation to provide the importers with the export control classification information (e.g. ECCN), as requested in the above-mentioned "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 15, 2008.

In this regard, we must point to the fact that many of the respondents indicate that a good percentage of U.S. companies are even unable to classify their products themselves or reluctant to provide the classification information to the importers mainly due to the lack of the above-mentioned legal obligation, and that it is causing considerable amounts of extra time and money to each company in Japan. This is one of the main reasons of Japanese companies' avoidance of the purchase or adoption of US origin items.

It is our strong desire that our comments presented here be a good help for your policy review.

Sincerely,

Tsutomu Oshida
Executive Managing Director, CISTEC

Attachments:

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If you have any questions on comments, please contact CISTEC as following e-mail.

Best regards,

Kiyotaka Sakurazawa, Senior Researcher
Center for Information on Security Trade Control
Phone: 81(0) 3-3593-1146
Fax: 81(0)3-3593-1138
E-mail: k-sakurazawa@cistec.or.jp

COMMENTS

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18 February 2009

US EXPORT CONTROLS

BUSINESSEUROPE CONTRIBUTION TO THE PUBLIC CONSULTATION BY THE U.S. COMMERCE DEPARTMENTS' BUREAU OF INDUSTRY AND SECURITY

Introduction

The U.S. Commerce Department's Bureau of Industry and Security (BIS) has issued a request for public comment on whether U.S. export controls influence decisions by manufacturers worldwide to use U.S.-origin parts and components in commercial products. As the Confederation of European business, representing companies across Europe through 40 national business federations of 34 European countries, BUSINESSEUROPE has collected several cases from companies located in a variety of Member States of the European Union (EU) which illustrate that EU manufacturers consider the potential applicability of U.S. export controls to their end-products when choosing between U.S. and non-U.S. parts suppliers.

European companies are supportive of the principle of export controls on dual use goods and are compliant with current EU and international regulation to this end. Although European companies fully support the right of the United States to put in place its own export controls policy, tailored to its own security and competitiveness needs, there are specific difficulties for European companies when dealing with US export controls legislation. The examples below confirm that there is evidence of manufacturers declining to incorporate U.S.-origin parts and components because of the potential applicability of the Export Administration Regulations (EAR) to their endproducts.

In response to our request for input from our members, a number of companies have also put forward their examples of where regulation around US embargoes has a similar effect as the EAR. Though we recognise that this is not the original object of the BIS' request, and that the context does differ, we have nonetheless included this information.

Selected cases

Case 1:

The company strictly avoids US software when designing controls for its machines and buys custom made computers, strictly without any US made hardware in order to avoid triggering the *de minimis* provision. These efforts are costly, but the company believes that they in the end pay off, since they put the company in the position to secure business and gain additional market access.

More broadly, the company advises its research and development and procurement departments to strictly avoid US goods. Its philosophy is a clear "design-out" of all US origin goods. Even a US good which - as defined by the EAR - is "incorporated" in the final product can lead to tremendous problems if it has to be shipped later as a spare part. As the company strives to be a reliable and speedy business partner for all our customers, we see no choice but to strictly avoid US content wherever possible.

Case 2:

In choosing a Denied Party screening tool, this company deliberately avoided products that sent transactional data to servers located in the US due to the possibility that all its transactions would be subject to Office of Foreign Assents

Control (OFAC) facilitation rules and EAR Part 744.3.a.1. For the same reason the company avoided dealing with US citizens.

In the late 1990s the company outsourced transducer production to US Original Equipment Manufacturers (OEM's) because of high quality at a lower price than in the EU, but due to EAR 744.3.a.1. and the Entity List the company is shifting production back to high-quality OEM's elsewhere despite the slightly higher costs. Now the company can market the same products worldwide with greater certainty.

Case 3:

As far as technically possible, the company tries not to use US items in its products and replace them with identical non-US-items, especially if these products may be exported to US embargo countries.

The company's decisions regarding the location of new production plants are influenced by US export regulations. If the products are destined for a worldwide market, production plants will not be established in the USA or at least parts of the production will be located outside USA.

The hosting of servers for Enterprise Resource Planning (ERP) systems is strictly maintained outside the USA if worldwide customer data is stored on these systems.

Some suppliers forbid the company to use their US items in our products, if they are shipped to critical US countries, even if the de minimis level is below 10 % and all re-export regulations are observed. In such cases the company changes the supplier.

Case 4:

The company steers its commodity transactions in such a way that a registration of European enterprises with US authorizing agencies is not necessary (i.e. by direct shipments).

US export control regulations are too difficult and too complex to understand. There are various authorities in charge of export controls. It is very difficult for companies to determine which authorities is the right one to contact. The company would very much welcome a "single window" approach.

Case 5:

The firm uses economic criteria for the selection of components from the US. The administrative burdens (license applications, reporting, tracking, record keeping) can outweigh the potential price benefits.

As some US suppliers seem not to be familiar with their own regulations, the company has experienced problems because of improper licenses. This creates problems after the parts are delivered because the company has to ensure that it complies with the US regulations. As a result, the company no longer uses these suppliers.

Case 6:

One company has implemented a specific process to manage export control data in its product development processes The following is a summary:

- In the early product development stages the design is checked for compliance with the *de minimis* rule (U.S. EAR)
- In practice this means a systematic approach to products with U.S. content. If the U.S. content in the product is equal to or higher than 10%, the product is redesigned to reduce the U.S. content to less than 10%.
- If a critical U.S. item is found, e.g. an encryption item, which makes it impossible to apply *de minimis*, the product is redesigned to remove this blocking U.S. item.

o If there is a possibility to choose between 2 component sources, the source is chosen which is not subject to the U.S. EAR. The second option is to choose non-US origin component subject to the U.S. EAR. The third option is to choose U.S. origin component.

Case 7:

Due to many additional activities concerning the International Traffic and Arms Regulations (ITAR) our company tries to avoid receiving deliveries under ITAR regulations. The requirement to receive a guarantee from the national government that a company handles the US-items according to the US law especially causes it difficulties.

Case 8:

ITAR does in fact represent a decisive factor when planning and preparing what parts and components are used when manufacturing products - especially when such products are planned for distribution to markets outside the US. Such components are avoided to the extent possible.

The company frequently meets specific requirements from customers that no ITAR restricted components or data are included in deliveries for that customer.

The definition and restrictions in the ITAR regulation regarding re-export to foreign nationals mean that compliance with these requirements leads to a conflict with national laws as well as EU laws on anti discrimination and protection of personal data.

Case 9:

The use of ITAR components and/or the involvement in ITAR-restricted projects require that extensive compliance control and risk management procedures are in place - considerably beyond what is required under national/EU laws. This adds significantly to administrative costs.

Case 10:

In order to deal with US export control regulation, this company has installed a specific software process to manage information on US products. US produced dual use goods requiring licences are systematically excluded.

For destinations which are embargoed by the US, the company proposes, where possible, equivalent products which do not include US technologies or compontents.

Case 11:

Certain electrical motors used in household equipment are EAR-99 US-origin components. In line with the de-minimis rule the equipment consists of 13% USorigin components. This company was advised to design these components out if sales to embargoed countries are part of the business. A sale of this equipment is generally not violating EU regulations on most embargoed countries.

Case 12:

Certain services (e.g. call centres) can not be supplied by US companies as US persons shall not be involved in certain transactions (e.g. with certain embargoed countries). Such US companies cannot be part of such tenders.

Case 13:

In the case of this company, all US-origin materials and materials with US material content are blocked for the countries covered by US re-export restrictions. This leads to limitations of use and reluctance to use US materials at all, due to the potential penalties. The exterritorial application of US export and re-export restrictions, beyond UN embargoes, has disadvantages for the manufacturing

plants of multinational companies in US.

Case 14:

As a general rule, the company tries to keep the US content in its products as low as possible, and well below 10%, to avoid the application of US embargo rules. These rules present an unforeseeable risk it is difficult to predict as nobody knows about tomorrow's list of embargoed countries.

US content is of particular risk since the US rules do not guarantee the supply of spare parts for legal exports into embargo countries (not even for medical equipment).

The company welcomes the latest alteration of the "*de minimis*" rule for foreign made products as a good step forward to an acceptable situation, but the spare part issue still remains a major problem.

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/19/2009 12:35:06 PM
Subject: Fwd: Parts and Components Inquiry

Ashley/Jennifer:

Please see the attached comments submitted by **Anka Schild (Adviser, International Relations Department, BUSINESSEUROPE)** in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> Schild Anka <a.schild@businesseurope.eu> 02/19/09 12:21 PM >>>
Dear Sir/Madam,

Please find enclosed the submission of BUSINESSEUROPE, the Confederation of European Business, to the BIS request for public comments on the effects of exports controls on the decision to use or not use U.S.-origin parts and components in commercials products.

Do not hesitate to contact me for further information.

Sincerely yours,
Anka Schild
Adviser, International Relations Department
BUSINESSEUROPE
The Confederation of European Business
Avenue de Cortenbergh, 168
B-1000 Brussels
Tel.: 00 32 (0)2 / 237.65.29
E-mail: a.schild@businesseurope.eu<mailto:a.schild@businesseurope.eu>
Visit our website at www.businesseurope.eu<http://www.businesseurope.eu/>

BUSINESSEUROPE

COMMENTS

18 February 2009

US EXPORT CONTROLS

BUSINESSEUROPE CONTRIBUTION TO THE PUBLIC CONSULTATION BY THE U.S. COMMERCE DEPARTMENTS' BUREAU OF INDUSTRY AND SECURITY

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- The firm uses economic criteria for the selection of components from the US. The administrative burdens (license applications, reporting, tracking, record keeping) can outweigh the potential price benefits.
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- One company has implemented a specific process to manage export control data in its product development processes The following is a summary:
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  - If there is a possibility to choose between 2 component sources, the source is chosen which is not subject to the U.S. EAR. The second option is to choose non-US origin component subject to the U.S. EAR. The third option is to choose U.S. origin component.

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- Due to many additional activities concerning the International Traffic and Arms Regulations (ITAR) our company tries to avoid receiving deliveries under ITAR regulations. The requirement to receive a guarantee from the national government that a company handles the US-items according to the US law especially causes it difficulties.

Case 8:

- ITAR does in fact represent a decisive factor when planning and preparing what parts and components are used when manufacturing products - especially when such products are planned for distribution to markets outside the US. Such components are avoided to the extent possible.
- The company frequently meets specific requirements from customers that no ITAR restricted components or data are included in deliveries for that customer.
- The definition and restrictions in the ITAR regulation regarding re-export to foreign nationals mean that compliance with these requirements leads to a conflict with national laws as well as EU laws on anti discrimination and protection of personal data.

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- In the case of this company, all US-origin materials and materials with US material content are blocked for the countries covered by US re-export restrictions. This leads to limitations of use and reluctance to use US materials at all, due to the potential penalties. The exterritorial application of US export and re-export restrictions, beyond UN embargoes, has disadvantages for the manufacturing plants of multinational companies in US.

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- As a general rule, the company tries to keep the US content in its products as low as possible, and well below 10%, to avoid the application of US embargo rules. These rules present an unforeseeable risk it is difficult to predict as nobody knows about tomorrow's list of embargoed countries.
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- The company welcomes the latest alteration of the "*de minimis*" rule for foreign made products as a good step forward to an acceptable situation, but the spare part issue still remains a major problem.

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/20/2009 2:01:08 PM
Subject: Fwd: Parts and Components Inquiry

Ashley/Jennifer:

Please see the following comments submitted by **Creighton Chin (Communications & Power Industries)** in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> "Chin, Creighton" <creighton.chin@cpii.com> 02/19/09 7:47 PM >>>
In response to BIS's request for public comments on the effects of export controls on decisions to use or not use U.S.- Origin parts and components in commercial products and the effects of such decisions Communications & Power Industries is submitting the following two examples of how US export requirements negatively effect US exports.

1) The level of due diligence that a US Exporter must perform to document and substantiate "knowledge of a transaction", particularly with EAR99 products, is negatively impacting a foreign company's decision to buy US origin components.

CPI has learned that Israel has established a special government office that issues end use statements for defense articles and dual use commodities in order to control the dissemination of the end use information and to insure that the information is only used for export control purposes rather than to gain a competitive advantage. As a result, some companies such as ELTA, when all else being equal, would rather buy from a source, US or foreign, that does not require end use information to avoid having to go through and additional process to obtain an end use statement from the Israeli government. This is particularly true for EAR99 commodities that generally do not require an export license to Israel.

This places companies such as CPI, who asks for the end use information as part of the company's due diligence, at a disadvantage when compared to foreign companies offering similar products or US companies who are not as diligent as CPI.

2) BIS has requested on a cases by case basis a translated business license and a description of the party's business activities, in addition to the normal supporting documents (e.g. BIS-711, end use statements, and purchase orders) to establish the bona fides of the transaction. The foreign customer has expressed their frustration with the licensing process and the requirement to provide additional information. From their perspective it's an unnecessary hassle when comparable products can be obtained from European sources with out a license.

Examples of the above are licenses D39933 and D39932 in which request BIS requested translated business licenses and a description of the parties business. The export licenses were for the export of Traveling Wave Tubes (ECCN: 3A001) to MCI Europa for re-export to Russia for use

as a spare TWTs for US origin amplifiers (ECCN: EAR99) used by the Russian Satellite Communications Company (RSCC). Comparable TWTs can be obtained from Thales Electron Devices located in France and E2V located in the U.K.

Additionally, the export licenses included a proviso requiring the defective TWTs, owned by RSCC, be returned to the US. This is an administrative burden for all involved as it requires creating new processes to ensure that the defective TWTs, which could fail tomorrow, a month from now, or two years from now, are returned to the U.S. and destroyed, at an additional cost, in accordance with local hazardous material disposal laws. This added cost of business makes foreign suppliers more attractive and negatively affects US exports.

Should you have any questions or require additional information concerning the above examples, I may be reached at 650-846-3021.

Best Regards,

Creighton Chin

Communications & Power Industries

<html><body>

 </body></html>

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/20/2009 2:01:20 PM
Subject: Fwd: Parts and Components inquiry: Aircraft Electronics Association Comments

Ashley/Jennifer:

Please see the attached comments submitted by **Jason Dickstein (General Counsel, Aircraft Electronics Association)** in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> "Jason Dickstein" <jason@washingtonaviation.com> 02/20/09 12:01 AM >>>
Attached are the comments from the Aircraft Electronics Association in response to The Effects of Export Controls On Decisions to Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions, 74 Fed. Reg. 263 (January 5, 2009).

--

Jason Dickstein, General Counsel

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The Effects of Export Controls On Decisions to Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions

74 Fed. Reg. 263 (January 5, 2009)

Comments on the Notice of Inquiry
Submitted by email to publiccomments@bis.doc.gov

Submitted by the Aircraft Electronics Association

3570 NE Ralph Powell Road
Lee's Summit, MO 64064

For more information, please contact:

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AIRCRAFT ELECTRONICS ASSOCIATION

The Effect of Export Controls On Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions, 74 Fed. Reg. 263 (January 5, 2009)
Comments on the Notice of Inquiry
Submitted by email to publiccomments@bis.doc.gov

February 19, 2009

U.S. Department of Commerce
Bureau of Industry and Security
Office of Technology Evaluation
ATTN: Parts and Components Inquiry
Room 2705
Washington, DC 20230

Dear Sir or Madam:

Please accept these comments pursuant to the Notice of Inquiry, The Effect of Export Controls On Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions, which was offered to the public for comment at 74 Fed. Reg. 263 on January 5, 2009.

Table of Contents

I. Who is AEA?

The Aircraft Electronics Association (AEA) is an international organization representing over 1,300 company members dedicated to the general aviation electronics industry. AEA recently celebrated its 50th birthday as a trade association – it has spent the lion's share of that time based in Missouri (although it was originally formed in Texas). AEA's membership includes avionics repair stations, manufacturers and distributors.

AEA supports efforts to improve safety and regulatory awareness among its members and in the industry as a whole. AEA has proactively sought to raise awareness of the US export rules among both its domestic and its non-US members. To this end, AEA has published export compliance articles in its monthly magazine and has provided export compliance training at its Annual Convention and at Regional Meetings. AEA has provided export education to its members with respect to export regulations published by the Commerce, State, and Treasury Departments.

II. Comments in Response to the Commerce Department Inquiry

All of AEA's 1300 members buy and sell – whether it is manufacturers who buy components to use in their products and then sell them to installers or dealers, or repair stations who buy and stock avionics articles for installation in customers' aircraft, and then sell the articles to the customer. AEA's members represent a valuable part of the U.S. aerospace industry, which, as a whole, was responsible for a trade balance of $60.4 billion in 2007. The export of aerospace parts including general aviation electronics components makes up a vital piece of U.S. industry and trade.

A. Many Avionics Require Export Licenses

Avionics are particularly vulnerable to US export restrictions. Although it is true that generally most US exports subject to Commerce Department export jurisdiction do not require export licenses, this generalization does not hold true when applied to avionics. A significant percentage of commercial avionics are subject to missile technology (MT) restrictions under the current export regulations. Export articles that are subject to MT restrictions usually need export licenses (except to Canada).

B. Issue: Complexity of the Rules and Fear of Non-Compliance

Aviation is a global marketplace; however there are some US companies that have affirmatively decided to only sell to domestic customers, and have actively refused to service non-US customers.

The main reason for turning away business in this manner is because of a fear that the regulations are too complex to readily permit compliance. Companies fear that they cannot export properly in compliance with the often-bewildering export regulations. The companies that make this decision tend to be smaller companies that do not feel that they can afford the sort of expert third-party compliance advice that larger companies are able to hire.

ASA has started to provide day-long export training workshops, as well as shorter export training opportunities, in order to promote compliance with the regulations, and to make small aerospace companies feel more comfortable with the export regulations so that they will start engaging in export transactions.

C. General Aviation Avionics Often Cannot Rely on Aviation Industry License Exceptions

The need to obtain export licenses can significantly impede an unplanned transaction. If a foreign aircraft operator needs replacement avionics on an expedited basis, it may be far more reasonable to purchase the avionics from a foreign manufacturer rather than buying American and waiting for the appropriate licenses to issue.

There are a number of license exceptions that apply to aircraft articles, but they tend to anticipate a transaction in support of an air carrier and ignore the modern complexities of avionics transactions. In particular, 15 C.F.R. 740.15 provides exceptions for supporting aircraft, and for supporting air carriers; but the licensing exception ignores the fact that most installations are performed by repair stations.

A repair station working for a US air carrier or on a US registered aircraft may be able to use 15 C.F.R. 740.15(c) to avoid licensing requirements, but AEA's 1300 members mostly service general aviation aircraft, like business jets, agricultural aircraft, firefighting aircraft, emergency medical aircraft, personal aircraft, etc. A foreign repair station that intends to obtain avionics to support aircraft in these categories is unlikely to find a clause in 15 C.F.R. 740.15 that provides relief from export licensing, unless the repair station waits until the aircraft is onsite (the repair station can use 15 C.F.R. 740.15(b) for the aircraft parts so long as the aircraft registry and other information is known). But this is inefficient, because potentially long lead times often make it commercially necessary to order the articles and hold them in stock before the customer is identified.

In the normal case of an unplanned installation (e.g. replacement of damaged avionics), the repair station will rely o nits existing stock of parts, and supplement whatever it does not have with purchases from competitors or other colleagues in the industry. These supplemental purchases must often be made quickly – too quickly to permit waiting for an export license.

So this vast market is beginning to find it easier in some cases to obtain foreign manufactured avionics than to rely on avionics exported from the United States.

D. Repair Stations and Upgrades

Under the current rules, there is an exception from the licensing requirements that applies to parts that are sent to the U.S. for repair and then exported back to their origin. 15 C.F.R. § 740.10.

Companies are willing to send repair business to the US because the work is high quality and it can be accomplished within a reasonable turn-around time. Often, the original equipment manufacturer of the article is in the United States, and many avionics manufacturers have licensed networks of authorized repair stations who possess the manufacturers' repair data to facilitate high-quality repairs. The repairs may also be conducted by independent repair stations under the Instructions for Continued Airworthiness, which are made available to repair stations and others who need to comply with them under 14 C.F.R. § 21.50(b).

The licensing exception of 15 C.F.R. § 740.10 helps to make sure that turn-around times are not onerous. If a license was required to return the articles to their foreign owners, then the foreign owners would probably not bother to send the articles to the United States for repair – instead they would send them to a foreign repair station; and if maintenance became too onerous then this would affect future purchase decisions.

There are several problems with the regulation that creates this licensing exception. One of them is that it is common for articles to need to be upgraded for safety reasons. The upgrades may be manufacturer-ordered (service bulletins) or they may be required by the FAA (airworthiness directives under 14 CFR Part 39). But the licensing exception does not apply when the article has been upgraded.

It may be impossible to know whether an upgrade is necessary until the component is at the US repair station's facility. At that time, the repair station may undertake an inspection and find that an upgrade is required. But if this will affect the licensing exception, then the customer may choose not to do it. This represents a loss of income for the US companies, which lose the upgrade business, and it also reflects a diminution of safety because the foreign customer chooses not to implement a safety upgrade. Comparing foreign commercial aviation accident rates with US accident rates shows that the US commercial aviation system is safer than that of any other part of the world, by a statistically relevant margin. Part of the reason for this safety is that safety upgrades are implemented frequently in the US, and are often mandated by the FAA for US civil aviation.

Thus, the fact that the exception found in 15 C.F.R. § 740.10 does not include parts that have been altered/modified leads to both a loss of business for the US economy and a diminution of safety for the rest of the world.

E. Example: De Minimis Rule

One example of the effect of export regulations can be found in the recent proposal to modify the *de minimis* rule that applies to regulated CCL 7A commodities.

For purposes of the aerospace community, category 7A represents avionics components. The *de minimis* standard allows US suppliers to provide avionics subcomponents to foreign manufacturers. The effect of U.S. export regulations can be seen in how foreign manufacturer try to keep the level of US content below the *de minimis* threshold. If the US content is below the threshold, US export laws do not come into effect for re-export of the item. This precaution is taken because foreign manufacturers perceive the US export restrictions to be onerous (without regard to whether they truly are as onerous as they seem). The 25% *de minimis* standard has encouraged foreign manufacturers to rely on US components in their avionics designs.

In researching the likely effects of an elimination of the *de minimis* standard, we were told by our European contacts that European manufacturers already take the *de minimis* rule into account, and that they would likely find alternative sources for components if the rule were eliminated.

In the case of the proposed elimination of the 7A *de minimis* rule, this was not an idle threat. Many US origin components are also produced outside the United States. While elimination of the *de minimis* rule would cause initial inconvenience to European manufacturers and distributors, most avionics components of the sort that are critical are available from overseas suppliers. For example, accelerometers of the sort that the United States considerers to be missile technology are available from CORRSYS-DATRON (Germany), Siemens (Germany), Murata (Japan) and BAE (UK). Similarly, gyros/angular rate sensors of the sort that the United States considerers to be missile technology are available from CORRSYS-DATRON (Germany), Siemens (Germany), and Murata (Japan).

In addition, the US suppliers of non-critical supplies would also be affected by the proposal. Thus, if a foreign avionics manufacturer obtains their angular rate sensors from Siemans, but obtains some non-critical components from US suppliers, the elimination of the *de minimis* rule would also cause the non-US buyer to seek out non-US sources for the non-critical components, because of the impact of the elimination of the *de minimis* rule (there is certainly no business reason to accept US export controls on your inertial avionics when the inertial

components did not come from the United States, but instead you merely relied on US suppliers for other non-critical components!).

The fact that currently, foreign manufacturers seek to purchase parts that fall under the *de minimis* rule exception shows that other countries consider U.S. export law consequences when purchasing U.S.-sourced goods.

In fact, the *de minimis* rule was added to the EAR in 1987 to "alleviate a major trade dispute with allies who strenuously objected to U.S. assertion of jurisdiction over all re-exports of non-U.S. items that contained even small amounts of U.S. content"[1]

Our communications with foreign aerospace parties have confirmed that the *de minimis* rule has been effective, because it is considered by foreign manufacturers who consider whether to incorporate US content in their designs.

F. Eliminate Conflicting Guidance

The State Department issued a rule on August 14, 2008 that was announced as 'clarifying' the State Department's policy with respect to which aircraft parts are considered commercial for export purposes, and which ones are considered to be governed by the International Traffic in Arms Regulations (ITARs). The true effect of this rule, though, was to expand the range of civil aircraft parts that are considered to potentially fall within the State Department's export jurisdiction, and it actually seems to have made the proper categorizations of many aircraft parts MORE confusing, instead of achieving the clarification that Congress had requested and that the State Department had promised.

Deciding which regulatory regime applies to an export can be difficult if the part is a dual-use part (one installed on both civilian and military models of an aircraft). This is particularly true of avionics, because many modern avionics features may arguably fall within the scope of technologies that the State Department wishes to control, but it can apply to almost any part because of the preference for commercial off-the-shelf aircraft parts (civil aircraft parts) exhibited in recent years by the Department of Defense (particularly the Air Force). While the use of civil aircraft parts in military aircraft and engines saves the taxpayers money while maintaining a high level of reliability, it also creates ambiguities about the nature of the parts when trying to decide whether they are defense-related or civilian for export jurisdiction purposes.

The New State Department regulations make an alarming confusion between the phrase "standard equipment in an aircraft" and the notion of "standard parts." Historically, the phrase standard equipment in an aircraft has been interpreted

[1] Request for Public Comments on the Prospect of Removing 7A Commodities From De Minimis Eligibility, Federal Register, 73 Fed. Reg. 70322, 70323 (Nov. 20, 2008).

according to its apparent plain meaning. But the new regulations provide a very different meaning to this seemingly simple phrase. The rule states that "A part or component is not standard equipment if there are any performance, manufacturing or testing requirements beyond" industry specifications and standards. This seems to suggest that any part that has any quality assurance elements, or other manufacturer-designated testing standards associated with it will be deemed to be NOT standard equipment. Practically all civil aircraft parts will have some manufacturer-specified elements to them. The language of the rule makes it clear that any item that is not based on a "civil aviation industry specification [or] standard" is not standard equipment. This is a clear confusion between the intent of the original Export Administration Act, which was meant to exclude normal aircraft equipment, and the much more limited category of standard parts (which are excluded from the PMA requirement under 14 C.F.R. 21.303(b)).

The State Department explicitly states that "in determining whether a part or component may be considered as standard equipment and integral to a civil aircraft (e.g., latches, fasteners, grommets, and switches) ... a part approved solely on a non-interference/provisions basis under a type certificate issued by the Federal Aviation Administration would not qualify. Similarly, unique application parts or components not integral to the aircraft would also not qualify." This seems to suggest that a part that is approved under a STC/ PMA combination based in part on a "no-technical-objection letter" from the OEM would not be considered standard equipment for purposes of determining export jurisdiction.

This rule could be a nightmare for distributors seeking to export aircraft parts, if it is interpreted to permit the State Department to extend jurisdiction over all non-SME parts that are not manufactured as standard parts. It means that any civil aircraft part that falls into the scope of the vague language of the USMLs could be deemed to be an ITAR item. For example, parts associated with an inertial system could be deemed to be ITAR items – even an old-fashioned spinning-mass gyro.

Some replacement parts might be marketed by the manufacturer under a single part number for a civilian model installation and the same part number for a different defense-related article installation. This represents a hidden trap for distributors, who could unwittingly export the part as a civilian model item with no knowledge that it was subject to the ITARs. Under prior interpretations, the fact that it met the three elements of the civil aircraft exception was sufficient, but under the convoluted language of the State Department rule, it is possible that the part may no longer be considered to meet the exception!

The Commerce Department issued its own interpretation on December 3 that further refines the State Department interpretation. The Commerce interpretation ameliorated the worst aspects of the State Department interpretation, but it did so

by essentially creating a conflict in interpretation. This creates more confusion in the industry and a greater level of uncertainty.

Domestic businesses wishing to avoid that uncertainty will avoid export transactions; foreign businesses wishing to avoid uncertainty will avoid purchasing products from the United States.

G. Outdated Categorizations and State Department Assertion Leads to a Loss of US Export Business

A Non-US repair station that is a member of AEA recently complained to us about the need to obtain export licenses for replacement gyros. The gyros were spinning mass gyros of a design that is at least 50 years old.

The gyros were known as C-12 gyros. The member had an old C-12 brochure dated 1972 and knows that they date back at least to the 1960s. So this is not new technology. The C-12 was discontinued sometime after 1989.

They had apparently been the subject of a commodity jurisdiction, because the manufacturer indicated that the gyros were controlled by the ITAR, despite the fact that no one could identify a military use that predated the civilian uses of the gyro.

These were old gyros used on civilian aircraft in civilian avionics. No one could identify the historical reason why the gyros had been identified as USML items. By all rights, they should have been subject to section 17(c) of the EAA and should have been subject to Commerce jurisdiction. But instead, State Department jurisdiction was asserted.

A commodity jurisdiction request to recharacterize the gyro was out of the question for this one-time need. The complexity of the export licensing process in this case caused the repair station to obtain gyros from a foreign source, that would not have to be imported from the United States and thus would not require an export license.

This is one example of the sort of situations that require the Commerce Department to be more assertive in protecting its jurisdiction from State Department encroachment. Failure to clearly delineate Commerce's jurisdiction over civilian aircraft products will lead to more foreign buyers avoiding US products.

H. We Are Facing a Future in Which "NOT Made in the USA" Becomes a Marketing Claim

In the software world, you can already find software that is promoted with claims *that it is not subject to the United States export administration regulations.*[2] As US exports become more and more burdened by export regulations, it would make sense for foreign manufacturers to begin to use the fact that they use no US content as a marketing feature to distinguish themselves from products that are more onerous to obtain.

This would represent the sort of negative promotion that would undercut US export goals by casting US content into a negative light, and promoting as a positive thing the fact that a product is disconnected from the United States. Such promotion would be contrary to US export policies with respect to the promotion and increase of US exports.

III. Conclusion

There are a number of steps that can be taken in order to ease the adverse *affect of export regulations* on US exports. Each of these proposals would positively affect US exports without jeopardizing US policy interests.

The licensing exception found at 15 C.F.R. § 740.10 does not include parts that have been altered/modified. This leads to both a loss of business for the US economy and a diminution of safety for the rest of the world. Including "authorized alterations" of articles manufactured under FAA production approval and defining "authorized alterations" to mean those that meet the requirements of Title 14 Chapter 1 of the Code of Federal Regulations would not jeopardize US policy interests and it would support US repair business while also supporting global safety.

The Commerce Department has primary jurisdiction over civil aircraft exports under EAA section 17(c). State Department initiatives threaten to encroach on this jurisdiction. It is important for the Commerce Department to stand-up for the industry and to guard its jurisdiction over civil aircraft parts. .

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[2] See, e.g., Gray, GNU launches free encryption tool, CNN.com (September 9, 1999) (*announcing the release of GnuPG, which was promoted for its freedom from* US export controls due to the fact that it was developed outside the United States) (http://www.cnn.com/TECH/computing/9909/09/gnupg.idg/index.html); see also a list of privacy and encryption software packages found at http://www.afn.org/~afn21533/rgdprogs.htm, which announces which packages are not subject to US EAR restrictions.

Thank you for affording industry this opportunity to help improve the proposal to make it better serve the needs of the U.S. export community. We appreciate the efforts of the Commerce Department in this regard.

Your consideration of these comments is greatly appreciated.

Respectfully Submitted,

Jason Dickstein
Washington Counsel
Aircraft Electronics Association

for

Ric Peri
Vice President of Government Affairs
Aircraft Electronics Association

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/20/2009 2:01:33 PM
Subject: Fwd: Parts and Components Inquiry: Aviation Suppliers Association Comments

Ashley/Jennifer:

Please see the attached comments submitted by **Jason Dickstein (General Counsel, Aviation Suppliers Association)** in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> "Jason Dickstein" <jason@washingtonaviation.com> 02/20/09 12:01 AM >>>
Attached are the comments from the Aviation Suppliers Association in response to The Effects of Export Controls On Decisions to Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions, 74 Fed. Reg. 263 (January 5, 2009).

--

Jason Dickstein, General Counsel

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The Effects of Export Controls on Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions

74 Fed. Reg. 263 (January 5, 2009)

Comments Pursuant to the Request for Public Comments
Submitted by email to publiccomments@bis.doc.gov

Submitted by the Aviation Suppliers Association

2233 Wisconsin Ave, NW, Suite 503
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The Effects of Export Controls on Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions
74 Fed. Reg. (January 5, 2009)
Comments Pursuant to the Request for Public Comments
Submitted by email to publiccomments@bis.doc.gov

February 19, 2009

U.S. Department of Commerce
Bureau of Industry and Security
Office of Technology Regulation
ATTN: Parts and Components Inquiry
14th St. and Pennsylvania Ave. NW
Room 2705
Washington, DC 20230

Dear Sir or Madam:

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Table of Contents

Who is ASA?

Founded in 1993, ASA represents the aviation parts distribution industry, and has become known as an organization that fights for safety in the aviation marketplace. ASA primarily represents civil aircraft parts distributors.

ASA members buy and sell aircraft parts. These aircraft parts transactions take place domestically and internationally. ASA members have found that foreign buyers are concerned about US export compliance, and that compliance issues influence their purchasing decisions. As a consequence, ASA's members have a great interest in any proposed future changes to the Export Administration Regulations (EAR).

Comments on the Notice of Inquiry

Currently, ASA members see the effects of U.S export regulations in how purchasers buy U.S.-sourced goods. They also see the effect in the decisions made by persons who forbear from US export transactions because of fear of the complexity of the US export regulations.

Issue: Complexity of the Rules and Fear of Non-Compliance

Aviation is a global marketplace; however there are some US companies that have affirmatively decided to only sell to domestic customers, and have actively refused to service non-US customers.

The main reason for turning away business in this manner is because of a fear that the regulations are too complex to readily permit compliance. Companies fear that they cannot export properly in compliance with the often-bewildering export regulations. The companies that make this decision tend to be smaller companies that do not feel that they can afford the sort of expert third-party compliance advice that larger companies are able to hire.

ASA has started to provide day-long export training workshops, as well as shorter export training opportunities, in order to promote compliance with the regulations, and to make small aerospace companies feel more comfortable with the export regulations so that they will start engaging in export transactions.

Issue: Using U.S. Repair Stations for Upgrades

Under the current rules, there is an exception from the licensing requirements that applies to parts that are sent to the U.S. for repair and then exported back to their origin. 15 C.F.R. § 740.10.

It has become common for non-US air carriers and other foreign parties to use US agents to select repair vendors in the United States. ASA member companies often provide this sort of logistics support. The foreign owner would send the part to the US logistics provider. The US logistics provider would send it to a repair station for maintenance, and then the part would be shipped back to the foreign customer – either through the US logistics provider or directly by the repair station (depending on the business relationships).

Companies are willing to send repair business to the US because the work is high quality and it can be accomplished within a reasonable turn-around time. Often, the original equipment manufacturer of the article is in the United States, and that OEM may license its data to a repair station nin the United States to facilitate high-quality repairs. The repairs may also be conducted by independent repair stations under the Instructions for Continued Airworthiness, which are made available to repair stations and others who need to comply with them under 14 CFR § 21.50(b). The licensing exception of 15 C.F.R. § 740.10 helps to make sure that turn-around times are not onerous. If a license was required to return the articles to their foreign owners, then the foreign owners would probably not bother to send the articles to the United States for repair.

There are several problems with the regulation that creates this licensing exception. One of them is that it is common for articles to need to be upgraded for safety reasons. The upgrades may be manufacturer-ordered (service bulletins) or they may be required by the FAA (airworthiness directives under 14 CFR Part 39). But the licensing exception does not apply when the article has been upgraded.

It may be impossible to know whether an upgrade is necessary until the component is at the US repair station's facility. At that time, the repair station may undertake an inspection and find that an upgrade is required. But if this will affect the licensing exception, then the customer may choose not to do it. This represents a loss of income for the US companies, which lose the upgrade business, and it also reflects a diminution of safety because the foreign customer chooses not to implement a safety upgrade. Comparing foreign commercial aviation accident rates with US accident rates shows that the US commercial aviation system is safer than that of any other part of the world, by a statistically relevant margin. Part of the reason for this safety is that safety upgrades are implemented frequently in the US, and are often mandated by the FAA for US civil aviation.

Thus, the fact that the exception found in 15 C.F.R. § 740.10 does not include parts that have been altered/modified leads to both a loss of business for the US economy and a diminution of safety for the rest of the world.

Example: De Minimis Rule

One example of the effect of export regulations can be found in the recent proposal to modify the *de minimis* rule that applies to regulated CCL 7A commodities.

For purposes of the aerospace community, category 7A represents avionics components. The *de minimis* standard allows US suppliers to provide avionics subcomponents to foreign manufacturers. The effect of U.S. export regulations can be seen in how foreign manufacturer try to keep the level of US content below the *de minimis* threshold. If the US content is below the threshold, US export laws do not come into effect for re-export of the item. This precaution is taken because foreign manufacturers perceive the US export restrictions to be onerous (without regard to whether they truly are as onerous as they seem). The 25% *de minimis* standard has encouraged foreign manufacturers to rely on US components in their avionics designs.

In researching the likely effects of an elimination of the *de minimis* standard, we were told by our European contacts that European manufacturers already take the *de minimis* rule into account, and that they would likely find alternative sources for components if the rule were eliminated.

In the case of the proposed elimination of the 7A *de minimis* rule, this was not an idle threat. Many US origin components are also produced outside the United States. While elimination of the *de minimis* rule would cause initial inconvenience to European manufacturers and distributors, most avionics components of the sort that are critical are available from overseas suppliers. For example, accelerometers of the sort that the United States considerers to be missile technology are available from CORRSYS-DATRON (Germany), Siemens (Germany), Murata (Japan) and BAE (UK). Similarly, gyros/angular rate sensors of the sort that the United States considerers to be missile technology are available from CORRSYS-DATRON (Germany), Siemens (Germany), and Murata (Japan).

In addition, the US suppliers of non-critical supplies would also be affected by the proposal. Thus, if a foreign avionics manufacturer obtains their angular rate sensors from Siemans, but obtains some non-critical components from US suppliers, the elimination of the *de minimis* rule would also cause the non-US buyer to seek out non-US sources for the non-critical components, because of the impact of the elimination of the *de minimis* rule (there is certainly no business reason to accept US export controls on your inertial avionics when the inertial

components did not come from the United States, but instead you merely relied on US suppliers for other non-critical components!).

The fact that currently, foreign manufacturers seek to purchase parts that fall under the *de minimis* rule exception shows that other countries consider U.S. export law consequences when purchasing U.S.-sourced goods.

In fact, the *de minimis* rule was added to the EAR in 1987 to "alleviate a major trade dispute with allies who strenuously objected to U.S. assertion of jurisdiction over all re-exports of non-U.S. items that contained even small amounts of U.S. content"[1]

Our communications with foreign aerospace parties have confirmed that the *de minimis* rule has been effective, because it is considered by foreign manufacturers who consider whether to incorporate US content in their designs.

Eliminate Conflicting Guidance

The State Department issued a rule on August 14, 2008 that was announced as 'clarifying' the State Department's policy with respect to which aircraft parts are considered commercial for export purposes, and which ones are considered to be governed by the International Traffic in Arms Regulations (ITARs). The true effect of this rule, though, was to expand the range of civil aircraft parts that are considered to potentially fall within the State Department's export jurisdiction, and it actually seems to have made the proper categorizations of many aircraft parts MORE confusing, instead of achieving the clarification that Congress had requested and that the State Department had promised.

Deciding which regulatory regime applies to an export can be difficult if the part is a dual-use part (one installed on both civilian and military models of an aircraft). This is particularly true of avionics, because many modern avionics features may arguably fall within the scope of technologies that the State Department wishes to control, but it can apply to almost any part because of the preference for commercial off-the-shelf aircraft parts (civil aircraft parts) exhibited in recent years by the Department of Defense (particularly the Air Force). While the use of civil aircraft parts in military aircraft and engines saves the taxpayers money while maintaining a high level of reliability, it also creates ambiguities about the nature of the parts when trying to decide whether they are defense-related or civilian for export jurisdiction purposes.

The New State Department regulations make an alarming confusion between the phrase "standard equipment in an aircraft" and the notion of "standard parts." Historically, the phrase standard equipment in an aircraft has been interpreted

[1] Request for Public Comments on the Prospect of Removing 7A Commodities From De Minimis Eligibility, Federal Register, 73 Fed. Reg. 70322, 70323 (Nov. 20, 2008).

according to its apparent plain meaning. But the new regulations provide a very different meaning to this seemingly simple phrase. The rule states that "A part or component is not standard equipment if there are any performance, manufacturing or testing requirements beyond" industry specifications and standards. This seems to suggest that any part that has any quality assurance elements, or other manufacturer-designated testing standards associated with it will be deemed to be NOT standard equipment. Practically all civil aircraft parts will have some manufacturer-specified elements to them. The language of the rule makes it clear that any item that is not based on a "civil aviation industry specification [or] standard" is not standard equipment. This is a clear confusion between the intent of the original Export Administration Act, which was meant to exclude normal aircraft equipment, and the much more limited category of standard parts (which are excluded from the PMA requirement under 14 C.F.R. 21.303(b)).

The State Department explicitly states that "in determining whether a part or component may be considered as standard equipment and integral to a civil aircraft (e.g., latches, fasteners, grommets, and switches) ... a part approved solely on a non-interference/provisions basis under a type certificate issued by the Federal Aviation Administration would not qualify. Similarly, unique application parts or components not integral to the aircraft would also not qualify." This seems to suggest that a part that is approved under a STC/ PMA combination based in part on a "no-technical-objection letter" from the OEM would not be considered standard equipment for purposes of determining export jurisdiction.

This rule could be a nightmare for distributors seeking to export aircraft parts, if it is interpreted to permit the State Department to extend jurisdiction over all non-SME parts that are not manufactured as standard parts. It means that any civil aircraft part that falls into the scope of the vague language of the USMLs could be deemed to be an ITAR item. For example, parts associated with an inertial system could be deemed to be ITAR items – even an old-fashioned spinning-mass gyro.

Some replacement parts might be marketed by the manufacturer under a single part number for a civilian model installation and the same part number for a different defense-related article installation. This represents a hidden trap for distributors, who could unwittingly export the part as a civilian model item with no knowledge that it was subject to the ITARs. Under prior interpretations, the fact that it met the three elements of the civil aircraft exception was sufficient, but under the convoluted language of the State Department rule, it is possible that the part may no longer be considered to meet the exception!

The Commerce Department issued its own interpretation on December 3 that further refines the State Department interpretation. The Commerce interpretation ameliorated the worst aspects of the State Department interpretation, but it did so

by essentially creating a conflict in interpretation. This creates more confusion in the industry and a greater level of uncertainty.

Domestic businesses wishing to avoid that uncertainty will avoid export transactions; foreign businesses wishing to avoid uncertainty will avoid purchasing products from the United States.

Conclusion

The US export rules currently act to shapes the decisions of foreign purchasers as to whether to use or not use U.S.-origin parts and components, as well as whether to rely on US businesses to provide services to products subject to export licensing provisions..

There are a number of remedies to this issue that should be considered:

The Commerce Department should consider expanding the scope of the exception found at 15 C.F.R. § 740.10 to include upgrades, modifications and alterations. If the Commerce Department is concerned that such a change in the regulations could have adverse consequences outside the aviation community, then the Commerce Department might consider limiting the exception only to upgrades, modifications and alterations performed in accordance with Chapter One of Title 14 C.F.R. This body of regulations requires such upgrades, modifications and alterations to be performed according to FAA-acceptable practices (14 C.F.R. § 43.13(a)), and in such a manner as to return the article to an FAA-approved configuration (14 C.F.R. §§ 43.13(b); 145.213(b)). The work must be performed according to FAA-approved data if it is a major alteration (14 C.F.R. § 145.201(c)(2)).

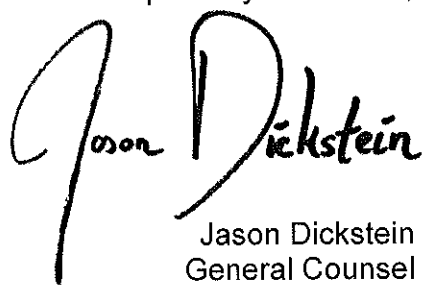
The Commerce Department could also consider supporting trade association efforts to bring low-cost high-quality export training to the small businesses that need this training.

The Commerce Department should also work with the State Department to eliminate State Department interpretations of Section 17(c) of the Export Administration Act. The State Department interpretations conflict with Commerce Department guidance, and they cause considerable confusion.

Thank you for affording industry this opportunity to comment on the proposed rule to help make it better serve the needs of the U.S. aviation industry. We appreciate the efforts of the Commerce Department in this regard.

Your consideration of these comments is greatly appreciated.

Respectfully Submitted,



Jason Dickstein
General Counsel
Aviation Suppliers Association

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/20/2009 2:02:00 PM
Subject: Fwd: Wtrlt: Federal Register Vol. 74, No. 2 -> comments fromGermany

Ashley/Jennifer:

Please see the attached comments submitted by **Christina Kechagias (Chamber of Industry and Commerce for Munich and Upper Bavaria)** in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> <Kechagias@muenchen.ihk.de> 02/20/09 3:35 AM >>>
Dear Ladies and Gentlemen,
enclosed I send you our comments regarding the above mentioned request
(see E-mail below).

Best regards,

Christina Kechagias

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>>> Christina Kechagias 02/19/09 3:01 >>>
Dear Ladies and Gentlemen,

in the Federal Register Vol. 74, No. 2 a notice was published, that the Bureau of Industry and Security (BIS) is seeking public comment on whether U.S. export controls influence manufacturers' decisions to use

or not use U.S.-origin parts and components in commercial products and the effects of such decisions.

We - the Chamber of Commerce for Munich and Upper Bavaria in cooperation with the other Chambers of Commerce in Bavaria - send you our comments in form of a report in the enclosed file.

If you have any question regarding the report please don't hesitate to contact us.

Best regards,

Christina Kechagias

Customs and Foeign Trade Law
Chamber of Industry and Commerce for Munich and Upper Bavaria
Munich / Germany

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Report

Impact of US-American Reexport Regulations on Bavarian Sourcing of US-origin Goods

1. Introduction

The following report is a response to the request for comments regarding the impact of the US-American export regulations on the sourcing of US-origin goods.

The Bavarian Chambers of Commerce in Germany conducted a survey among roughly a hundred Bavarian companies to find an answer to the above question reflecting the current situation in Bavaria. Bavaria is one of 16 German federal states in the south of our country. Bavaria has a strong industry and serves as location for many US-affiliated companies.

2. Content of Survey

The survey was conducted on the basis of a questionnaire including the following questions:

1.) Do the US-reexport regulations generally spoken have (negative) impact on the sourcing of US-American products?
   Possible answers:
   a.) significant impact
   b.) small impact
   c.) no impact

2.) Would a reduction of the complexity of the US-reexport regulations have (positive) impact on your sourcing on the US-American market?
   Possible answers:
   a.) significant impact
   b.) small impact
   c.) no impact

3.) To what extent your company would purchase products in the USA, if there were no US-reexport regulations? (Euros per year)
   Possible answers:
   a.) less than a 3-digit amount
   b.) 3-digit amount
   c.) 4-digit amount
   d.) 5-digit amount
   e.) 6-digit amount
   f.) 7-digit amount
   g.) more than a 7-digit amount
   h.) estimation not possible

4.) Headcount of the company
   Possible answers:
   a.) < 10 employees
   b.) 10 – 50 employees

c.) 51 – 100 employees
d.) 101 – 500 employees
e.) > 500 employees

5.) Industrial sector
(Without predefined answers)

3. Preliminary Remarks regarding the Complete List

As an instrument to make the answers to **question 3** more concrete the following correlation was set up (to have a calculable average amount):

less than a 3-digit amount	→ average of 50 Euros
3-digit amount	→ average of 500 Euros
4-digit amount	→ average of 5000 Euros
5-digit amount	→ average of 50000 Euros
6-digit amount	→ average of 500000 Euros
7-digit amount	→ average of 5000000 Euros
more than a 7-digit amount	→ average of 50000000 Euros

The answer "estimation not possible" was abbreviated as "e.n.p.".

The answers to **question 4** were assigned to size ranges assuming the following table:

< 10 employees and 10 – 50 employees	→ size range 1
51 – 100 employees	→ size range 2
101 – 500 employees	→ size range 3
> 500 employees	→ size range 4

The answers to **question** 5 (industrial sector) were categorized into 5 groups:

- mechanical engineering
- medical engineering & medicine
- chemical industry
- electrical industry & IT
- miscellaneous

4. Result of the Survey – Complete List

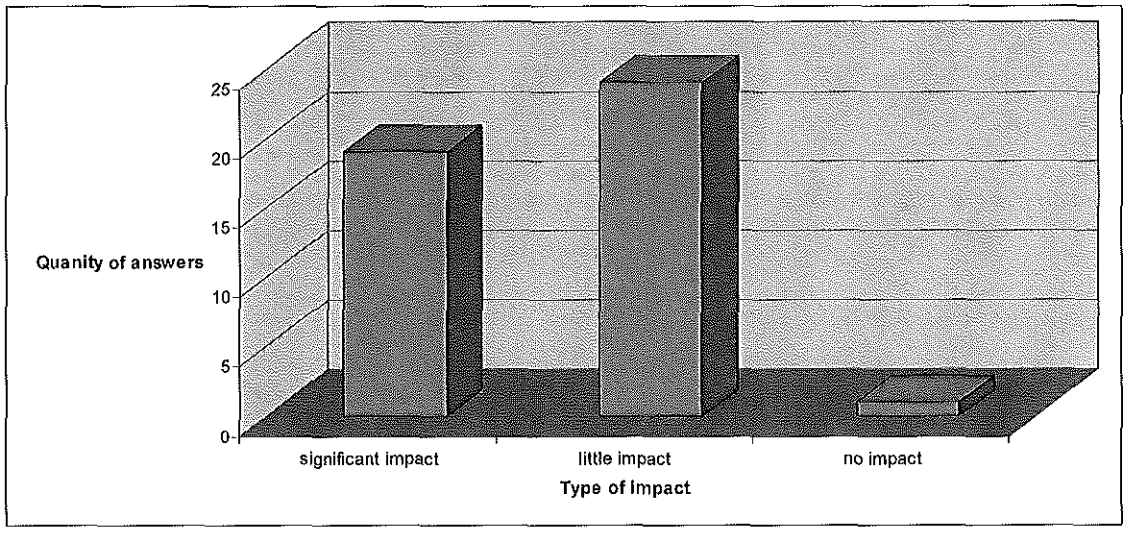
In the below list you can see the overall result. The list includes only the companies with relevant answers.

Complete List:

	Question 1			Question 2			Question 3	Q. 4	Question 5
No.	signifi-cant impact	small impact	no impact	signifi-cant impact	small impact	no impact	(Euros per year)		
1	1			1			50.000.000	4	miscellaneous
2	1			1			50.000.000	4	mechanical engineering
3		1				1	50.000	3	mechanical engineering
4		1			1		50.000	4	medical engineering & medicine
5		1				1		2	medical engineering & medicine
6		1			1		n.e.p.	2	mechanical engineering
7		1			1		500	1	mechanical engineering
8			1		1		n.e.p.	4	mechanical engineering
9	1			1			n.e.p.	3	chemical industry
10	1			1			50.000	3	mechanical engineering
11		1				1	500.000	4	chemical industry
12	1				1		5.000.000	4	miscellaneous
13		1			1		500.000	4	chemical industry
14		1			1		5.000	3	mechanical engineering
15	1			1			50.000	3	mechanical engineering
16	1			1			n.e.p.	1	miscellaneous
17		1		1			50.000	2	miscellaneous
18		1				1	50.000	3	mechanical engineering
19	1			1			500.000	3	miscellaneous
20		1			1		500.000	4	miscellaneous
21		1				1		2	mechanical engineering
22		1			1		5.000	1	electrical industry & IT
23	1			1			n.e.p.	1	electrical industry & IT
24	1				1		n.e.p.	1	electrical industry & IT
25		1			1		n.e.p.	4	mechanical engineering
26	1			1			n.e.p.	3	miscellaneous
27	1			1			n.e.p.	1	medical engineering & medicine
28		1			1		n.e.p.	3	mechanical engineering
29	1			1			500.000	1	medical engineering & medicine
30		1			1		50.000	4	mechanical engineering
31		1			1		500.000	4	mechanical engineering
32		1			1		n.e.p.	1	medical engineering & medicine
33	1			1			n.e.p.	4	electrical industry & IT
34		1			1		n.e.p.	1	miscellaneous
35		1			1		50	2	mechanical engineering
36		1			1		500.000	4	miscellaneous
37	1			1			5.000.000	4	miscellaneous
38		1				1		3	miscellaneous
39	1			1			500.000	2	electrical industry & IT
40		1			1		n.e.p.	3	medical engineering & medicine
41	1			1			5.000.000	4	medical engineering & medicine
42		1			1		n.e.p.	3	mechanical engineering
43	1				1		50.000	3	mechanical engineering
44	1			1			n.e.p.	3	mechanical engineering

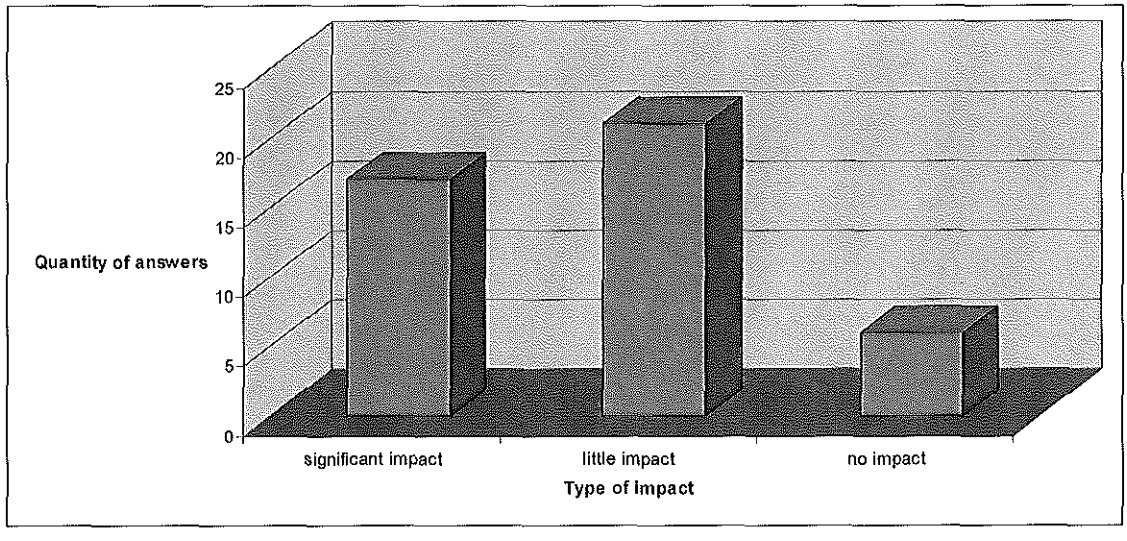
5. Detailed interpretation

Question 1: Do the US-reexport regulations generally spoken have (negative) impact on the sourcing of US-American products?



98 % of the relevant companies have indicated that the US-reexport regulations have significant or small impact on the sourcing of US-American products.

Question 2: Would a reduction of the complexity of the US-reexport regulations have (positive) impact on your sourcing on the US-American market?



86 % of the relevant companies have indicated that a reduction of the complexity of the US-reexport regulations would have significant or small impact on the sourcing of US-American products.

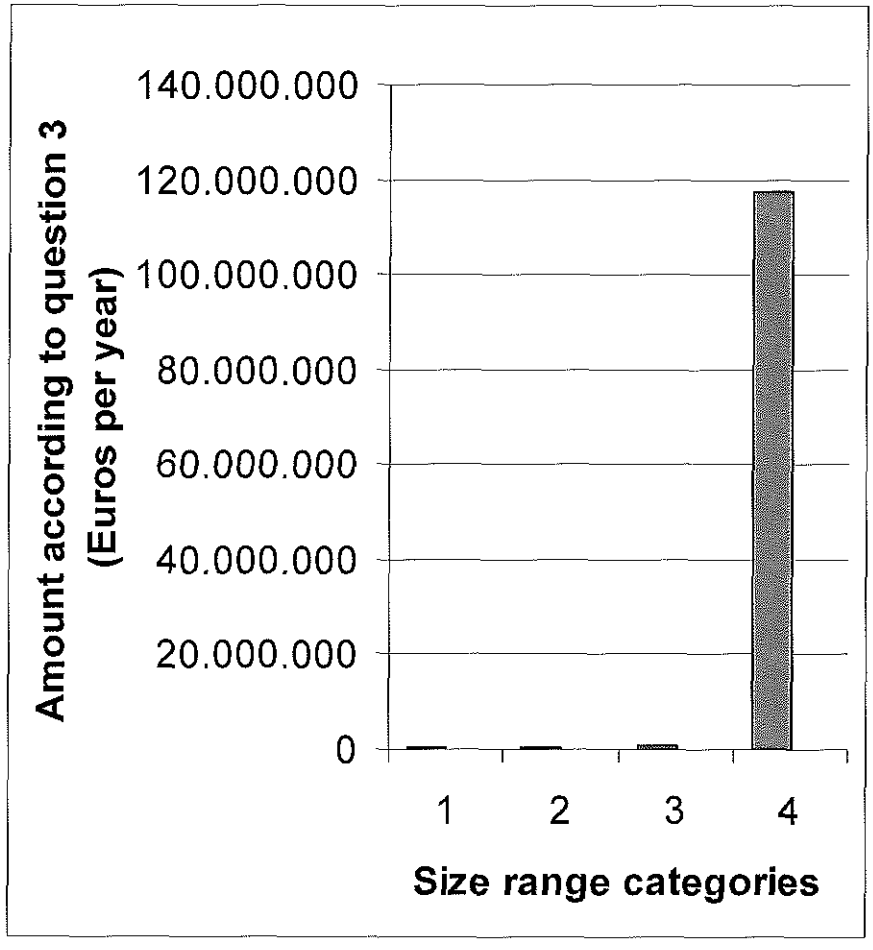
Question 3: To what extent your company would purchase products in the USA, if there were no US-reexport regulations?

Not considering the "n.e.p."- answers the aggregated answers of question 3 amount to **119.410.550 Euros** per year.

Considerung, that 36 % of the companies (16 of 44) could not estimate the amount according to question 3, the actual figure can be regarded as considerably higher.

Question 4 in connection with question 3:

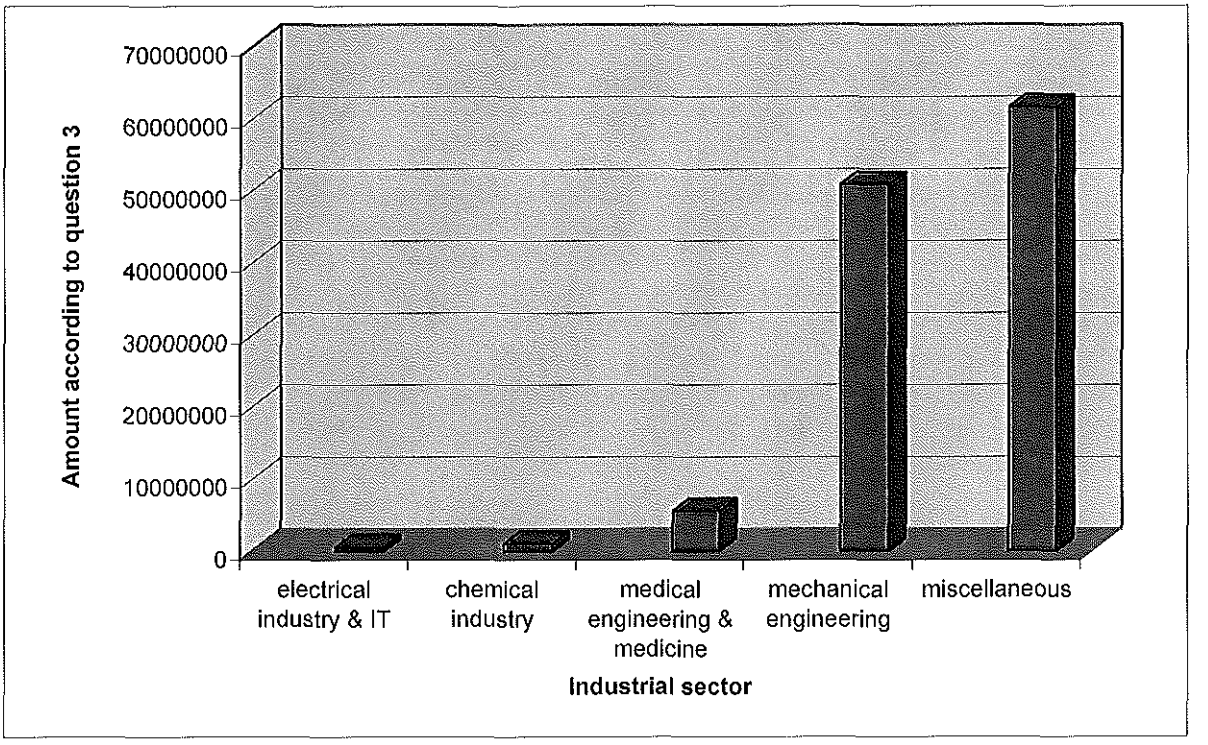
The following diagram shows the statistical distribution of the monetary amount (question 3) according to the four size range groups.



The lion's share of the overall amount of 119.410.550 can be ascribed to the group of companies with more than 500 employees.

Question 5 in connection with question 3:

The below diagram reflects the distribution of the amount (question 3) according to the industrial sector.



The industrial sector „miscellaneous" contains many different sectors, due to the variaty of the business fields a further subdivision is not possible.

6. General remarks

The information, that the Bureau of Industry and Security (BIS) is seeking public comment on whether U.S. export controls influence manufacturers' decisions to use or not use U.S.-origin parts and components, was received by our Chamber of Industry and Commerce only in calendar week 15 (last week!). So we needed to conduct the above described survey within a very short timeline. On this background the percentage of companies, that could be contacted by one of the Bavarian Chambers of Commerce is not comprehensive. **Nevertheless the result of the survey shows, that the impact of the US-reeport regulations on the sourcing of US-American goods is considerable.**

In the end we would like to express our appreciation, that the BIS has published the notice regarding the request for comments regarding the above topic.

Christina Kechagias, 19.02.09

Phone +49 / 89 / 5116 - 461
Customs and Foeign Trade Law
Chamber of Industry and Commerce for Munich and Upper Bavaria
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ALD Vacuum Technologies GmbH

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Parts and Components Study
Office of Technology Evaluation, Room 2705
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230
USA

The Solution

Ihr Zeichen	Unser Zeichen	Direktwahlen	Datum
	ALD/Z-EXKO RD/R	Fon: 06181.307-3468 Fax: 06181.307-3470 e-mail: marianne.rieth@ald-vt.de	11 February 2009

"Parts and Components Inquiry"

Dear Sir or Madam,

Thank you for the opportunity to offer comments on the subject matter, to "use or not use U.S. Origin Parts" as published in FR Jan 5, 2009 page 263..

1) About buying decisions abroad

Ordinarily the decision to use / buy items depends on quality, price, availability, renown of supplier, etc. etc.

If the item is made in USA, caveat reexporter, since you have to add costs for compliance and you have to be always on the alert for delivery restrictions at present or in the future.

2) Compliance costs abroad

Even for an already experienced European Export Controller it is an enormous additional task to learn and master the U.S. regulations of Commerce Department and OFAC.

Companies should assume 1000 working hours for the start (seminars, consultants, U.S. lawyers) and allocate permanently time for scrutinizing the Federal Register and the ever changing rules.

ALD Vacuum Technologies GmbH, Wilhelm-Rohn-Str. 35, 63450 Hanau, Tel.: +49-6181-307-0, Fax: +49-6181-307-3290
Ein Unternehmen der AMG Advanced Metallurgical Group N.V., Amsterdam, Niederlande
Geschäftsführung: Dr. Reinhard Walter (Vorsitzender), Dr. Matthias Häberle, Werner Ketzschner, Richard Seemann
Vorsitzender des Aufsichtsrates: Dr. Heinz Schimmelbusch
Handelsregisternummer HRB-Nr. 92377 Steuer-Nr. 035 225 01224/Finanzamt Offenbach am Main VAT: DE268853629
Bankverbindung: Commerzbank Hanau (BLZ 508 400 16), Konto 230 404 600, IBAN DE64 5064 0015 0230 4046 00, Swift COBA DE FF 506
Hypo-Vereinsbank Aschaffenburg (BLZ 795 200 70), Konto 366 829 849, IBAN DE56 7952 0070 0366 8298 49, Swift HYVE DE MM 407

Moreover, considerable resources are needed for creating a classification database for the many thousands of individual bolts, nuts, chips and electronics that manufacturing firms are using and exporting eventually. It is always an individual effort for purchasing departments to find out if an item was made in USA, is covered by any ECCN or is EAR 99.

Any legal obligation for U.S. exporters to state the ECCN or EAR 99 would help foreign importers in their struggle to comply with U.S. laws.

Examples: (1) US-made oscilloscope (2) big vacuum pump or (3) spare parts for the vacuum pump

(1)	EU-List: no	CCL: ECCN 3A292	EAR 99: no
(2)	EU-List: 2B231	CCL: ECCN 2B231	EAR 99: no
(3)	EU-List: no	CCL: no	EAR 99: yes

"Made in USA" is an information that may be engraved on the commodity or printed on a plate or stated in a document. However, before an U.S. made item can be reexported, one further question must be answered: How did the item come into the German company? Take for example the a.m. oscilloscope ECCN 3A292, which is required from a Chinese customer. If the item is ordered for this customer at any reseller (because no items are on stock outside USA) then this order is not the beginning of the reexport, but the start of an export from USA via Germany; see § 734.2 (b)(6).

§ 744.21 should be screened for license applications requirements because of possible "military end-uses". The "knowledge" for this has to be checked against defined U.S. standards. There might be alternatives from other countries for the U.S. oscilloscope ... if this topic becomes too complicated.

In other cases, however, like those involving computers and related operation software there are no alternatives. See TOC E 892, E 893, E 894 in BIS-Database *"...Mobil Sudan caused acts prohibited by ordering .... Dell Laptops ... ECCN 4A494 ...".*

Besides the cases of "causing, aiding or abetting a violation" which have been described in many settlement agreements the a.m. Mobil Sudan violations related to listed computers include a further "failure to comply with recordkeeping requirements" for an EAR 99-Software. Five years after the very act, one company in UK and one in Egypt could not present to the U.S. Enforcement "certain export control documents (including airway bills)".

The U.S. mandated "five year retention period" for all records described in § 762.2 may create reluctance especially in Austria. The Austrian export trade law (Außenhandelsgesetz 2005) mandates only a three year retention period.

Summing up these few examples, it is obvious that any foreign company that uses and reexports U.S. items needs considerable resources in manpower and money to cope with the extraterritorial reach of U.S. laws.

3) Causes for "Not Use" U.S. parts and components

The European List and the Commerce Control List (CCL) are much the same. So multilaterally listed items like the a.m. vacuum pump need a German license if exported from Germany to China or a U.S. license if exported from USA to China. However, if the U.S. made pump is reexported from Germany to China the License Exception APR, § 740.16 (j) provides for permissive reexport. This is possible since May 9, 1997, 62 FR, 25458, when the paragraph (j) was added to the APR.

3.1 Missing APR

The previous EAR 1994 (15 CFR Parts 768 – 799) contained a General License GNSG; see EAR 1994 Part 774 (2)(n) with the same content that the EAR 1998 (15 CFR Parts 730 – 774) had in § 740.16 (j).

Unfortunately for all reexporters, the rewritten EAR, published on March 25, 1996, 61 FR 12714 did not any longer contain the equivalent of GNSG. This non-occurrence in the new EAR hits approx. 100 ECCNs with Reason for Control NP Column 1 and therefore approx. 150 third countries lost permissive reexport-status.

The many attempts of European reexporters and their lawyers at BXA to remedy that failure were of no avail.

> Anecdotic information: BXA-Director Larry E. Christensen happened to be a speaker at a conference in London 11 – 12 November 1996. In discussions he made no allusion at all that the missing paragraph (j) might be "inadvertently omitted from the March 25 interim rule".

So every company concerned by the drop of the permissive reexport had to look for "ersatz". Some of these companies had to start – for certain exclusion of U.S. items – new developments and manufacturing lines at considerable costs. The time constraint for reaction was attenuated by the fact that the old EAR 1994 and the new interim rule of March 1996 were simultaneously in force for a few months.

3.2 Sudden License Requirements

An important other case with no reaction time, however, arose on April 14, 2005, when Australia Group items like ECCN 2B350 with Reason for Control CB Column 3 were changed to CB Column 2.

For approx. 120 target countries reexport authorizations were now mandated all at a sudden. There is no(t yet any) APR provision foreseen to protect foreign reexporters.

Since April 14, 2005 exists a level playing field inasmuch U.S. exporters had also to ask for a license what their European competitors had been doing for at least 15 years before – however, the U.S. rule forces the Europeans to ask for a second written license from Washington, so the level is again in favour for the U.S.

3.3 Extension of U.S. Extraterritoriality

A new prospect of BIS for transforming foreign made items into U.S. jurisdiction is hidden in a further request for public comment in FR Jan 6, 2009 page 413. If the foreign produced "direct product" of U.S. encryption technology will be changed from "not subject to the EAR" to "subject to the EAR", the foreign producer will be subject to new license and U.S. Government review requirements, he never thought of before. Anyone who fully understands these consequences will check possible evasions.

As a matter of fact according to the homepage of BAFA (German Federal Office of Economics and Export Control), the European Commission has requested BAFA to publish a link to the Federal Register Note of Jan 6, 2009.

4) Technology-Considerations

The a.m. examples made clear that the repugnance to use U.S. parts originates from the burden to apply for two licenses – at first a national license and another one from Washington. BIS should not underestimate the troubles foreigners have been enduring over the years: telephone calls to BIS for hours without connection, unanswered letters, delays of months, etc. So the only reliable way to reach BXA, now BIS is via U.S. lawyers. In many cases the costs therefore exceed even the value of the commodities involved. Consequently such business must be dropped, if no replacement is found, to the vexation of the people involved.

Other businesses where U.S. regulations cause reluctance abroad relate to possible technology-cooperations between U.S. companies and foreign companies. The companies may not be related to each other or one may be a mother company of other companies, etc.

As an example for the inherent problems we take the recently created ECCN 3A001 e.4. for Solar Cells with efficiency greater 20 % and ECCN 3E001 Technology for Development or Production of these items. The rule became effective on October 14, 2008 in USA and on January 2, 2009 in the EU.

The legal restrictions to the parties are much different: The EU-company may export technology 3E001 to the 27 EU-countries and by means of a EU General License EU 001 to 7 more countries, among them USA, whereas the U.S. company faces for the export of ECCN 3E001 the Reason for Control NS 1, but no License Exception is available.

Possibly the Department of State, Directorate of Defense Trade Controls must be involved in addition, for certain space qualified solar cells with higher efficiency (FR Oct. 14, 2008).

The U.S. License for ECCN 3E001 may readily be granted. However, in the riders and conditions the foreign partner of the U.S. company may find a much unexpected clause: the U.S. technology must not be made accessible to any foreigner who is not a citizen of any EU-country.

As often the case, highly qualified engineers of other nations are employed in European companies and embedded in the technical procedures of research, design, manufacturing etc.

There is neither a will – and often no possibility – to reorganize or to get rid of important members of the staff, which may be key persons. Also legal aspects prohibit discrimination due to ethnic origin (see General Equal Treatment Act, based on EU Council Directives).

> Remark:
> In the global job market U.S. citizens sometimes face rejection for getting certain key jobs because of their nationality. The reason are U.S. embargo rules, such as 31 CFR 560.208: "..... no U.S. person, wherever located, may approve, finance, facilitate any transaction ...."

There are a great number of ECCNs in the Commerce Control List, NS 1- or MT-controlled, with a duty for individual licenses.

The a.m. solar cell example is taken because of the ever increasing importance of the solar cell market in Germany due to national laws for the support of renewable energy. Consequently there are broad scale activities of research, manufacturing and export activities all over the country.

The cell efficiency of 20 % listed in 3A001 e.4 has been reached in laboratories, and those technicians, who developed this quality in the past, may now be uncertain if such cells may have the capacity of being "space qualified", and more important, if their manufacturing knowledge 3E001 has become export-restricted to third countries since January 2, 2009. Although the term "space qualified" or "weltraumgeeignet" is identically defined in USA and Europe, the rating decisions of the authorities is of national discretion in all countries. Exporters have been suffering in the past from controversial decisions between USA and Germany.

At the end of the day each company, research organization or university will have to make their "own arrangements" * regarding this new requirement in export control. One thing is important: a capable export control department at senior level must be in place in order to oversee these topics, here enumerated.

* The own arrangement may be the decision not to cooperate with U.S. partners.

5) Conclusions

Any company outside USA that uses U.S. made parts in the form received or incorporates them in their own products, concomitantly has to observe U.S. export regulations. It is a full-time job for highly qualified persons to even understand the complex regulations and then make the right decisions in the interest of the company, without compromising U.S. law.
The costs accumulate by: the export control department, U.S. lawyers in connection with reexport licenses and dubious interpretations, design changes and or search for non U.S. parts, complete drop of business due to U.S. regulations.

Companies inside USA may feel losses whenever foreign parties stop buying because of the reasons explained above.

Numerous propositions from competent U.S. parties to the U.S. Government have been made to reform the complex and contradictory textbooks of BIS and OFAC into one system. Europeans desire a new view of U.S. legislators, bearing new trust in the reliability of foreign authorities when they grant licenses. Double licensing could be discarded, by reforming License Exception § 740.16 (j), Additional Permissive Reexport, to include more items to more countries.

Sincerely yours,

ALD Vacuum Technologies GmbH

ppa. Dipl.-Ing. Rainer Debes
Export Control Manager

i.V. Dr. Bernhard Herkert
Former Manager of Export Control

From: RPD PublicComments
To: MILLER, ASHLEY; WATTS, JENNIFER
Date: 2/27/2009 7:45:37 PM
Subject: Fwd: "Parts and Components Inquiry"

Ashley/Jennifer:

Please see the following comments submitted by [redacted] in response to BIS's January 5, 2009, request for comments concerning the effects of U.S. export controls on foreign persons' decisions to use or not to use U.S.-origin products, parts, and components in foreign-made products.

>>> [redacted] 02/27/09 5:00 PM >>>
Kind of information requested: While specific and quantitative data will be particularly helpful, other types of information, even anecdotal, will also be useful. Quantitative data that is aggregated to reflect a group of companies or an industry segment, particularly if companies are reluctant to provide company-specific information, will also be useful.

We do not wish to give specifics but are sending a simple statement, and general answers to the questions below.

US ITAR control changes have had a major impact on our business including lost business, production line stoppage, and lay-offs. The effort to manage this process remains expensive. We have replaced US vendors for rocket system and satellite system components at great expense in qualification. Replacement of all US vendors for ITAR controlled items remains a goal. In addition, ITAR rules and associated Technical Assistance Agreements pose an unacceptable restriction on access to materials and technical information for Canadian citizens who were not born in Canada.

BIS Questions to you are:
If a Canadian aerospace manufacturer has decided not to include U.S.-origin parts and components in a foreign-manufactured commercial product because such inclusion could subject the products to U.S.export controls, the following kinds of data would be useful to BIS' assessment:

1. Any information about the existence of advertising or marketing efforts that use the absence of U.S. origin aerospace components or exemptions from U.S. export controls as a selling point. The absence of U.S. origin components is not advertised, but reassurance is given to the many customers who ask that the product not contain components of U.S. origin.

2. Any details about possible customer preferences, including Canadian aerospace manufacturers' preferences, for products that do not contain U.S.-origin components, and whether such preferences may be related to U.S. export controls. Customers, including some in Canada, often state a strong preference for components that are not subject to U.S. export control citing: complexity of regulations; appearance of capricious decision making; use of export control as a non-tariff trade barrier; discrimination against landed immigrants (equivalent to legal alien in U.S.) and legal citizens, etc.

3. Any details about parts and components that manufacturers, including Canadian aerospace manufacturers, may elect not to use because of their U.S.-origin and any information regarding the products into which such parts and components are incorporated. Please see general statement above.

4. Any details about sales lost by U.S. suppliers to non-U.S. competitors, including when a Canadian aerospace manufacturer decided to go with a non-U.S. supplier due to U.S. export controls. Please see general statement above.

5. Any details about specific commercial aerospace products that were designed or modified to explicitly exclude U.S. parts and components due to U.S. export controls. Please see comments on rocket and satellite systems above.

6. Any details about decisions to locate or relocate production facilities outside the United States, including a description of which items (i.e. commodity classification information such as Export Control Classification Number) would be produced abroad . Nil

7. Any information about the possible economic impact (e.g. employment, outsourcing of specific expenditures such as research and development) to companies, industry segments or communities of any decision not to use U.S.-origin parts and components because of U.S. export controls, including any possible impact on the ability to support specific defense industrial base activities. In general, the complexity, process time, and unpredictability of the export control regime in the U.S. is driving opportunity out of the U.S. (costs and lack of predictability) and raising costs for both U.S. and allied industry, while allies and the U.S. could otherwise derive mutual benefit if the regime were more transparent, focused and efficient. No one questions the need to control export of certain knowledge, technology and product. What is opposed is the massive and contradictory documentation from various Federal Departments, the excessive, inclusive lists and arbitrary linkage rules, and vast application to technology and product that is readily available on a global scale.

Our general statement, and answers to questions are NOT CONFIDENTIAL, and may be posted WITHOUT COMPANY NAME at the discretion of Commerce, BIS.

Japan Machinery Center for Trade and Investment

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Japan

Tel :81-3-3431-9507
Fax:81-3-3436-6455

March 6, 2009

Mr. Christopher R. Wall
Assistant Secretary for Export Administration
U.S. Department of Commerce

Re: Response to Request for Comment --- Federal Register Vol. 74, No.2 (January 5, 2009).

Dear Mr. Wall :

The Japan Machinery Center for Trade and Investment ("JMC") hereby submits comments in response to the above-referenced notice published in the Federal Register Vol. 74, No. 2, on January 5, 2009.

JMC is an association of 272 firms that manufacture and export machinery products worldwide. JMC includes most of the major electronics and machinery exporters in Japan. JMC understands the significance of export controls in the global trade, and therefore JMC assists its member companies to comply with the export control regulations. JMC also is sensitive to concerns from member companies about burdens sometimes associated with such controls.

To prepare these comments, JMC conducted a survey of its members to learn how the extraterritorial application of the US export control regulations affects its members' decision making with respect to the procurements of parts and components. The results derived from the survey are indicated in the attached document entitled, "An Overview of the Survey," and "the Detailed Summary of the Survey"

JMC would greatly appreciate your taking its comments into account for your policy review.

Best Regards,

Haruhiko Kuramochi,
Executive Managing Director
Japan Machinery Center for Trade and Investment

Japan Machinery Center for Trade and Investment

Contact

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Trade Promotion and Administration Group
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Japan Machinery Center for Trade and Investment

Overview of the Survey

Survey Period : January 23 – 31, 2009

Response : 34 of 272 JMC members responded to the questionnaire. The response rate was 12.5%

(Note)

- In order to ensure internal consistency in survey results for different Japanese companies, we used the same questionnaire as Japan's Center for Information on Security Trade Control ("CISTEC") used for its survey.
- Some of JMC member companies are also members of CISTEC.
- The percentiles reflected in the summary of the answers may not be fully representative of JMC member company views because of the relatively low response rate.

Questions and Responses

Category No.1

a: Questions to those who have procured US-origin parts or components in the past.

(1) 27% of the respondents had elected non-US items when they found the US-origin items required an export license from BIS. (Question 1-a-1)

(2) 21% of the respondents had elected non-US items without classifying the US items in order to save the time and cost associated with commodity - classification. (Question 1-a-3)

b: Questions to those who have not procured US origin parts or components, and those who have had no choice but elect US origin items.

(1) 70% of the respondents answered that they would have elected non-US items if the US-origin items had required an export license and corresponding non-US items had been available at the same time. (Question 1-b-1)

(2) 40% of the respondents answered that they would have elected non US items instead of classifying the US items if non US items had been available. (Question 1-b-3)

Category No.2

Questions regarding the customers in third countries.

(1) 65% of the respondents answered that their customers in third countries seemed to implement export controls in accordance with the US regulations, but 17% of the 65% of the respondents above experienced cases in which buyers refused to purchase their products. 13% of the 65% above had experienced cases in which

they were asked to replace US-origin items with non-US items. (Question 2-a, 2-b-1,and 2-b-2)

Category No.3
Please refer to the attached "Detailed summary of the survey".

Category No.4
Questions regarding the economic impact.

(1) 47% of the respondents answered that they would increase the procurement of US origin items if the extraterritorial application of the US export control regulations were removed. (Question 4-a-1)
(2) 73% of the respondents answered that they have incurred additional costs for complying with the US export control regulations. For 24% of respondents, these additional costs account for 11%-40% of the company's total export control costs. (Question 4-b-1, 4-b-2)

Category No.5
A General Question

(1) 21% of the respondents have encountered some advertising or marketing efforts that indicated as a selling point the absence of US-origin items or the existence of exemptions from US export controls.(Question 5-a)

Category No.6
Questions asking the respondents' views about the US export controls.

(1) 53% of the respondents agreed that the US government should stop the extraterritorial application of the export control regulations for the reason that it violates the international law. (Question 6-a)
(2) While 79% of the respondents agreed that the countries participating in the international export control regimes should be exempted from the extraterritorial application of the US export control regulations, 6% of the respondents agreed that the extraterritorial application of the US export control regulations is rather necessary considering the fact that there are many countries that have not implemented effective export controls yet. (Question 6-b, 6-e)

Excerpt from the Comments responded to Question 6-f
(The respondents who came up with following comments are also members of CISTEC, and they sent same comments also to CISTEC)

(1) The US Government should abandon the extraterritorial application of the export control regulations since it violates the international law, and in addition, it

imposes duplicative burden on non-U.S. exporters.

(2) Alternatively BIS should implement its export control regulations consistently within the internationally agreed framework for export controls, and should stop its unilateral approach to export controls.

(3) If BIS still continues the extraterritorial application as it is, it should take the following measures immediately.

① The countries participating in the multilateral export control regimes should be exempted from the extraterritorial application of the US regulations because those countries, including Japan, are considered to be capable of implementing national export controls at the same level with the U.S.

② It must be made mandatory for U.S. exporters to provide their foreign importers with right ECCNs relevant to the products exported from the US.

③ The complicated regulations of the EAR have to be simplified and streamlined so that everyone can understand them without difficulty.

④ The present multi-agency regulatory system, where different sets of regulations are intertwined, has to be reformed into one single set of regulations that should be administered under single authority.

Conclusion

We hereunder sum up our findings derived from our survey relating to the question as to whether U.S. export controls influence manufacturers' decisions to use or not use U.S. origin parts and components in commercial products.

(1) There is a propensity among the Japanese exporters to avoid US-origin parts and components and to elect non-US origin parts and components due to the extraterritorial application of the US export control regulations. There is also a propensity among the importers in the third countries to avoid US origin products for the same reason above.

Theses propensities above could undermine the competitiveness and viability of the US industry without improving the effectiveness of the US export controls. This seems to be particularly significant considering the current economic crisis.

(2) The extraterritorial application of the US export control regulations has imposed additional and duplicative costs on Japanese exporters because they must comply with both Japan's national export control regulations and the US regulations. The additional costs account for a significant share of a company's total compliance costs.

(3) Many respondents argue that BIS should scrap the extraterritorial application of the export control regulations. They think the legitimacy of the extraterritorial application of the regulations is questionable in light of the principle of International Law.

(4) If BIS, however, has to even continue the extraterritorial application as it is, the respondents suggest that BIS consistently implement its export control regulations within the internationally agreed frameworks for multilateral export control regimes, and that BIS exempt the countries participating in those regimes from the extraterritorial application of US export control regulations.

(5) One of the biggest troubles for the Japanese exporters in complying with the US regulations is that the US exporters can't provide their foreign importers with ECCNs relevant to the products exported from the US in many cases. Many of the respondents request BIS to make it mandatory for the US exporters to provide the Japanese exporters with ECCNs.

ECCNs are indispensable data in order for re-exporters to comply with the US export control regulations. Some respondents pointed out existence of the US exporters who do not have basic knowledge about EAR. Those US exporters seem to cause Japanese exporters further troubles in obtaining ECCNs.

Japan Machinery Center for Trade and Investment

Detailed Summary of the survey

Category No. 1: Questions regarding the controls of US-origin items in your company		
a	Please answer the following questions a-0 through a-6, if you have ever procured or have considered procuring US-origin parts or components for their incorporation into your products.	
	a-0	Your company has ever considered procuring or designing-in US-origin parts or components. (Please check "No" in the case you had no choice but using US-origin items for a technological reason, etc.) Yes : 22 (65%) No: 10 (29%) N/A : 2 (6%)
	a-1	You have ever elected non-US items because the US-origin items were listed on the CCL and required a license from BIS for your exports of the products. (This includes the case you designed out the US-origin items.) Yes : 9 (27%) No: 18 (55%) N/A : 6 (18%)
	a-2	You have ever elected non-US items even in the case that the US-origin items were listed on the CCL but no license was required since the items were non-controlled for the destination or a License Exception was applicable, because you considered you would Yes : 7 (21%) No: 20 (61%) N/A : 6 (18%)
	a-3	You have simply elected non-US items disregarding the classification of the US-origin items, etc. because you thought it's more efficient and cost effective. (This includes the case you designed out the US-origin items.) Yes : 7 (21%) No: 22 (67%) N/A : 4 (12%)
	a-4	You have ever elected non-US items even in the case that you came to know that the US-origin items were non-CCL items as a result of the classification you conducted or because the supplier so informed to you, considering that the US controls would possib Yes : 4 (12%) No: 23 (70%) N/A : 6 (18%)

Category No. 1: Questions regarding the controls of US-origin items in your company	
a	Please answer the following questions a-0 through a-6, if you have ever procured or have considered procuring US-origin parts or components for their incorporation into your products.
a-5	If you answered "Yes" to either of the questions a-1 through a-4 above, please outline the case as far as possible, including the following elements. (If there are more than one case for one question, we would also appreciate it if you would outline all of the cases.) (i) Generic name of the US-origin items. (You do not have to state any proprietary name of the items or manufacturer's name) (ii) Name of your end-products that incorporate US-origin items(You do not have to state any proprietary name of the items.) (iii) Export destinations (iv) The reason for your choice of non-US items, and others if any
	Comments to 1- a-5
	Please refer to the responses indicated in the comments from CISTEC with regard to this 1-a-5 question in order to avoid duplication.

Category No. 1: Questions regarding the controls of US-origin items in your company	
a	Please answer the following questions a-0 through a-6, if you have ever procured or have considered procuring US-origin parts or components for their incorporation into your products.
a-6	With regard to the cases other than those described in the questions a-1 through a-4 above, please state if you had instances in which the US export controls influenced your decision whether to procure US-origin items, regardless of its final outcome.
	Comments to 1-a-6
	Please refer to the responses indicated in the comments from CISTEC with regard to this 1-a-6 question in order to avoid duplication.

Category No. 1: Questions regarding the controls of US-origin items in your company		
b	Please answer the following questions b-1 through b-4, if you have never encountered the cases of the questions in part (a) since you had no necessity at all of procuring US-origin items, or since you had no choice but using US-origin items you procured. *Suppose you intend to procure US-origin parts and components while having another option to elect non-US items instead;*	
	b-1	You would elect non-US items in case the US-origin items were listed on the CCL and the intended export required a license. (This includes the case you would design out the US-origin items.) Yes : 7 (70%) No: 0 (0%) N/A : 3 (30%)
	b-2	You would elect non-US items even in the case that the US-origin items were listed on the CCL but no license was required since the items were non-controlled for the destination or a License Exception was applicable, because you would possibly export the Yes : 6 (60%) No: 1 (10%) N/A : 3 (30%)
	b-3	You would simply elect non-US items disregarding the classification of the US-origin items, etc. because you think it's more efficient and cost effective. (This includes the case you would design out the US-origin items.) Yes : 4 (40%) No: 5 (50%) N/A : 1 (10%)
	b-4	You would still elect non-US items even if you came to know that the US-origin items were non-CCL items as a result of the classification you conducted or because the supplier so informed to you, considering that the US controls would be intensified even Yes : 3 (30%) No: 3 (30%) N/A : 4 (40%)

Category No. 2: Questions regarding the control of US-origin items by your customers	
	The questions of category No. 1 asked you about the controls of US-origin items in your company. Here in category 2, we ask you about the control status of your customers to whom you sell US-origin items or products that contain US-origin items. Your "cus (i) Your overseas customers (excluding those in the US) in case you export your products from Japan, or (ii) Your domestic customers in case you sell your products in Japan knowing that those will be exported from the customers.
a	It seems your customers are not implementing any controls based on the US regulations, since you have never been asked from them whether those are US-origin or not. Yes : 9 (26%) No: 23 (66%) N/A : 3 (9%)
b	Please answer the following questions (b-1) and (b-2), if you answered "No" to the above question (a).
b-1	Your customers have refused to buy your products because they are of US-origin. Yes : 4 (17%) No: 19 (83%) N/A : 0 (0%)
b-2	Your customers have asked you to change your US-origin products to those of non US-origin. Yes : 3 (13%) No: 20 (87%) N/A : 0 (0%)

Category No. 2: Questions regarding the control of US-origin items by your customers	
c	If you answered "Yes" to either of the questions b-1 and b-2 above, please outline the case as far as possible, including the following elements. (You may state more than one case for one question.) (i) Generic name of the US-origin items. (You do not have to state any proprietary name of the items or manufacturer's name) (ii) Name of your end-products that incorporate US-origin items (iii) Export destinations (iv) The reason for your choice of non-US items, and others if any
	Comments to 2-c
	Please refer to the responses indicated in the comments from CISTEC with regard to this 2-c question in order to avoid duplication.

Category No.3: Questions regarding the location of your company's overseas manufacturing sites		
(a)	Do you have facilities in non-US countries where you manufacture any list-controlled items? Yes : 10 (29%) No: 19 (56%) N/A : 5 (15%)	
(b)	Please answer the following questions (b-1) through (b-3), if you answered "Yes" to the above question (a).	
	(b-1)	You have never considered establishing your manufacturing sites in the US. Yes : 3 (27%) No: 3 (27%) N/A : 5 (45%)
	(b-2)	You have considered the US as a country of your manufacturing sites, but have never put each country's export control laws and regulations into consideration. Yes : 3 (27%) No: 3 (27%) N/A : 5 (45%)
	(b-3)	The US was one of the options. One reason for ruling it out was the existence of its strict export controls. Yes : 1 (9%) No: 3 (27%) N/A : 7 (64%)

Category No.4: Questions regarding the impact on the economy					
	(a-1)	*Do you think* that the amount of US-origin items you procure will increase if the extraterritorial application of the US regulations is removed? Yes : 16 (47%) No: 12 (35%) N/A : 6 (18%)			
	(a-2)	Please state, if possible, the ballpark amount of your procurement of US-origin items per year. No answer responded to this question			
	(b-1)	Do you incur additional costs for complying with the US export control regulations? Yes : 24 (73%) No: 7 (21%) N/A : 2 (6%)			
	(b-2)	If so, please state their estimated percentage to the whole cost of your corporate export controls.			
	1%—10% : 6 (18%)	11%—20% : 3 (9%)	21%—30% : 3 (9%)	31%—40% : 2 (6%)	41%— : 0

Category No.5: General questions		
	(a)	Have you ever encountered any advertising or marketing efforts by a third party that use the absence of US-origin components or exemption from US export controls as a selling point? Yes : 7 (21%) No: 27 (79%) N/A : 0 (0%)
	(b)	If you answered "Yes" to the above question (a), please state the details as far as possible.
		Comments to 5-b
	Please refer to the responses indicated in the comments from CISTEC with regard to this 5-b question in order to avoid duplication.	

Japan Machinery Center for Trade and Investment

Category No.6: Questions regarding your thoughts about the US reexport controls

Please check the agreeable response to each one of the five comments stated below.

a The US Government should stop the extraterritorial application of its export controls since it's a violation of the International Law.

(1) We agree.	18 (53%)
(2) We'd rather agree.	11 (32%)
(3) Difficult to judge.	4 (12%)
(4) We'd rather disagree.	0 (0%)
(5) We disagree.	1 (3%)

b For a reason of diversion concerns, the extraterritorial application of the US export controls is rather necessary to the countries who have no export control laws and regulations, but not necessary to Japan where export controls are implemented as strict

(1) We agree.	27 (79%)
(2) We'd rather agree.	5 (15%)
(3) Difficult to judge.	1 (3%)
(4) We'd rather disagree.	0 (0%)
(5) We disagree.	1 (3%)

c The current system would rather exclude US-origin items—even non-sensitive ones—from non-US companies' transactions simply because they are of US-origin.

(1) We agree.	16 (47%)
(2) We'd rather agree.	11 (32%)
(3) Difficult to judge.	6 (18%)
(4) We'd rather disagree.	1 (3%)
(5) We disagree.	0 (0%)

d The extraterritorial application of the US export controls is giving not only a negative impact on the US economy but also a negative image of the US itself to foreign countries.

(1) We agree.	9 (26%)
(2) We'd rather agree.	17 (50%)
(3) Difficult to judge.	6 (18%)
(4) We'd rather disagree.	1 (3%)
(5) We disagree.	1 (3%)

e The extraterritorial application of the US export controls is rather necessary because export controls are still insufficient in many countries.

(1) We agree.	2 (6%)
(2) We'd rather agree.	2 (6%)
(3) Difficult to judge.	16 (47%)
(4) We'd rather disagree.	9 (26%)
(5) We disagree.	5 (15%)

Category No.6: Questions regarding your thoughts about the US reexport controls	
f	Please state any other comments, if any, in regard to the US export controls.
	Comments to 6-f
	Please refer to the responses indicated in the comments from CISTEC with regard to this 6-f question in order to avoid duplication.

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

April 17, 2009

VIA ELECTRONIC MAIL

Parts and Components Study
Office of Technology Evaluation
Room 2705, U.S. Department of Commerce
14th Street & Pennsylvania Avenue NW
Washington DC 20230

Re: Parts and Components Inquiry (74 Fed. Reg. 263, Jan. 5, 2009)

Gentlemen/Ladies:

The Industry Coalition on Technology Transfer ("ICOTT") supports the Commerce Department's effort to ascertain the effects of United States export controls on decisions by foreign manufacturers whether to use United States-origin parts and components. The evidence demonstrates that United States controls—particularly those under the International Traffic in Arms Regulations ("ITAR"), which contain no generally applicable *de minimis* exclusion—have a significant negative effect on such sourcing decisions.

More than two decades ago, the House Foreign Affairs Committee took eloquent note of the problem. In a report on the legislation that became the export control provisions of the Omnibus Trade and Competitiveness Act of 1988,[1] the committee, recommending a twenty-five percent *de minimis* level worldwide, expressed its "concern" over—

> the increasing tendency of foreign manufacturers to establish non-U.S. sources of goods and technology in order to avoid the costs and difficulties of U.S. reexport requirements. Considerable evidence has been presented regarding efforts to "de-Americanize" foreign products of U.S. parts. The effect of this effort to avoid U.S. reexport controls is the elimination of American firms from the world market for parts and components, resulting in not only lost sales but a weakening of America's high-technology industrial base.[2]

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[1] Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107.

[2] H.R. Rep. 100-40, pt. 3, at 92 (1988).

The Foreign Affairs Committee proposed the twenty-five percent threshold as "the least amount necessary to address the current disincentives for use of U.S.-origin parts and components in foreign products."[3] The final version of the legislation, which amended the Export Administration Act of 1979, included a twenty-five percent *de minimis* threshold.[4]

Today, the Export Administration Regulations ("EAR") contain a twenty-five percent *de minimis* threshold for exports of foreign-made end products to most destinations.[5] As noted above, the ITAR generally use a "look-through rule" that continues controls on U.S. Munitions List ("USML") parts and components incorporated into foreign-made end products no matter how insignificant to the end product those parts or components may be.[6]

The QRS-11 controversy of a few years ago provides a stark example of how disruptive this approach can be when applied to USML parts and components that are incorporated in *non*-military products manufactured abroad. In essence, the Department of State took the position that the presence in United States or foreign-made commercial passenger aircraft of a single component—originally designed for military aircraft but by then commonly used in civil aircraft as well—meant that the approval of the State Department was required before such civil aircraft could be flown to *any* destination. The QRS-11 problem eventually was resolved by moving the component to the Commerce Control List, when it is integrated (or exported for integration) into a Commercial Standby Instrument System.[7]

The problem, of course, is far larger than this one high visibility incident. Since the QRS-11 controversy surfaced about seven years ago, trade associations, companies, and individuals active in ICOTT have seen increasing examples of manufacturers—in the United States and elsewhere—demanding certifications from vendors of U.S.-origin parts and components that such items are "ITAR free." No certification, no sale. If the United States company does certify that its products are not subject to the ITAR, the company typically is required to indemnify its customer in the event the Department of State later decides otherwise.

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[3] *Id.*

[4] Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 2414, 102 Stat. 1107, 1347-48 (codified at 50 U.S.C. app. § 2404(a)(5) (1982) (expired 2001)).

[5] 15 C.F.R. § 734.4(d). The *de minimis* limit for the "terrorist-supporting" countries (currently Cuba, Iran, North Korea, Sudan, and Syria) is ten percent. *id.* § 734.4(c). Moreover, several types of U.S.-origin parts and components are ineligible for reexport under the *de minimis* rule. *Id.* § 734.4(a).

[6] 22 C.F.R. § 123.9. The lone exception is for U.S.-origin USML parts and components that are incorporated into foreign-made defense articles that in turn are destined for the government of a NATO country, Australia, or Japan. *Id.* § 123.9(e).

[7] 69 Fed. Reg. 5928, 5929-30 (Feb. 9, 2004) (EAR amendments; codified at 15 C.F.R. § 734.4(a)(3); *id.* pt. 774, supp. 1, ECCNs 7A994 and 9A991); 69 Fed. Reg. 873, 874 (Jan. 7, 2004) (ITAR amendments; codified at 22 C.F.R. § 121.1, categ. VIII).

Many United States controls are unilateral, which means that the nations where our competitors are located—often reliable allies of the United States—do not control these items. United States controls are broader, too. For example, we are the only industrialized country that controls oral exchanges of technical information.

Two recent articles from the respected publication Space News exemplify the problem. In June 2008, Space News reported that "European governments have agreed that a new commercial telecommunications satellite they are financing will permit customers to order a version without U.S.-built parts covered by the now-infamous U.S. technology export regime known as ITAR."[8] The project involves more than $300 million worth of investment.[9] The same article reported that "[o]ne of Europe's two principal satellite prime contractors, Thales Alenia Space, has developed an ITAR-free version of its Spacebus satellite platform" and noted that the move away from United States components "received a fresh impetus with the stricter export-licensing rules [for space items] that U.S. lawmakers put into place in 1999."[10]

A more recent report reiterates that European Space Agency member governments "are determined to reduce their industries' dependence on the United States and the U.S. technology export-control regime called ITAR," adding that—

> ITAR remains an issue in Europe in part because of the paperwork and time delays involved in receiving ITAR-restricted satellite components, a factor that can undermine a commercial bid.
>
> But an even bigger factor, [ESA official Michel] Courtois said, is how ITAR undermines a European prime contractor's obligation to its customers in the event of a satellite component failure. "You cannot conduct a proper investigation, because you cannot go directly to the U.S. component manufacturer and find out what you need to know," Courtois said.[11]

The Defense Department agrees. A DOD report on the United States space industry, issued in August 2007, concluded that—

> ITAR has either directly or indirectly precipitated the global competition and is a *significant impediment* to the U.S. space industry's ability to market to foreign buyers. Lost sales are significant. The licensing and TAA processes impact

[8] Peter B. de Selding, "OHB to Offer Small GEO Variant with no U.S. Components," Space News, June 2, 2008, p. 6.

[9] *Id.*

[10] *Id.*

[11] Peter B. de Selding, "ESA To Invest Heavily in Satellite Communications Technology," Space News, Dec. 8, 2008, p. 11.

> competitiveness and a significant number of firms at all tiers are either not applying for export licenses and/or may be changing their business model and many are focusing on domestic customers only. Some foreign firms advertise systems as "ITAR-free."[12]

Another example, from 2004, saw Alcatel Space signing a $145 million contract to build a large direct-broadcast television satellite for a Chinese customer. Space News described the transaction as "a deal that represents just the latest example of a European company profiting from U.S. government technology-transfer restrictions."[13]

> Since 1998, U.S. government restrictions on satellite sales to China have tightened into a de facto refusal by the U.S. government to permit satellites with U.S. components from delivering to Chinese organizations if the satellites are to be launched on a Chinese Long March rocket.
>
> These restrictions made it all but impossible for any U.S. contractor to bid on the Chinasat contract. The same restrictions would have made it difficult for Alcatel Space's chief European competitor, EADS Astrium, to bid. Astrium uses U.S. components in its satellites.
>
> * * *
>
> Alcatel Space, whose corporate parent, Alcatel, has a strong telecommunications presence in China, has made it company policy since around 2002 to be able to offer satellites that are "ITAR-free," meaning they contain no components subject to the U.S. International Traffic in Arms regulations.[14]

A recent press release (attached as Enclosure A) announced the acquisition of—

> a very competitive European operation that can supply ITAR-free propulsion systems and components to European space customers. As is well known, the U.S. International Trade in Arms Regulations or ITAR restricts and controls the U.S. export of commercial satellite components, including propulsion systems. European satellite companies have a strong preference for products not restricted

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[12] U.S. Dep't of the Air Force, "Defense Industrial Base Assessment: U.S. Space Industry—Final Report," at 48 (Aug. 31, 2007) (emphasis added).

[13] Peter B. de Selding, "U.S. Export Restrictions Help Alcatel Win Chinasat 9," Space News, June 21, 2004 (on-line edition), (downloaded Feb. 15, 2009 from http://www.space.com/spacenews/archive04/alcatelarch_062104.html).

[14] Peter B. de Selding, "ESA To Invest Heavily in Satellite Communications Technology," Space News, Dec. 8, 2008, p. 11.

> by ITAR, so-called ITAR-free, and from time to time, have specified such in requests for proposals. With this acquisition, our Aerospace Equipment segment will be able to address new opportunities in the European aerospace markets.[15]

A number of vendor brochures offering "ITAR-free" components are attached as Enclosure B.

These particular examples concern satellites but the problem extends to all instances where parts and components designated as being on the USML have the potential for use in products manufactured or assembled abroad. The fact that satellites were put on the USML by statute, while most other USML items are placed there by the Department of State, makes no difference.

Outside the satellite arena, Defense News has reported that—

> EADS [European Aeronautic Defence and Space Company] and other European companies have been working to develop military components that are not subject to a U.S. sales veto. For example, EADS Space Transportation Division boasts it is developing a satellite motor that will be "completely ITAR-free and therefore not subject to U.S. export license restrictions, allowing competitive access to worldwide customers."[16]

Colibrys, a Swiss manufacturer of motion sensors for aerospace applications, assures potential customers that "[a]s a military / aerospace supplier, Colibrys is very sensitive to export regulation and insuring worldwide delivery of ITAR-free products."[17] Telkoor Power Supplies Ltd. advertises that "[a]ll Telkoor military power supplies are ITAR-free."[18]

Granted, the ITAR and the *de minimis* limitations of the EAR are not the only factors governing the purchase of United States origin parts and components by foreign manufacturers. Quality, cost, currency fluctuations, and other such factors also play a role. But there is no doubt that United States export controls are a significant factor. The most obvious effect is reduced sales of U.S.-made parts and components, with its resulting adverse effects on the United States industrial base and on our employment figures. Less obvious, but perhaps more significant over

---

[15] Press Release, "American Pacific to Hold Teleconference Regarding Acquisition of Marotta Europa for €4.7 Million" (Oct. 13, 2008) (downloaded Feb. 15, 2009 from http://www.apfc.com/pdf/Marotta_Acqusition.pdf (copy attached).

[16] Quoted in "Watching America," Oct. 25, 2005 (downloaded Feb. 15, 2009 from http://www.watchingamerica.com/dedefense000001.html)

[17] Downloaded Feb. 15, 2009 from http://www.aerospace-technology.com/contractors/flight_control/colibrys/ .

[18] Downloaded Feb. 15, 2009 from http://www.telkoor.com/?CategoryID=162 .

the long term, is that foreign countries avoid using United States origin parts and components by developing the ability to build those items *themselves*:

> Micro-electromechanical systems, advanced gyroscopes, small satellite on-board motors, mission-specific integrated circuits and field-programmable gate arrays are among the technologies ESA will focus on to assure that Europe has its own production base and need not go to the United States, or South Korea or Japan, for such components.[19]

Reportedly, a senior official of the State Department's Directorate of Defense Trade Controls said publicly at last fall's BIS Update Conference that State ordinarily will not approve the export of ITAR parts or components for incorporation into commercial items. This may obviate QRS-11-type problems, in that it avoids placing State in the position of controlling foreign-made commercial products, but it tells foreign manufacturers that producing ITAR-free end products is not merely desirable, but is *required* by the United States Department of State. This policy represents a further disincentive to the use of United States-made components.

All in all, then, the current extraterritorial controls on United States made parts, components—and, for that matter, finished products—detract from our economic well-being. A hard look at the effectiveness of these policies is overdue. Their adverse effects are not theoretical, for they place at risk the jobs of tens of thousands of American workers and the welfare of their families.

Again, ICOTT appreciates the opportunity to comment and believes that the "designing out" problem is significant. We urge the United States government to consider ameliorating the controls discussed above, and would be happy to meet with appropriate government officials to discuss our views further.

Sincerely,

Eric L. Hirschhorn
Executive Secretary

[19] Peter B. de Selding, "ESA To Invest Heavily in Satellite Communications Technology," Space News, Dec. 8, 2008, p. 11.

ENCLOSURE A

AMPAC™
AMERICAN PACIFIC

News Release
Contact: Deanna Riccardi +1 (702) 735-2200
E-mail: InvestorRelations@apfc.com
Website: www.apfc.com

AMERICAN PACIFIC TO HOLD TELECONFERENCE REGARDING ACQUISITION OF MAROTTA EUROPE FOR €4.7 MILLION

LAS VEGAS, NEVADA, October 13, 2008 -- American Pacific Corporation (the "Company") (NASDAQ:APFC) announced today that its wholly-owned subsidiary Ampac-ISP Corp. completed the acquisition of Marotta Holdings, Ltd. and its wholly-owned subsidiaries ("Marotta Europe") for a Euro-denominated cash purchase price of €4.7 million. The acquired business is the European operations of Marotta Controls, Inc. Marotta Europe will be integrated with the Company's Aerospace Equipment segment.

Marotta Europe designs, develops and manufactures high performance valves, pressure regulators, cold-gas propulsion systems, and precision structures for space applications, especially in the European space market. These products are used on various satellites and spacecraft, as well as on the Ariane 5 launch vehicle. The business has two locations, Dublin, Ireland and Cheltenham, England and employs approximately 30 engineers, scientists and technical specialists.

"While this acquisition is relatively small, it is a very significant strategic move for our corporation," stated John Gibson, Chairman and CEO of American Pacific Corporation ("AMPAC"), "and enables our growth in the European space market by complementing our in-space propulsion business in Europe."

The Company's Aerospace Equipment segment currently provides thrusters and propulsion systems for the satellite and missile markets. It operates from two locations, Niagara Falls, NY and Westcott, England. Combining the acquired capabilities of Marotta Europe with those at the Westcott location will form a very competitive European operation that can supply ITAR-free propulsion systems and components to European space customers. As is well known, the U.S. International Trade in Arms Regulations or ITAR restricts and controls the U.S. export of commercial satellite components, including propulsion systems. European satellite companies have a strong preference for products not restricted by ITAR, so-called ITAR-free, and from time to time, have specified such in requests for proposals. With this acquisition, our Aerospace Equipment segment will be able to address new opportunities in the European aerospace markets.

There are operational benefits as well. Marotta Europe currently uses AMPAC's Westcott facilities to test some of their products and the Electron Beam welding capability at Westcott is used in the manufacture of a number of the Marotta Europe components. The acquired engineering capabilities will give Westcott access to an additional European engineering workforce rather than relying on the Company's Niagara Falls capability, further enabling an ITAR-free environment.

The major strategic elements of this merger are:

- Expands AMPAC's aerospace product offering with valves and structures
- Increases the customer base in Europe and enhances our position with existing European customers
- Provides greater access to the European space market with ITAR-free products
- Increases the critical skills capabilities within our ISP European operations
- Enables access to Ireland's aerospace development incentives

We believe that this acquisition enhances the value of our Aerospace Equipment segment. We anticipate it will contribute revenues of approximately €4.0 million for the Company's fiscal year 2009. In addition, we expect to incur costs associated with the integration of our European operations and further development of key strategic products. As a result, the acquired business is expected to perform at an

– more –

approximately break-even profit level and contribute EBITDA at rates consistent with our Aerospace Equipment segment for the next two years. This acquisition is an important long-term strategic element of our Aerospace Equipment segment.

"We are very happy to welcome the folks from Dublin and Cheltenham into the AMPAC family and know with their tremendous experience and capability we can together grow our European aerospace business," said John Gibson.

INVESTOR TELECONFERENCE

We invite you to participate in a teleconference with our executive management covering this acquisition. The investor teleconference will be held Tuesday October 14, 2008 at 6:00 a.m., Pacific Daylight Time. The teleconference will include a presentation by management followed by a question and answer session. The teleconference can be accessed by dialing (973) 582-2852 between 5:45 and 6:00 a.m., Pacific Daylight Time. Please reference conference ID# 69123075. As is our customary practice, a live webcast of the teleconference is being provided by Thomson Financial's First Call Events. A link to the webcast and the press release is available at our website at www.apfc.com, and will be available for replay for 30 days.

RISK FACTORS/FORWARD-LOOKING STATEMENTS

Statements contained in this press release that are not purely historical are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such forward-looking statements include statements regarding the Company's expectations, beliefs or intentions regarding the future and other statements of management's opinion. Forward-looking statements in this press release include without limitation statements concerning or relating to expectations of the Company's growth, competitive advantage and new opportunities, including ITAR-free products, in the European space markets as a result of the acquisition of Marotta Europe, expected operational benefits resulting from the acquisition, access to Ireland's aerospace development incentives, the enhancement of the value of the Company's Aerospace Equipment segment, and expected revenue, profit and EBITDA contributions. Words such as "anticipate", "expect", "can", "will" and similar expressions are intended to identify forward-looking statements. Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the Company's actual results, market performance or achievements to differ materially from any future results, performance or achievements expressed or implied by such forward-looking statements. The inclusion of forward-looking statements should not be regarded as a representation by the Company that any of its expectations will be achieved. Factors that could cause actual results to differ materially from such forward-looking statements include risks and uncertainties detailed in the Company's periodic and other filings with the Securities and Exchange Commission, including in Management's Discussion and Analysis of Financial Condition and Results of Operations and in Risk Factors in the Company's annual report on Form 10-K for the fiscal year ended September 30, 2007 and quarterly reports on Form 10-Q for the quarter ended June 30, 2008. All forward-looking statements contained in this release are made as of the date hereof, based on information available to the Company as of the date hereof, and the Company assumes no obligation to update any forward-looking statement, whether for actual results or otherwise, except as required by law.

ABOUT AMERICAN PACIFIC CORPORATION

American Pacific Corporation is a leading manufacturer of specialty and fine chemicals within its focused markets, as well as propulsion products sold to defense, aerospace and pharmaceutical end markets. Our products provide access to, and movement in, space via solid fuel and propulsion thrusters and represent the registered or active pharmaceutical ingredient in drug applications such as HIV, epilepsy and cancer. We also produce specialty chemicals utilized in various applications such as fire extinguishing systems, as well as manufacture water treatment equipment. Our products are designed to meet customer specifications and often must meet certain governmental and regulatory approvals. Additional information about us can be obtained by visiting our web site at www.apfc.com.

###

ENCLOSURE B

Products & Services

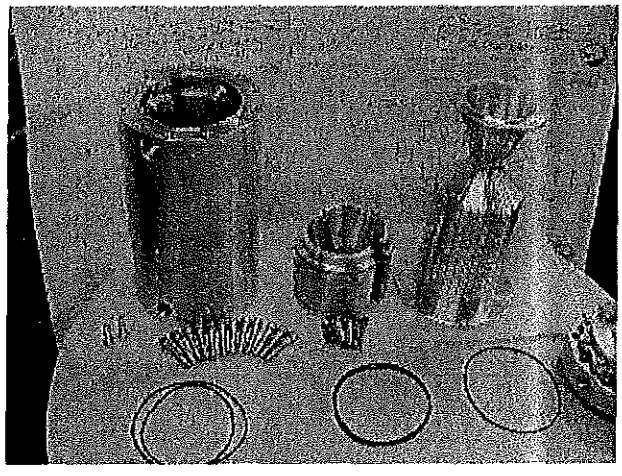
An overview of what we can do for you. All products are ITAR-free or can be made ITAR-f Feel free to contact our sales office if you have a question about our products or items on your wish list currently not listed here.

Rocket Engines/-Motors **Igniters** **Test Equipment**
Components **Consulting/Engineering** **Manufacturing capabilities**

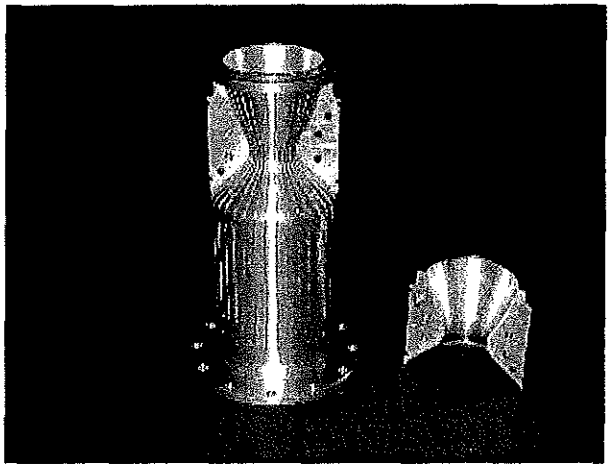
Rocket Engines/-Motors

2.5 kN (560 lbs) regenerative cooled engine *SLR2.5k-I*

SPL and others such as XCOR have built regenerative engines using separate chamber, throat sadc and outer jacket (CSJ-design). This engine uses exactly this design. The outer jacket is shown in th left picture on the left only. The jacket does not constrain the chamber's thermal expansion during firing. Thus the thermal strain, plastic yield and cracking cycle never get started. In our engines we haven't seen any distortion, yielding, or cracking. This construction contributes to long life by maki feasible to disassemble the engine for inspecting and removing coking deposits if needed. We think CSJ approach is good for thrust levels up to 100 kN and beyond. The mass of the engine is ~5 kg. operates with alcohol/LOX or kerosene/LOX at a chamber pressure of 25 bar (362 PSI) and is restartable.



Parts of the combustion chamber. The chamber is designed to be fully demountable to test various configurations. This is also important to inspect the liner and its cooling channels after test runs. Click on the image to enlarge...



The inner liner with the milled cooling channels. One of the two halves of the throat closeout has been removed. The closeout mates very precisely with the liner to prevent any bypass flow in the throat area. The temperatures in the cooling channels are measured by thermocouples of 0.5mm diameter that are mounted through small openings in the outer shell and in the closeout. Click on the image to enlarge ...

Next Steps

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Management and ownership

Quality

Customers & Markets

Customer service

Customers & Markets

Our products and Services are available to customers worldwide to whom we prov Hardware for missions ranging from manned to un-manned and for applications in

ABSL has delivered highly successful battery and optical space projects and produ striking success is ABSL Space Products unmatched record, having won battery co mission.

Amongst the long list of satisfied ABSL's customers can be found all the major pla including but not limited to:

Europe:

- BNSC
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- EADS Astrium
- ESA *European Space Agency*
- EUMETSAT
- INTA
- OHB
- SSTL
- Thales Alenia

Rest Of the World (ROW):

- DSO
- INPE
- IAI
- ISRO

KARI

MECTRON

Sunspace

"The European arm of ABSL Space Products delivers ITAR-Free Space hardware tc Space Products is uniquely positioned to best service USA clients via a Colorado b from which ABSL routinely delivers projects for both governmental and commerc

USA:

Aeroastro

AFRL

ASRC Aerospace Corporation

ATK

Ball

Goodrich

Hamilton Sundstrand

Honeywell

Lockheed Martin

Loral

MicroSat

NASA

Northrop Grumman

Spacedev

United Space Alliance

ITAR Management

When setting up US space infrastructure, ABSL was extremely careful to ensure tl (ITAR) were properly adhered to. ABSL has serviced US space customers since the space projects conducted in the United Kingdom, has built up considerable exper ABSL has worked both directly with the United States Government on space progr formal export licenses granted by the US state Department. For example, when w Agreements (TAA) have been granted to facilitate the open discussion of battery execution of space battery projects. In the past, ABSL programs with US custome sensitive by the ITAR, it was the responsibility of our customers to ensure that th was unsatisfactory due to the time and legal resource required to obtain the corr ABSL to invest in the set up of an American based capability was to remove this I

legal experts, experienced specifically in space programs, ABSL constructed an el
that ensures clear channels of communication for all programs. Eventually, the Al
US citizens and permanent residents.

Building F4, Culham, Abingdon, Oxfordshire, OX14 3ED, UK

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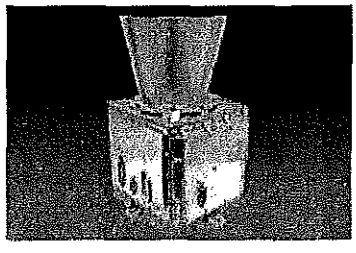
Space

Spaceborne attitude sensors

An extensive experience in optical technology sets Galileo Avionica at the leading edge of space sensor development. With 350 sensorsdeployed in over 90 space programs by European, Asian and American customers, Galileo Avionica is a world leader in the supply of Earth, Sun, Stars, Autonomous Star Trackers and *Navigation Sensors, offering standard and* custom configurations.

Star Trackers Family

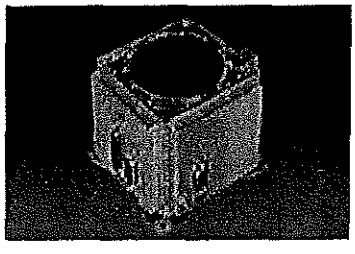
Galileo Avionica has developed a family of multipurpose and fully autonomous star trackers to provide attitude data and motion rate of satellite. *Galileo Avionica Autonomous Star Trackers are* based on a radiation hardened design and proprietary algorithms that ensure accurate and robust 3-axes attitude determination in all types of mission. Galileo Avionica Star Trackers accumulated an excellent in-flight heritage, demonstrating accuracy exceeding the required performance of few arc seconds as well as high reliability and tracking robustness under severe radiation environments.



A-STR - Autonomous Star Tracker

Medium Field of View CCD based Star tracker leveraging over 20 years *of experience in star tracker development.* Most recent successes include flying on board Messenger and Mars Reconnaissance Orbiter, and on spinning spacecrafts such as New Horizon. More than 30 flight units have been delivered to Customers all over the world. A-STR uses a common design for a broad range of missions delivering *an off-the-shelf, readily* available product. All A-STR operations are executed under microprocessor control by means of mission dependant SW modules with in-flight reprogramming capability.

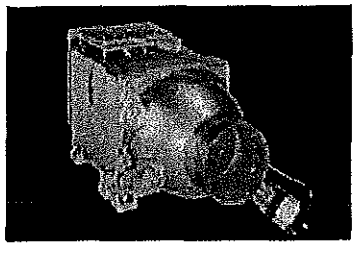
more information .pdf (261 KB)



AA-STR - APS Autonomous Star Tracker

New generation, medium FOV star tracker based on a rad-hard Active Pixel Sensor (APS) detector. The AA-STR (ITAR free) highly compact, lightweight and low power delivers an accuracy comparable to that of the CCD based star trackers, beginning a new age for star trackers that will *dominate the future satellites* AOCSs. The AA-STR design offers exceptional robustness under harsh conditions (launch loads, protons,..). The AA-STR has been selected as the standard star tracker for the next generation of the European TLC-GEO platform (ALPHABUS).

more information .pdf (262 KB)



Navigation Cameras

A multipurpose CCD based Navigation Camera is currently guiding the ESA Rosetta Spacecraft toward the comet *67P/ Churyumov* Gerasimenko to support acquisition and tracking of point like sources and extended objects ranging from ? 2 to +11 magnitude as well as to allow full frame image acquisition. A state-of-the-art, compact and modular navigation camera based on APS technology is now available, and can be tailored to different mission needs, offering significant reductions in mass, power consumption and costs. Galileo Avionica also designed and *developed the* ERA-CLU cameras (Camera and Lighting Unit) for the European Robotic Arm of the International Space Station. The ERA-CLU is equipped with a laser diode illuminator.

more information .pdf (403 KB)

S3 - Smart Sun Sensor

Two axes solar sensor with low mass and consumption, based on a radiation hardened APS detector. S3 has been developed and qualified for Earth Observation and *GEO Telecommunication spacecraft. The S3 is* also suitable for Interplanetary missions (up to 50AU) and for spinning spacecraft (up to 100rpm). With a large dynamic range providing

Space

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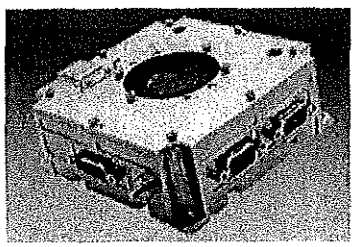


medium/high accuracy, and wide FOV, S3 combines the tasks traditionally performed by both Fine and Coarse Sun sensors. An ITAR free version is also available.

more information .pdf (210 KB)

IRES - Infrared Earth Sensor

With close to 20 years of flight proven experience, the Galileo Avionica Earth sensors have been deployed in over 35 programmes. IRES is a two axes Earth horizon sensor for attitude control of 3-axes stabilized GEO spacecraft. Operating principle is based on electromechanical modulation of the radiation coming from the Earth horizon in the 14÷16.25 μm band based on bolometers. IRES consists of an optical head and processing electronics in a single housing for the two axes measurement. Full performance Pitch and Roll are computed inside the sensor by means of a dedicated ASIC. An ITAR free and lower cost configuration based on pyroelectric detectors (IRES-N2) is also available with the same interfaces as IRES-NE.
IRES-NE has been selected as the baseline earth sensor for the Galileo constellation.

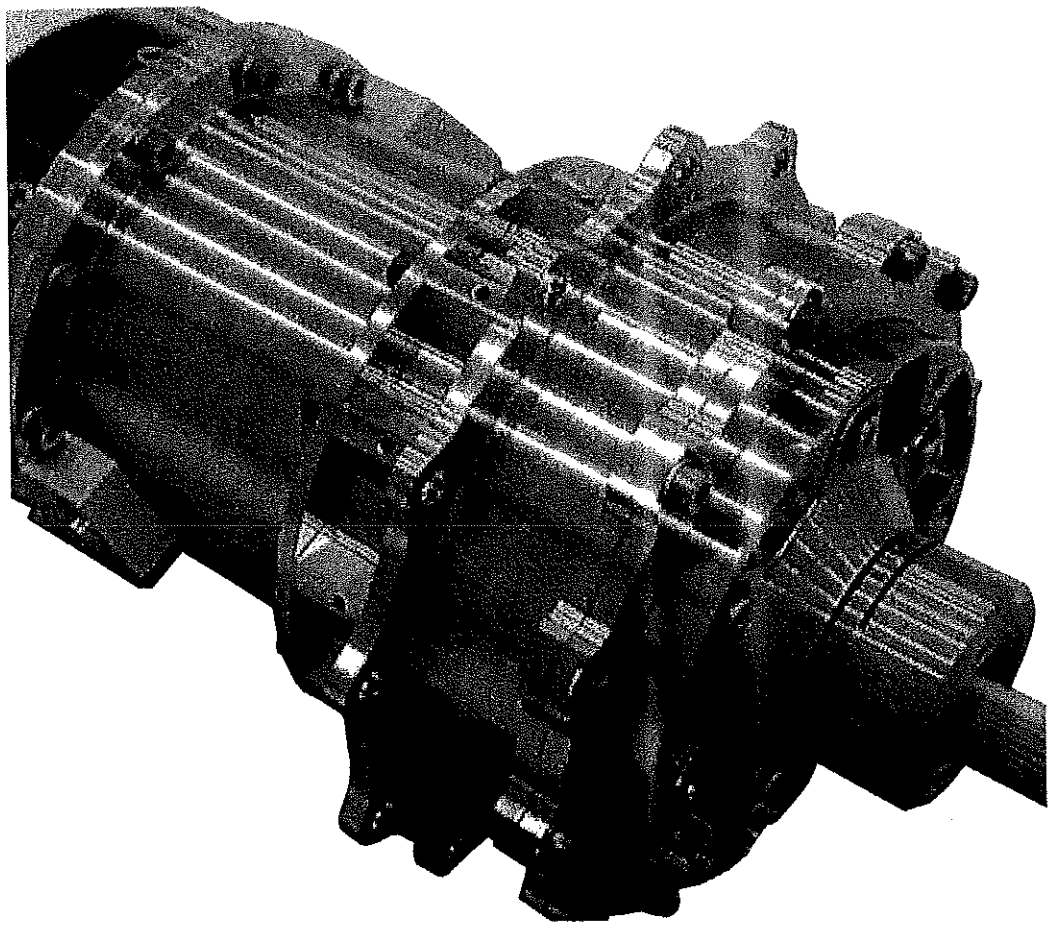
more information .pdf (198 KB)

components

space

SEPTA® 33

An ITAR free Mid-Size Solar Array Drive Mechanism for Galileo



SEPTA® 33

An ITAR free Mid-Size Solar Array Drive Mechanism for Galileo

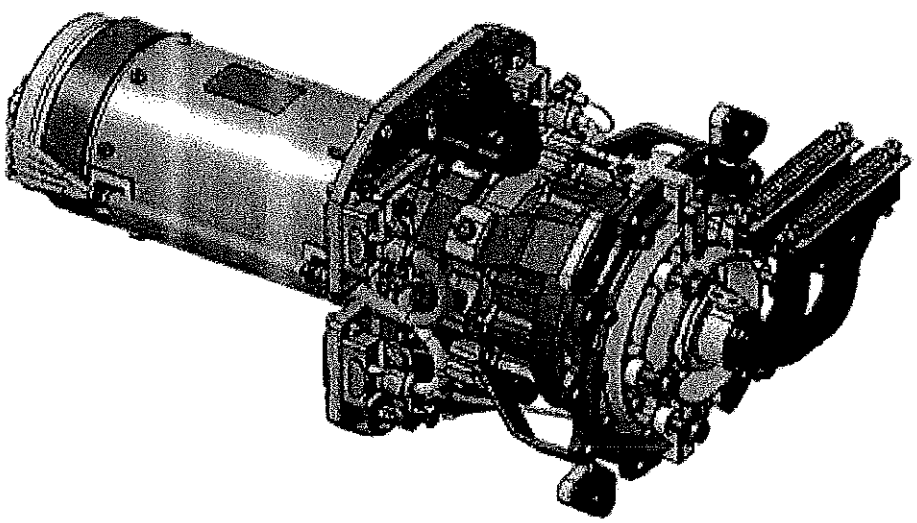
Galileo, the upcoming European Navigation system, is being developed to operate with a set of 24 satellites on different 14.1 h orbits. The energy supply for these satellites has to fulfil stringent reliability requirements. SEPTA® 33, based on the previous SAD-LP development, has been designed to fulfil these requirements and to withstand the harsh mechanical, thermal, and radiation environment to be expected in orbit.

SEPTA® 33 covers the 1.5... 2 kW range and could also be used for 3 kW satellites with higher panel voltages. It also allows for the transfer of up to eight electrical measurement signals which are foreseen to be deployment and temperature signals.

SEPTA® 33 tolerates high interface loads which are expected during transfer orbit as well as Solar Array deployment. It provides very high stiffness also during operation and can operate in hot environments.

The mechanism features a redundant stepper motor with a high ratio gearbox that offers an intrinsic hold mode with no power needed, minimising the power demand for the expected slow operation. Still, fast turning at 2.4 revs/h is available. The design is basically modular and longer slip rings to extend the power transfer capability could be fitted. Specific design means have been implemented for thermal paths, angular position measurement using an optical encoder, reference position indication, and to ensure insulation between different electrical paths in an unseen manner. Full redundancy is considered in all components.

Performances	
Nominal SA voltage (V)	52.5
Design Current (A)	30.5
Peak Current (A)	40.0
Number of transfer lines	10
Number of return lines	5
Number of signal transfers	8
Signal transfer capacity	60 V, 1 A each
Satellite Temperature Limit	60 °C
Mass (kg)	4.2
Life (years)	12



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CH-8052 Zurich
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sales.space@oerlikon.com
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Product development

SSTL

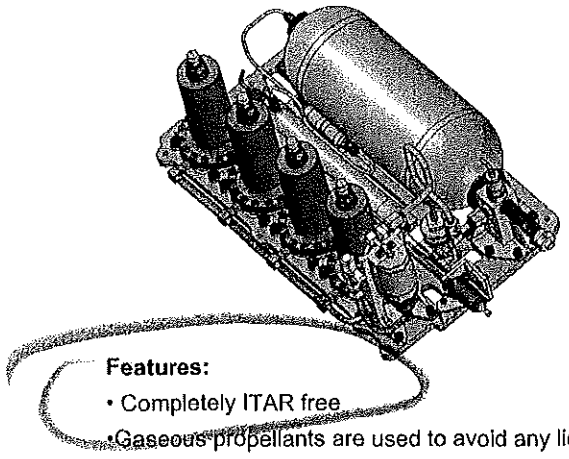
Microsatellite Gas Propulsion System

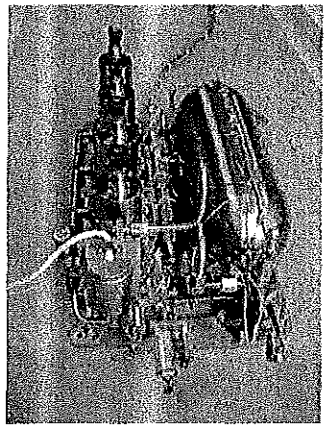
SSTL's *microsatellite Propulsion System is designed as an in-orbit* micropropulsion system test-bed. The first application is ESA's PROBA2 spacecraft. The core design of the system is based around heritage design of SSTL's benchmark Microsatellite xenon propulsion system technology.

The design of the PROBA 2 system is optimised to constitute a platform to incorporate the following demonstration units and thus exhibit an application of their use:

COGEX: Four cool gas generators. These have the capability to re-fill the tank with a certain amount of gaseous nitrogen (>99% pure) at near ambient temperature. The nitrogen is is generated from a Sodium Azide based solid charge which generates the nitrogen when pyrotechnically initiated on demand.

FSD – one fibre optic pressure and temperature sensor.





Features:

- Completely ITAR free
- Gaseous propellants are used to avoid any liquid sloshing effects
- *Propellant is stored in a 2.1 litre propellant tank, of titanium construction. The tank* has a maximum expected operation pressure of 44 bar, with a burst factor of > x10
- The propulsion system is built as a module with integrated thruster. The thruster alignment can be modified at both module and spacecraft levels
- Bang-bang pressure regulation control allows thrust level to be throttled between 10 to 50mN
- SSTL's flight proven resistojet thruster with either 15, 30 or 50 Watt redundant heaters
- Series solenoid valves to isolate the propellant stored in the tank
- Can be supplied with Integrated electronic controller with interface to CAN bus. Could be modified to RS485 if required

Other SSTL Products

- **Propulsion systems**: Flight proven systems using nitrogen, nitrous oxide, butane, xenon and water propellants, impulses ranging from 1 N.sec to 52 kN.sec
- **Propulsion products**: Resistojet thrusters, Mechanical and Electrical Ground Support Equipment, Design and test services
- **Sub-systems** for C&DH, Power, Comms, ADCS and ODCS sub-systems, various *Payloads and ground segments*
- **Space missions**: From platform provision to turn-key commercial and science space missions from LEO to GEO, in the 5 to 1,000 kg range
- **Know-how transfer** programmes, including academic and industrial training of entire teams in real mission environments
- **Space Consultancy** for Insurance, Investment and Industrial sectors

SSTL is Changing the Economics of Space

SURREY SATELLITE TECHNOLOGY LTD

Applications

- Launcher injection correction
- Constellations station keeping and acquisition
- Orbit height maintenance

Specifications

- Propellant:
  - 500g Xenon
  - *176g Nitrogen*
- Thrust: 20 – 50 mN
- Storage Pressure: 40bar abs maximum @ 20℃
- *Specific Impulse:*
  - 42 sec Xenon @ 300°C
  - 100 sec N_2 @ 300°C
- Total impulse: 380 N.sec
- System Volume: 2.1 litres
- Life duration: > 3 years

Environmental

- Operating temperature: -20℃ to +60 ℃
- Vibration > 13.1 grms (all axes)

Power Supply

- Operating voltage: 28Vdc nominal (24 – 38 Vdc)
- Valve power: 19 Watts open, 0.6 Watts hold
- Thruster : 2 x 15 Watt heaters (30 & 50 W optional)

Physical Characteristics

- Dry mass: 6.72 kg
- Dimensions: 400mm x 254mm x 215mm (height)

Contact

SURREY SATELLITE TECHNOLOGY LTD
Tycho House
20 Stephenson Road
Guildford, Surrey GU2 7YE
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E-mail: info@sstl.co.uk
www: www.sstl.co.uk

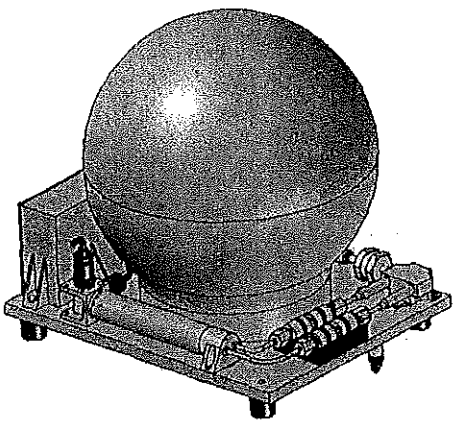
Issue & Notice

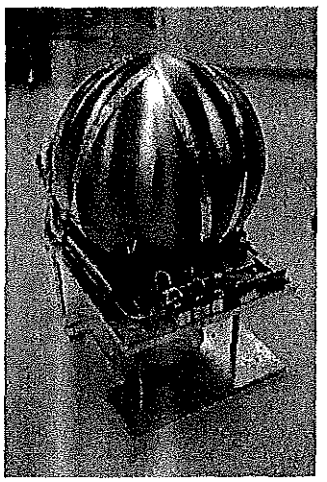
SSTL-9046. 31-08-2007.

Microsatellite Xenon Propulsion System

SURREY SATELLITE TECHNOLOGY LTD

SSTL's Microsat-150 Propulsion System is designed to provide 36 m.sec^{-1} of delta V capability to a 150kg microsatellite. It can be applied to correct launcher injection errors, to maintain orbit height, to station keeping and acquisition in small satellite constellations, or to general orbit manoeuvres. The system is well suited to advanced small satellite applications. It provides high performance within a compact design, does not impart disturbances due to propellant movement, and avoids significant propellant handling costs.





Features:

- Completely ITAR free
- Xenon propellant is used because of its high storage density and it can be kept as a gas, hence no liquid sloshing effects
- The propulsion system is built as a module and integrated with the thruster feed pipework on the spacecraft
- Bang-bang pressure regulation control allows thrust level to be varied between 10 to 50mN
- Series solenoid valves to isolate propellant
- Propellant tank has a high burst factor of > x4
- Integrated electronic controller with interface to CAN bus. RS485 and RS422 options available
- Full mechanical and electrical redundancy
- SSTL's flight proven resistojet thruster with either 15, 30 or 50 Watt redundant heaters
- Thruster mounting bracket provides full adjustability on the spacecraft
- First flight on BLMIT-1, with 5 more in build for RapidEye

Other SSTL Products

- **Propulsion systems**: Flight proven systems using nitrogen, nitrous oxide, butane, xenon and water propellants, impulses ranging from 1 N.sec to 52 kN.sec
- **Propulsion products**: Resistojet thrusters, Mechanical and Electrical Ground Support Equipment, Design and test services
- **Sub-systems** for C&DH, Power, Comms, Guidance & Navigation, Attitude Control, various Payloads and ground segments
- **Space missions**: From platform provision to turn-key commercial and science space missions from LEO to GEO, in the 5 to 500 kg range
- **Know-how transfer** programmes, including academic and industrial training of entire teams in real mission environments
- **Space Consultancy** for Insurance, Investment and Industrial sectors

SSTL is Changing the Economics of Space

Applications

- Launcher injection correction
- Constellations station keeping and acquisition
- Orbit height maintenance
- Orbit transfers

Specifications

- Propellant: 12kg Xenon
- Thrust: 10 – 50 mN
- Max total impulse: 5.65kN.s
- Storage Pressure: 120bar abs maximum @ 40℃
- Tank burst factor: > x 4
- Specific Impulse (Isp):
  - up to 48 sec
- System Volume: 7.42 litres
- Life duration: > 7 years

Environmental

- Temperature (non-op): better than -20℃ to +60 ℃
- Vibration: > 6 grms (all axes)

Power Supply

- 28Vdc nominal (24 – 38 Vdc)
- 5Vdc supply for electronics
- Valve power (open/hold):
  - 19/0.6 Watts
- Thruster :
  - 2 x 30 Watt heaters
  - (15 or 50 W optional)

Physical Characteristics

- Dry Mass: 7.2 kg
- Outline: 300mm x 255mm
- Height: 295mm

Contact

SURREY SATELLITE TECHNOLOGY LTD
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Issue & Notice

SSTL-9046. 31-08-2007.

April 20, 2009

Docket No. 0812221638–81639–01
Parts and Components Study, Office of
Technology Evaluation, Room 2705,
U.S. Department of Commerce,
14th Street and Pennsylvania Avenue, NW.,
Washington, DC 20230

RE: Request by the Commerce Department's Bureau for Industry and Security (BIS) for Public Comments on the Effects of Export Controls on Decisions to Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions [Docket No. 0812221638–81639–01]

The National Association of Manufacturers (NAM) is providing the following comments in response to the Request by the Commerce Department's Bureau for Industry and Security (BIS) for Public Comments on the Effects of Export Controls on Decisions to Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions [Docket No. 0812221638–81639–01].

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM is also a founding member of the Coalition for Security and Competitiveness (CSC), created to support modernization of the export control system and make it more transparent, efficient and predictable.

NAM members play a critical role in protecting the security of the United States. Some are directly engaged in providing the technology and equipment that keep the U.S. military the best in the world. A much larger group plays a key support role developing the advanced industrial technology, machinery, and information systems that ensure our defense industries and the U.S. military have the capabilities they need to keep our defenses strong against all threats.

High-technology industries play not only a vital role in defending our nation but also in promoting a strong and growing economy. Companies in this sector employ over 2.5 million workers, most of whom receive wages much higher than the national average. High-technology industries also contribute significantly to U.S. exports of manufactured goods. In 2008, high-technology exports represented 28 percent of total U.S. manufactured goods exports or $369 billion. As the U.S. industry continues to evolve, the United States will depend increasingly on these high-technology industries to expand exports, create jobs and keep our economy strong and competitive.

It is with this backdrop that the NAM provides the following comments on the effect of export controls on U.S. manufacturers. The U.S. export control policy does harm the competitiveness of U.S. manufacturers, does threaten the defense industrial base and does impact the way our competitors do business globally. U.S. manufacturers do lose business opportunities; competitors have made strategic decisions to buy non-U.S. manufactured parts and components; easy foreign availability of many of the items controlled by the U.S. government allows this happen. The export control system must be modernized to recognize the realities of the global marketplace. Many of our unilateral controls decrease the competitiveness of U.S. manufacturers and harm American workers without any improvement to U.S. national security. In the current environment, a system that threatens technological innovation and harms workers provides neither national nor economic security.

The NAM commends BIS for requesting comments on this important matter and looks forward to continuing to work with the agency to improve the system. The NAM comments address the questions raised by BIS and provide information on the overall state of high tech manufacturing, trade statistics and recommendations to for the government to consider.

BIS's Questions

• Any evidence or information about the existence of advertising or marketing efforts that use the absence of U.S. origin components or exemption from U.S. export controls as a selling point.

NAM members have both anecdotal evidence and actual knowledge that their foreign competitors are advertising their products as U.S. manufactured parts and components free[1]. Many foreign competitors are not as brazen to formally advertise their products as such and instead are more informal in their methods. Many highlight that their products do not include U.S. origin goods during one-on-one meetings, during the contract negotiation process or in more open settings such as at global conferences. While some competitors may not formally advertise their products as free of U.S. origin goods, many do. Competitors from Europe and China do formally advertise their products as U.S. origin free. While the most well-known advertisements are in the satellite industry, other industries are also running similar campaigns. Below is a list of some companies who advertise as U.S. origin free:

- Thales Alenia Space
- EADS
- Morotta
- Surrey Satellite Technology
- Ricardo
- Shares Tech
- Dongling Company

[1] At first most companies merely advertised as "ITAR-Free." However, many foreign competitors are now beginning to expand the campaign to include any U.S. origin parts or components.

• Any information about possible customer preferences for products that do not contain U.S.-origin components, and whether such preference may be related to relevant U.S. export controls.

The NAM has heard first-hand that foreign competitors prefer not to source from the United States because of the U.S. export control system. In meetings with foreign companies, delegations of foreign officials or our counterpart associations in other countries, each has specifically identified the export control system as a reason not to trade with U.S. manufacturers. In those meetings, representatives from Europe, Japan, and China have stated that U.S. manufactured goods are superior in quality and make but that the U.S. export control system makes the U.S. manufacturer a less reliable and dependable partner. Foreign competitors make conscious sourcing decisions to exclude U.S. manufactured goods because of:

- The licensing process itself
- Visa problems
- Unilateral U.S. controls
- Reexport controls
- The inability to get replacement parts in a timely manner
- The inability to easily transfer parts and components within their corporate family

This not only affects actual items controlled but any larger system that may incorporate controlled parts and components. Foreign competitors do not purchase larger items or systems due to the trepidation that if a replacement part is needed it could take months to procure and get approval for the export. Lack of a critical part can lead to operation shutdowns at the foreign manufacturing plant. Foreign competitors cannot risk the possibility of a plant shut down for want of a controlled part or component. Each item is critical for their operations no matter how small. Therefore, since most unilaterally controlled items are available from a foreign source, competitors source from non-U.S. manufacturers.

NAM members have also experienced foreign competitors drafting contracts to exclude U.S. manufactured goods. Our members have told us of contracts with binding clauses which require no-U.S. manufactured goods or components. Companies have also reported that some contracts from European and Asian governments include similar provisions. This trend is particularly damaging for U.S. manufacturers.

• Any information about sales lost by U.S. suppliers to non-U.S. competitors.

NAM members report losing sales to non-U.S. competitors and (many) attribute the lost sale to the U.S. export control regime; however it is hard to quantify the number or value of those sales. For contracts with clauses prohibiting U.S. content, those are sales opportunities U.S. manufacturers are unable to submit a bid to compete for the sale.

One company reports losing over half its previous level of foreign defense sales due to the overly broad nature of the ITAR that captures all parts and components used in the design of a military item.

• Any information about the possible economic impact (e.g., employment, outsourcing of specific expenditures such as research and development) to companies, industry segments or communities of any decision not to use U.S.-origin parts and components because of U.S. export controls, including any possible impact on the ability to support specific defense industrial base activities.

The unintended consequences of these regulations on the competitiveness of U.S. manufacturers, on the defense industrial base and on U.S. technological leadership cannot be overstated and significant attention must be paid immediately to address and to rectify the situation. U.S. technological leadership remains strong but has been decreasing for a number of years. The United States is innovative but so are other countries. No longer is the United States the only country able to develop, design and manufacturer cutting edge technology. Many countries including in the European Union, Japan, Korea, and China have indigenous capabilities to create the same or similar technologies to those that are manufactured in the United States. This is the reality of a globalized world and of the 21st century and these trends will accelerate.

If the United States is to maintain its technological leadership, export control policy must acknowledge that other countries can and do compete with the United States and that some unilateral controls only undermine the ability of U.S. manufacturers to design the next generation of cutting-edge technologies which are critical to the security of the United States. The NAM and our member companies fully acknowledge that there are some sensitive technologies that the United States must safeguard but the broader policy should fully consider foreign availability and indigenous capabilities before unilateral controls are implemented.

The United States needs a healthy defense industrial base for both our economic and national security. Indeed these are not two separate concepts; economic security is key pillar of, and a prerequisite for, our broader national security. The current trends though suggest that export control policy, among others, is undercutting the ability of U.S manufacturers to be first to market with new technologies. The impact of the regulations may not be felt immediately but the long term effect should be given due consideration. The slow erosion of high tech manufacturing in the United States will have significant repercussions—the United States will no longer have a strong industrial base, foreign countries will own the technology for which our military depends and millions of jobs could be lost.

Entire supply chains are negatively impacted from the original equipment manufacturer (OEMs) to the third and fourth tier supplier. Small and medium sized manufacturers (SMEs) who supply the OEMs are harmed by the decrease in global market share and exports. SMEs provide critical parts and component without which the OEMs could not operate. The more our export control policy affects U.S. exports, the more likely the SMEs will be unable to weather the downturn in business. Without suppliers, U.S. high tech manufacturers will come to rely on parts and components from abroad. This is damaging to the defense industrial base, threatens our national security and increases our reliance on foreign made goods for which we can not attest to the quality. We need a policy that encourages investment and supports R&D in the United States, levels the playing field for U.S. manufacturers and restores confidence abroad that U.S. manufacturers are dependable and reliable trading partners.

To illustrate the impact on high tech manufacturers, the NAM provides economic analysis that clearly shows the NAM is losing global market share, its own indigenous capabilities and jobs in the very sectors that are critical to our national security.

NAM ECONOMIC ANALYSIS

High tech manufacturing has been adversely affected by the current export control regime. Using trade data available for the United States government, the NAM provides analysis on high tech exports and employment.

The U.S. Government often cites the fact that the actual value of licensed exports is so minimal (in 2007, $52.6 billion or 5% of total exports for BIS) that it does not effect the competitiveness of U.S. manufacturers. Unfortunately, this measure of the impact of export controls does not tell the complete story. The more accurate measure should include the universe of products that could potentially be covered by or are related to products affected by export controls. For example, if a larger item contains one controlled part or component, companies are less in inclined to purchase the U.S. manufactured item. Therefore the lost sale is not the value of the controlled component but rather of the larger item. It is through this lens that the impact of export controls should be viewed.

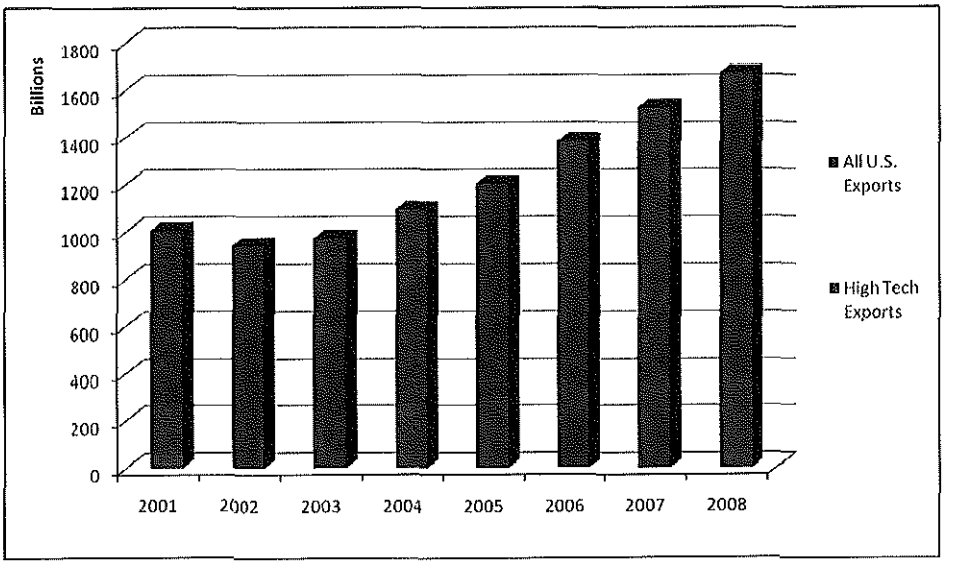
The NAM has identified twelve high tech sectors by NAICS number that we believe are directly or indirectly adversely impacted by export controls as currently administered. The NAICs numbers are listed below:

NAICS #	Description
3332	Industrial machinery manufacturing
3339	other general purpose machinery manufacturing
3341	computer and peripheral equipment manufacturing
3342	communications equipment manufacturing
3343	audio and video equipment manufacturing
3344	semiconductor and other electronic component manufacturing
3345	*Navigational, measuring, electro medical and control instruments* manufacturing
3346	Manufacturing and reproducing magnetic and optical media
3353	Electrical equipment manufacturing
3359	all other electrical equipment and component manufacturing
3364	Aerospace product and parts manufacturing
5112	Software publishers

Using this data set, the NAM provides the following trade analysis for high tech manufactured goods that are or could be affected by export controls.

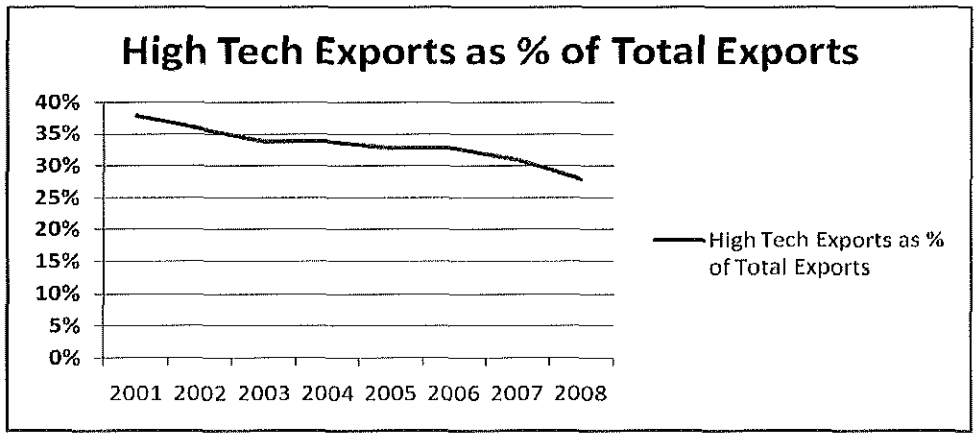
- U.S. exports have risen by 44% since 2001 while high tech exports have only grown 25% over the same time period.

CHART 1: U.S. Exports from 2001 to 2008 (see appendix B for further details)
Source: Department of Commerce



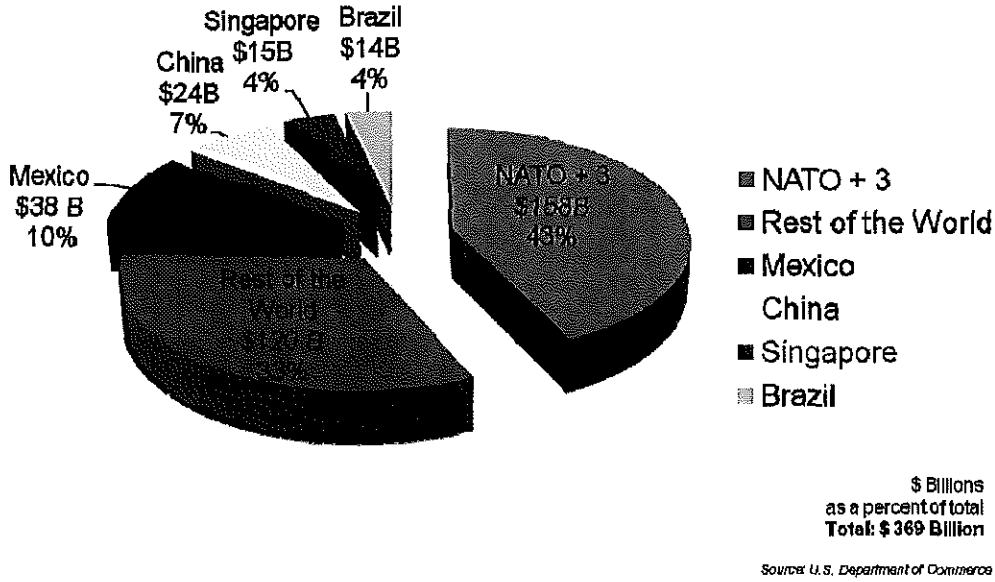
- Since 2001, high tech exports account for an ever decreasing percentage of total U.S exports. High tech exports accounted for 36% of all exports in 2001 and only 28% in 2008 with the most significant decrease occurring within the last three years.

CHART 2: High Tech Exports as a % of Total Exports (see appendix D for further details)
Source: Department of Commerce



- Over 50% of all high tech exports are to NATO +3 countries and Mexico.

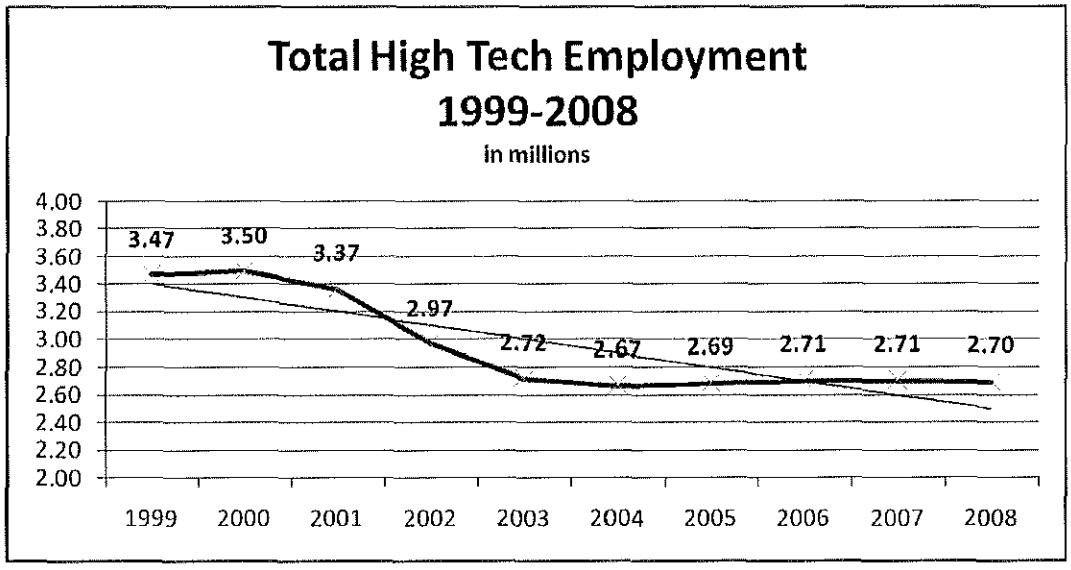
CHART 3: Top U.S. High Tech Export Markets (See appendix C)



- Since 2000, the number of people employed in high tech manufacturing has decreased.

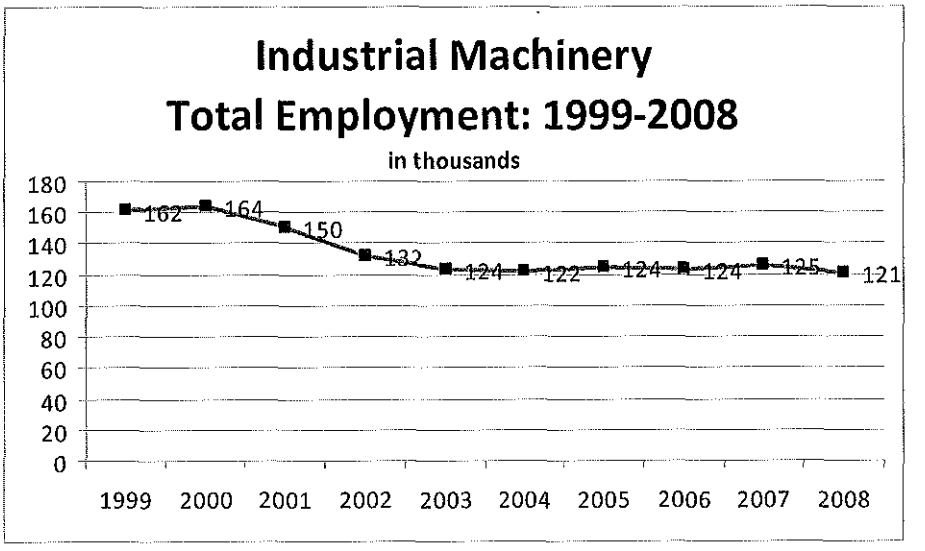
CHART 4: High Tech Employment 1999-2008 (see Appendix A for further details)

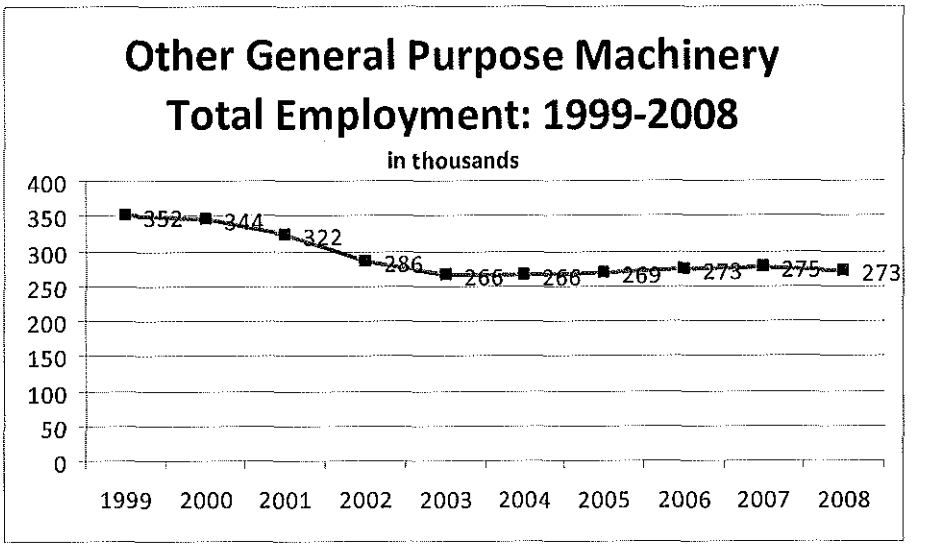
Source: Department of Labor

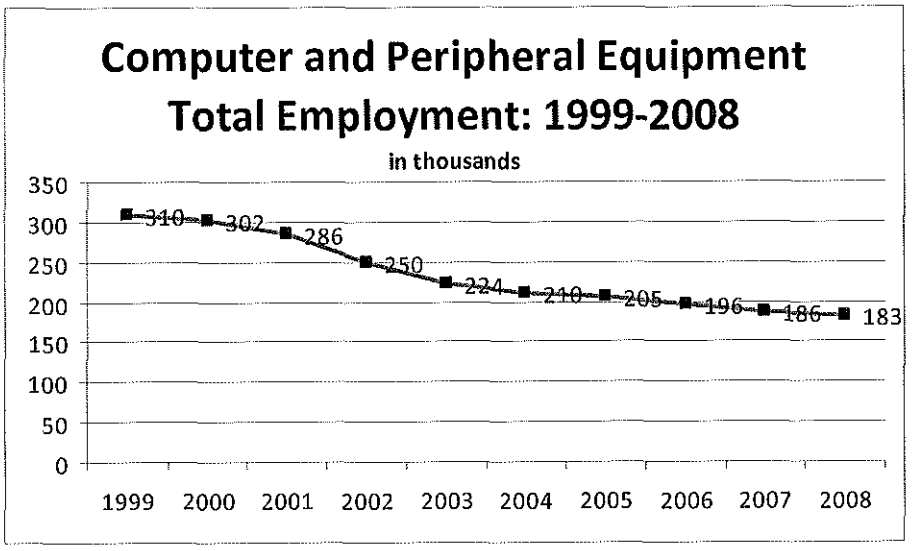


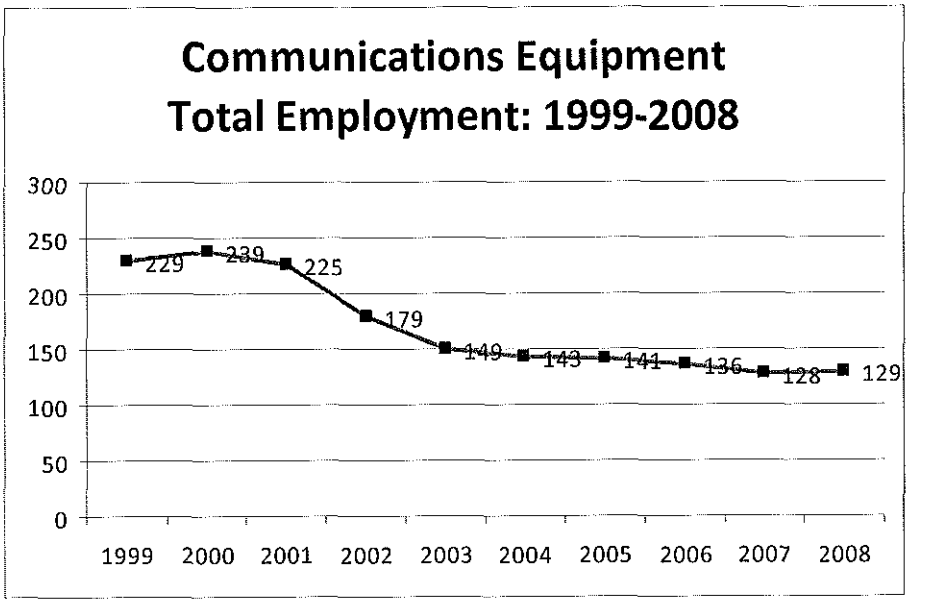
- Since 1999, every industry within the NAM's definition of high tech has decreased the size of its workforce

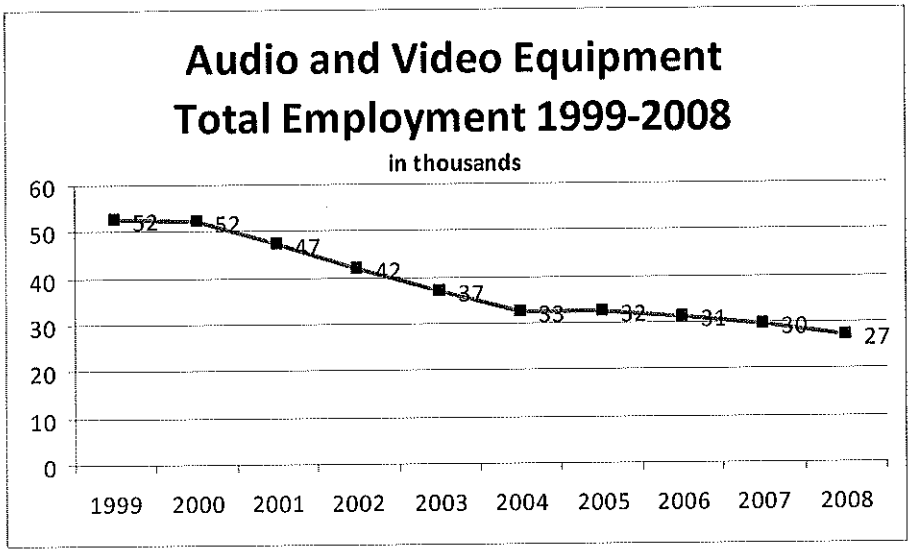
CHARTS 5-16: Industry Specific Employment Graphs (in thousands) (see Appendix A for further details)
Source: Department of Labor

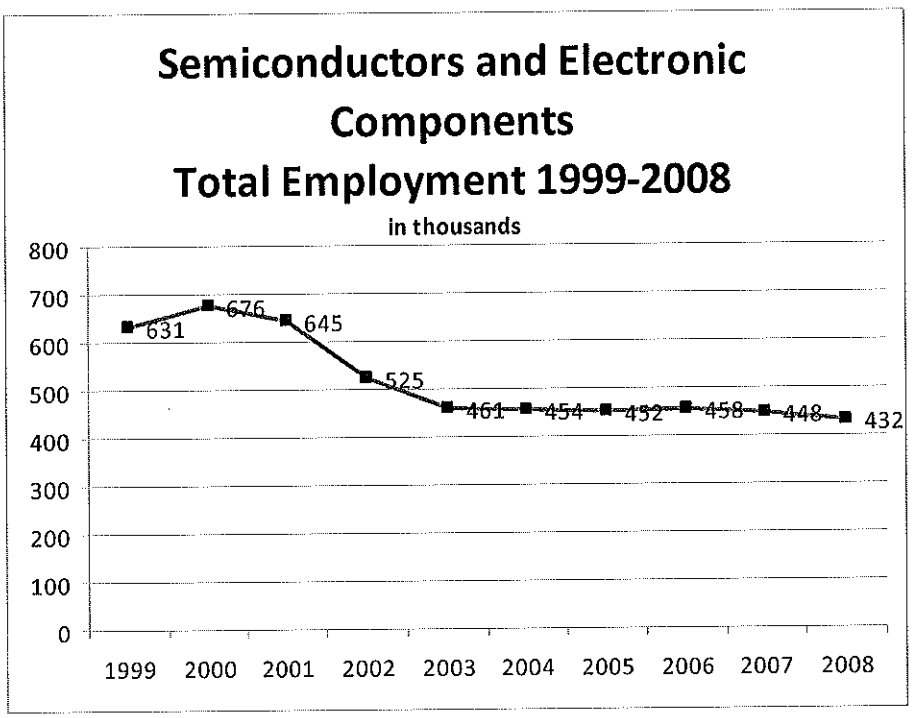


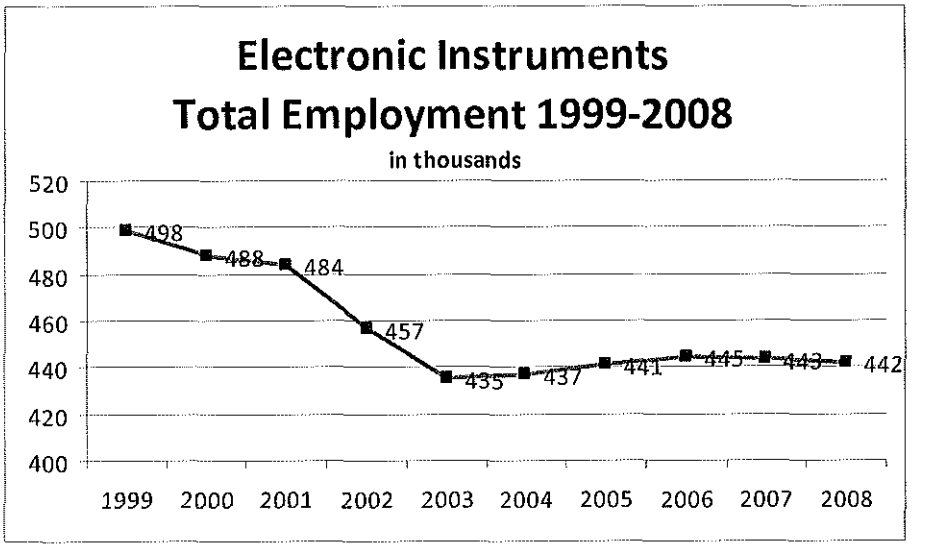


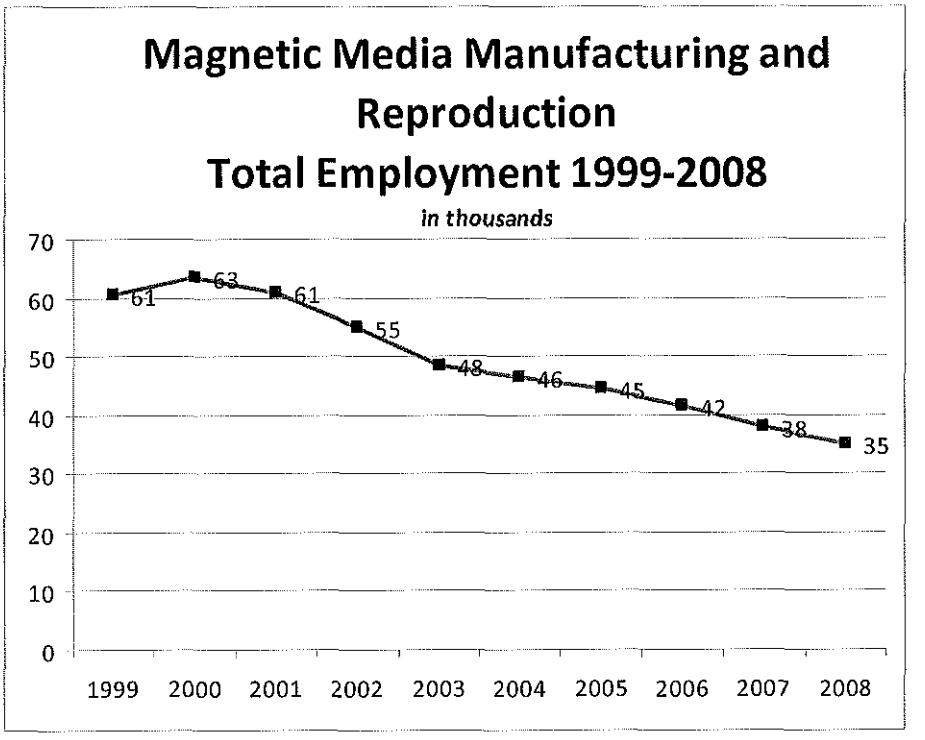

Computer and Peripheral Equipment
Total Employment: 1999-2008
in thousands
350
300
250
200
150
100
50
0
310
302
286
250
224
210
205
196
186
183
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008

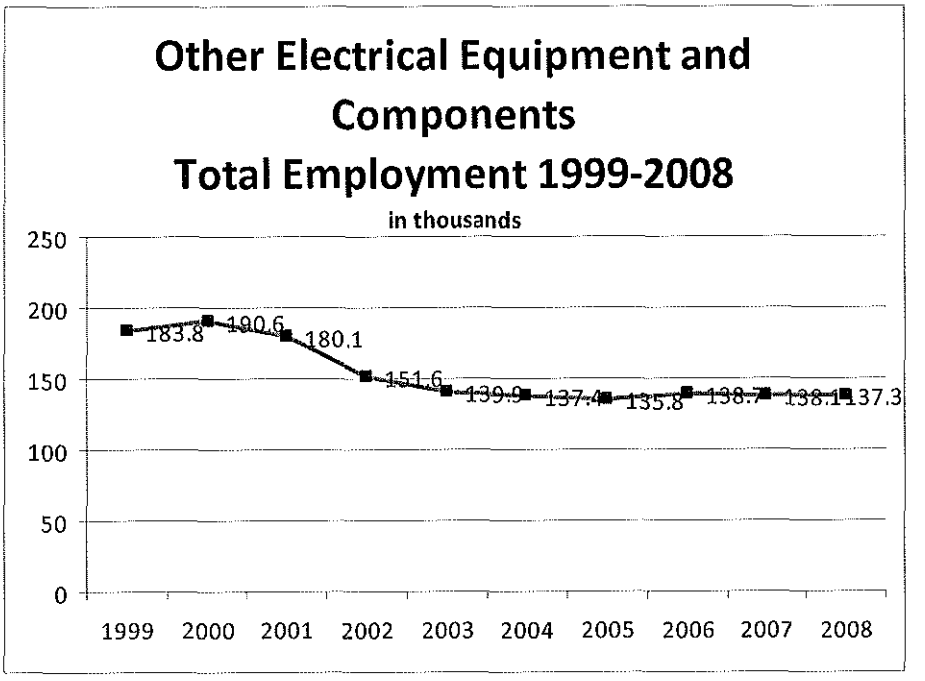

Communications Equipment
Total Employment: 1999-2008
300
250
200
150
100
50
0
229
239
225
179
149
143
141
136
128
129
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008

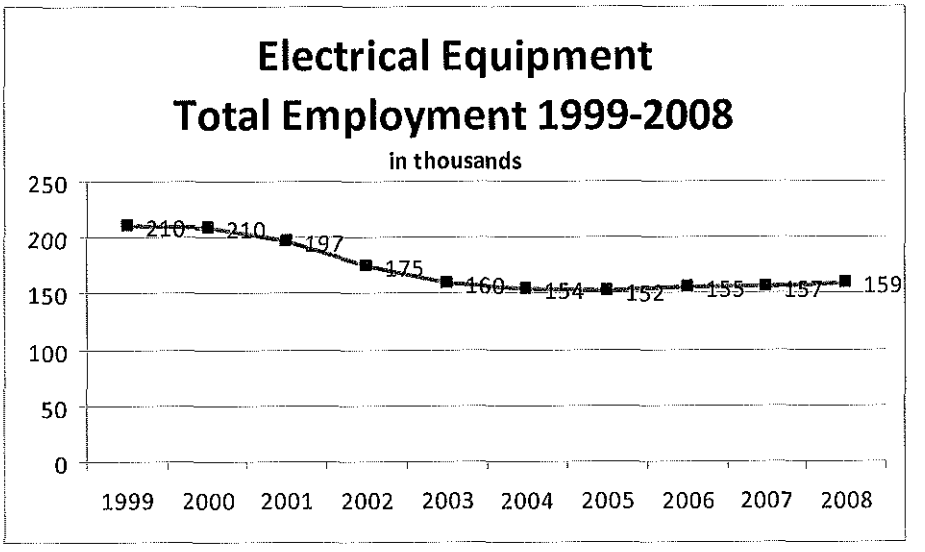

Audio and Video Equipment
Total Employment 1999-2008
in thousands
60
50
40
30
20
10
0
52
52
47
42
37
33
32
31
30
27
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008

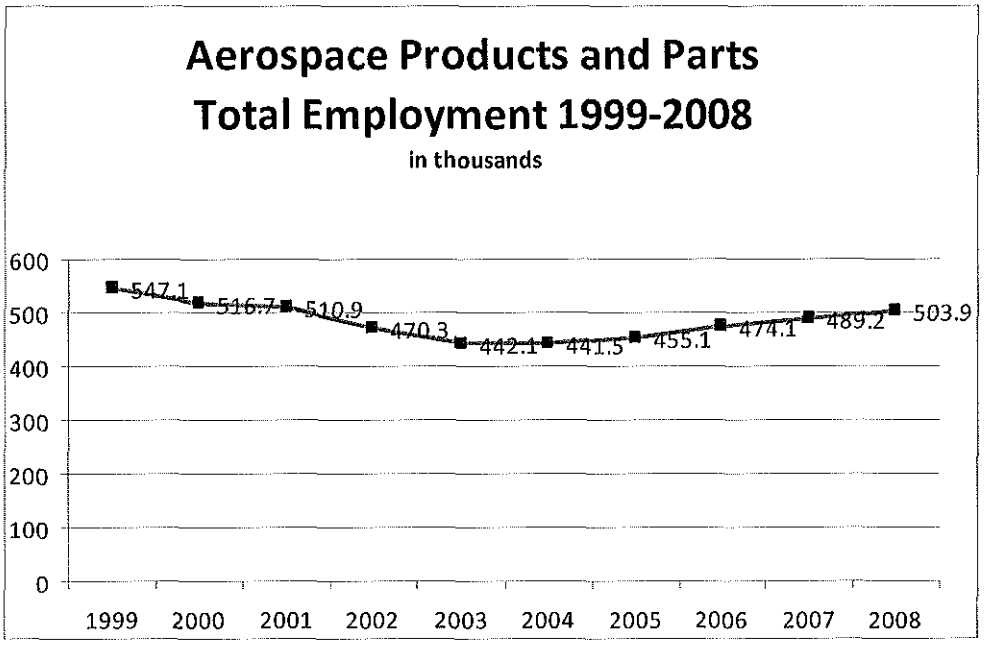

Semiconductors and Electronic Components
Total Employment 1999-2008
in thousands
800
700
600
500
400
300
200
100
0
631
676
645
525
461
454
452
458
448
432
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008

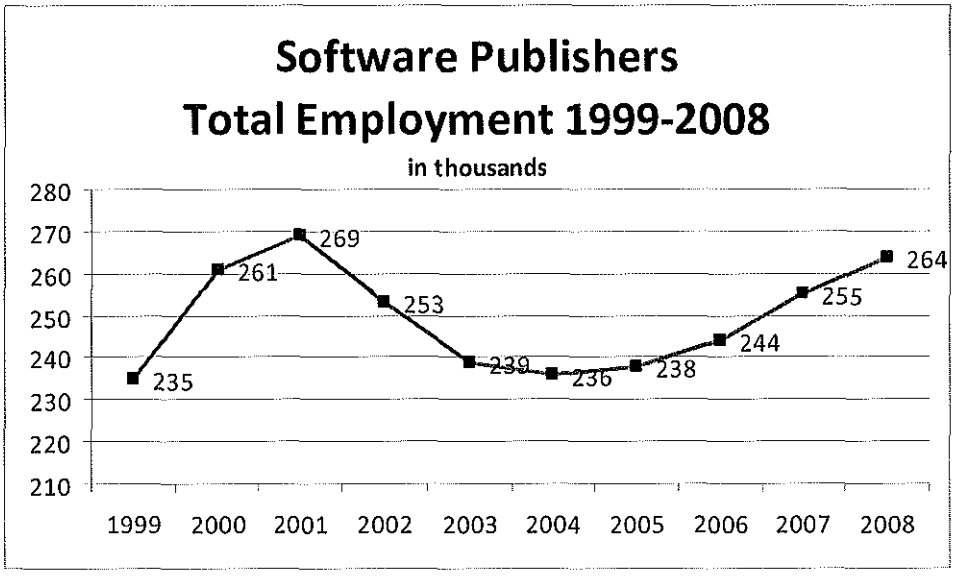

Electronic Instruments
Total Employment 1999-2008
in thousands
520
500
480
460
440
420
400
498
488
484
457
435
437
441
445
443
442
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008


Magnetic Media Manufacturing and Reproduction
Total Employment 1999-2008
in thousands
70
60
50
40
30
20
10
0
61
63
61
55
48
46
45
42
38
35
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008


Other Electrical Equipment and Components
Total Employment 1999-2008
in thousands
250
200
150
100
50
0
183.8
190.6
180.1
151.6
139.9
137.4
135.8
138.7
138.1
137.3
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008


Electrical Equipment
Total Employment 1999-2008
in thousands
250
200
150
100
50
0
210
210
197
175
160
154
152
155
157
159
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008

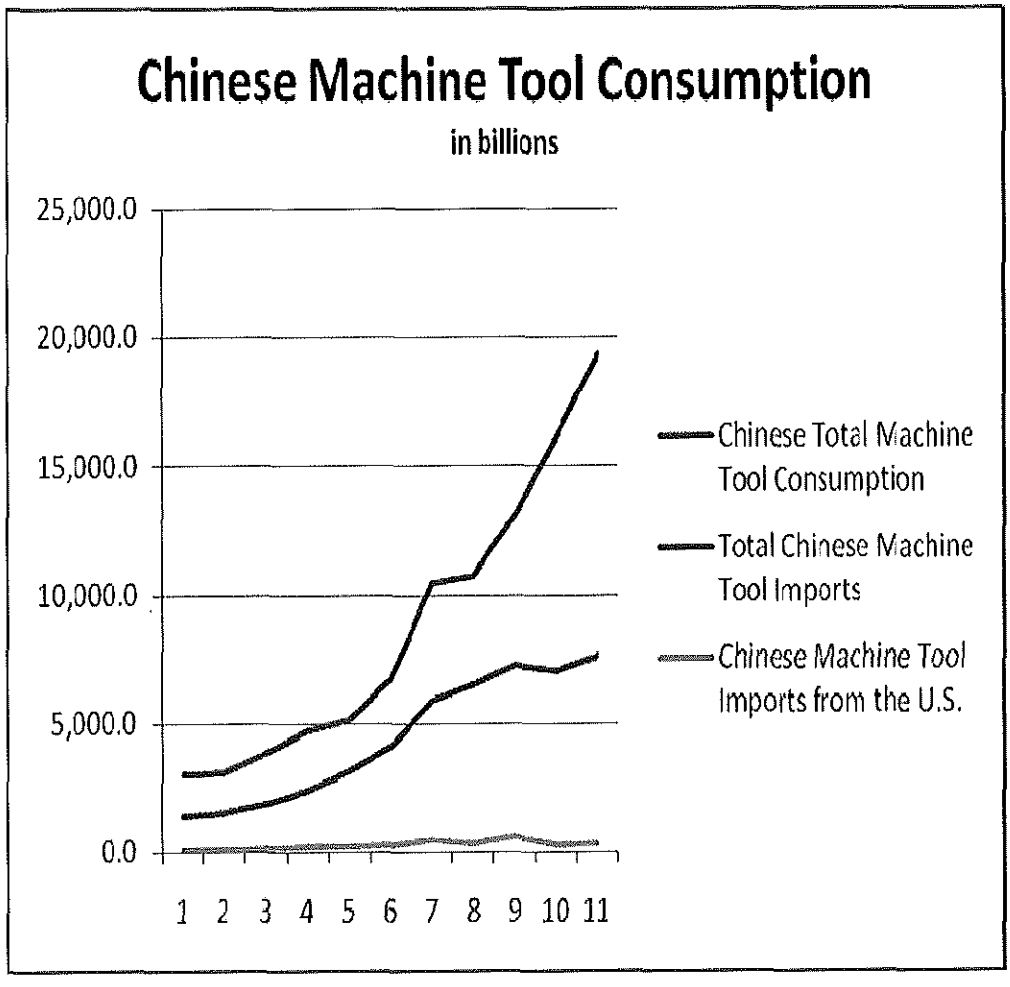

Aerospace Products and Parts
Total Employment 1999-2008
in thousands
600
500
400
300
200
100
0
547.1
516.7
510.9
470.3
442.1
441.5
455.1
474.1
489.2
503.9
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008


Software Publishers
Total Employment 1999-2008
in thousands
280
270
260
250
240
230
220
210
235
261
269
253
239
236
238
244
255
264
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008

- Since 1998, U.S. machine tool manufacturers have lost significant sales opportunities to the Chinese market.

CHART 17: Chinese Machine Tool Imports from the United States (see appendix B for further details)

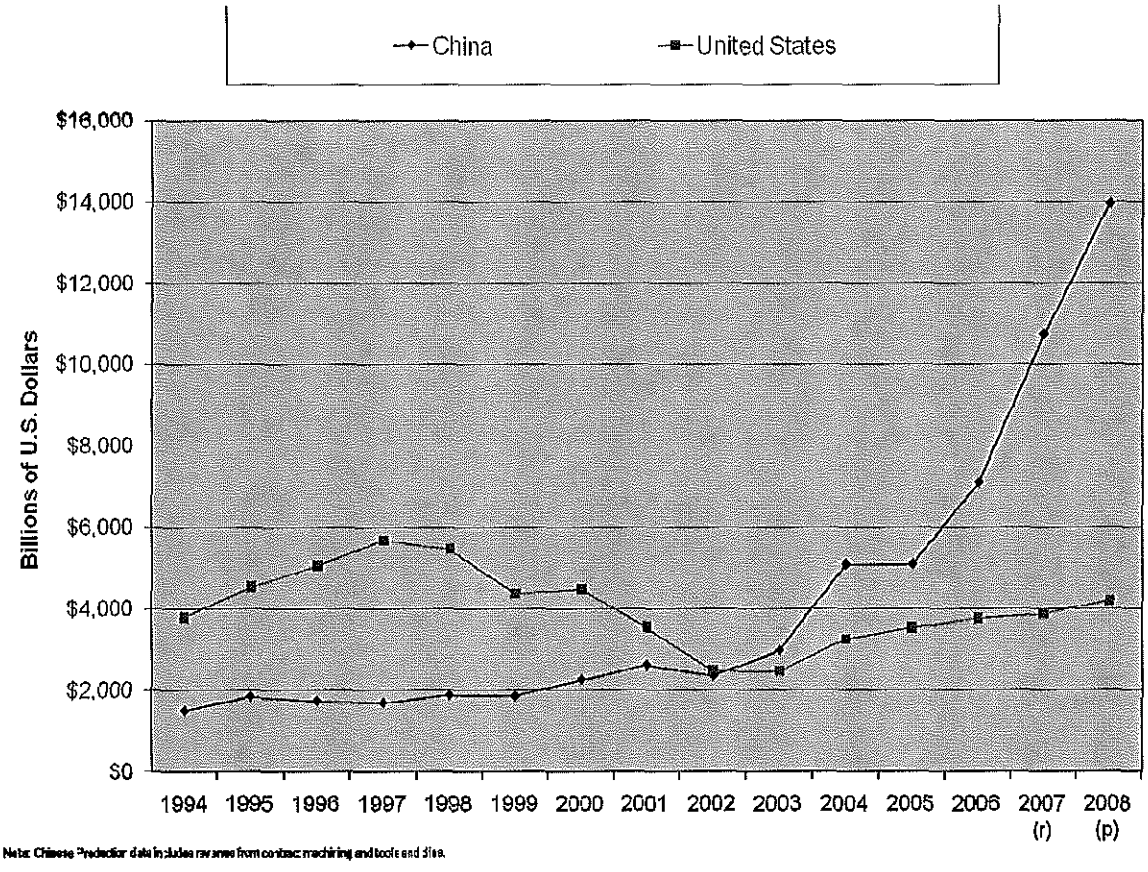
Source: GTIS, China Customs, Gardner Publications Metalworking Insiders' Report, U.S. Department of Commerce



- The Chinese machine tool industry is benefiting from U.S. export controls.

CHART 18: Chinese machine tool production is growing significantly while U.S. manufacturing production is relatively flat.

Source: U.S. Department of Congress, Gardner Publications Metalworking Insiders' Report



Note: Chinese *[illegible] data includes revenue from contract machining and tools and dies.

Recommendations

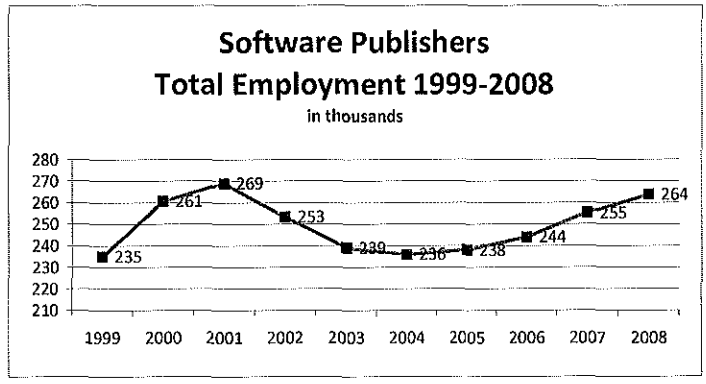
The NAM offers the following recommendations to address the impact of export controls on high tech manufacturers.

1. The NAM asks for BIS to commission a formal in-depth study by a government agency to investigate the impact of export controls on U.S. manufacturing. If BIS cannot request such a study, BIS should work with the Congress to commission a GAO report. Such a formal study would allow the government to interview foreign companies to learn firsthand how U.S. manufacturers are placed a competitive disadvantage. The NAM strongly suggest for BIS to continue to explore this subject in greater detail and to commission a formal report by the government.

2. A comprehensive review of the both the Commerce Control List (CCL) and the International Traffic in Arms Regulations (ITAR) should begin immediately to review the sensitivity and foreign availability of the controlled technology. Those technologies that are not truly sensitive and available from non-U.S. sources should be removed from the control lists.

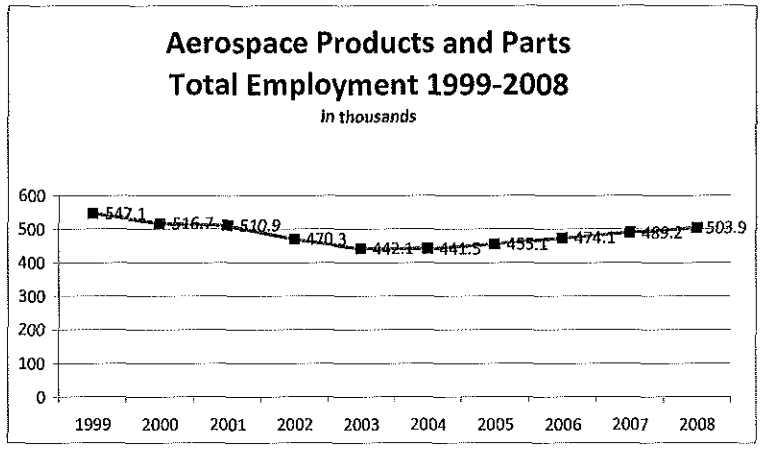
Implementing the NAM's two recommendation will go a long way towards increasing the competitiveness of U.S. high tech manufacturers, strengthening the defense industrial base and guaranteeing that the United States remains as the leader in technological innovation. NAM and its member companies are fully prepared, indeed anxious, to cooperate with BIS and other parts of the U.S. Government on such a study or any other efforts related to reforming the export control system.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1999	224.8	228.4	229.6	231.2	232.7	234.9	238	238.5	239.6	239	240.8	242.7	235
2000	243.9	246	250.2	253.8	256.7	261.8	266.9	269.6	269.1	268.4	269.3	271.5	261
2001	274.1	276.2	278.1	275.9	273.9	271.5	267.2	265.6	265.4	261.5	258.5	258.6	269
2002	259.2	257.2	255.7	255.2	254.5	255.4	256.2	253.6	251	249.9	246.1	245.4	253
2003	245.3	243.3	240.5	239.3	238.3	239.5	238.7	238.7	236.8	235.4	235.6	235.6	239
2004	234.4	234.5	234.7	234.8	235.4	236.8	237.3	238.2	237	235.5	236.1	235.6	236
2005	234.9	233.4	235.2	234	233.5	238.7	240.2	241.7	240.6	240.9	241.8	240.3	238
2006	239.2	240.7	240.4	240.1	240.1	244.5	246.3	247.5	244.7	245.9	248.3	249.9	244
2007	248.2	249.2	250.3	250	252.3	255.6	259.1	260.3	259.2	259.2	258.4	261.5	255
2008	258.2	259.7	259.6	260.4	261.9	264.8	266.8	268.1	267.6	265.2	265.2	266.6	264



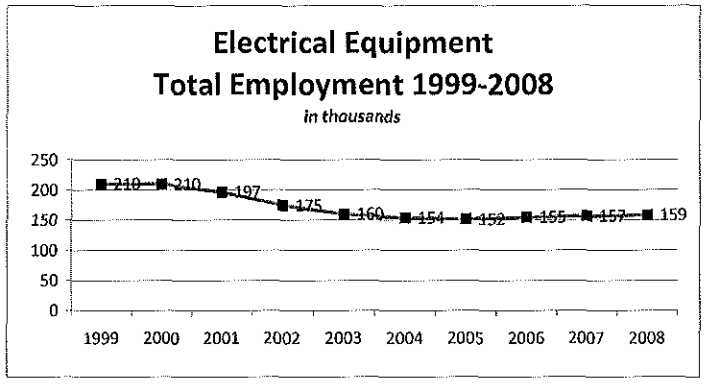
Source: Department of Labor
in thousands

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1999	571.3	564.7	563.7	555.9	551.8	548.2	544.2	539.3	535.8	531.4	530.5	528.6	547.1
2000	526.4	509.8	523.6	520.4	519.9	519.7	517.2	513.1	511.3	511.8	512.4	514.8	516.7
2001	510.2	511	512.3	512.3	512.9	514.7	514	514.2	514.7	511.6	505.7	497.7	510.9
2002	490.8	484	477.9	472.6	472.9	470	468.9	468.6	463.6	460.4	457	456.7	470.3
2003	452.4	451	446.6	446.6	444.7	441	439.4	436.6	436.5	436.7	436.9	436.8	442.1
2004	434.8	434.4	436.6	438.3	437.7	441.2	443	444.3	444.7	444.5	448.3	450.2	441.5
2005	445.3	447.7	448.7	451.3	454	458.3	461	460.2	443	460.7	463.5	467.4	455.1
2006	465	467.6	465.2	468.9	470.6	475.3	476.1	476.5	480.2	481.9	480.3	481.4	474.1
2007	481.2	484.1	482.4	481.2	484.2	488.6	489.8	492.3	493.3	494.1	498.8	500.2	489.2
2008	502.4	500.1	502.2	503.6	506.9	511	509.3	505.1	509.6	481.6	507.3	507.6	503.9



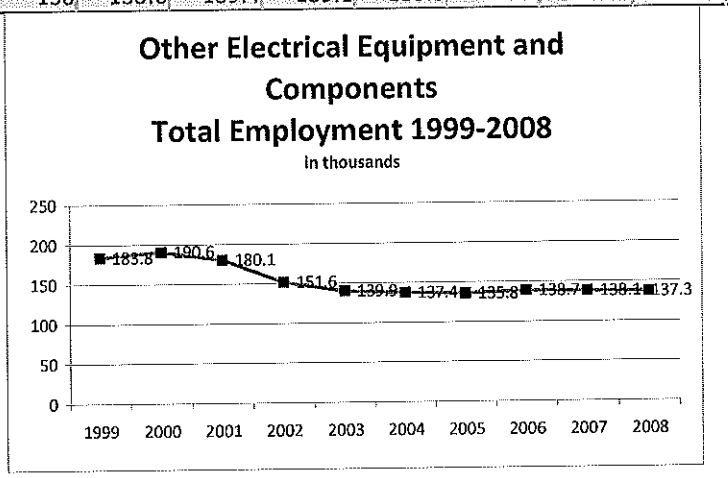
Source: Department of Labor
in thousands

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1999	211.9	211.7	211.5	210.5	209.6	209.6	208.8	207.8	208.2	209.1	209.4	210.3	210
2000	210.9	209.8	208.9	208.2	207.9	211.2	211.9	210.8	210.2	209.2	208.5	209	210
2001	206.8	207.3	205.8	202.4	200	198	194.5	193.4	191.3	189.1	185.4	183.4	197
2002	182.9	180.1	178.7	177.6	175.1	176.1	174.8	173.2	172.1	170.1	168.4	167.8	175
2003	166.1	163.6	164	162.5	161.1	160.7	158.8	158	157.2	156.4	155.8	154.4	160
2004	153.7	153.2	153.4	153.6	153.3	155.2	154.1	154.4	153.3	152.6	153.2	152.7	154
2005	152.4	151.5	151.6	151.3	151.8	151.1	150.6	151.9	151.4	151.2	152.1	153.1	152
2006	153.2	153.2	154	154.3	155	157.1	157.2	156.4	155.2	154.7	155.1	155.1	155
2007	155.3	155.5	154.6	155.2	156.8	156.9	157.6	156.8	156.7	157.6	157.6	158.4	157
2008	158.6	158.7	158	158.5	158.5	159.6	160.8	159.3	157.9	158	157.8	156.7	159



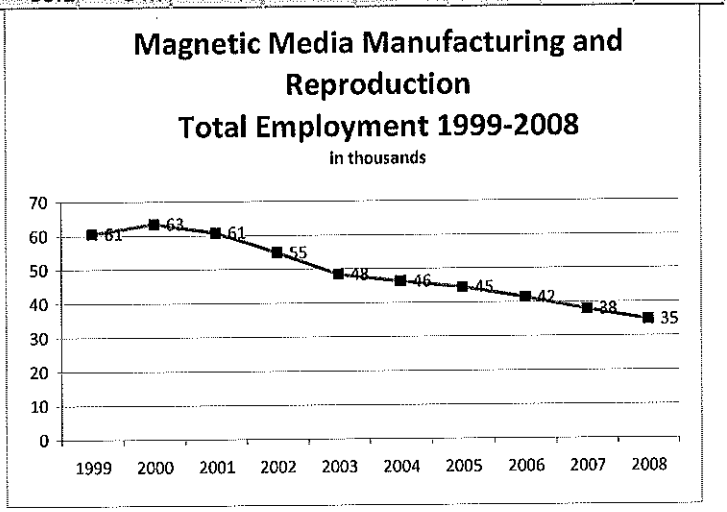
Source: Department of Labor
in thousands

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1999	183.4	182.6	183.1	184.1	183.1	184	182.6	183.5	183.1	184.6	185.5	186	183.8
2000	185.6	186.9	187.7	189.3	189.7	191.7	191.3	191.8	192.8	192.6	193.1	194.8	190.6
2001	194.8	193.3	190	188.5	185.9	183.7	179.9	177	172.7	168.6	164.6	162.6	180.1
2002	159	156.5	155.6	153.8	154.5	152.1	150.1	149.5	148.8	147.3	146.1	145.4	151.6
2003	143.8	143.5	142	140.9	140.3	140	138.5	139.1	138.8	138	136.6	137.4	139.9
2004	137	137.1	136.7	136.5	137.5	137.8	137.6	137.7	138.2	137.4	137.7	137.9	137.4
2005	136.4	136.2	136.5	136.2	135.8	136.2	136.3	136	134.9	133.4	135.5	135.7	135.8
2006	135.4	135.9	137.4	137.6	138.4	141.1	139.5	139.4	140.1	140.1	139.3	140.3	138.7
2007	138.8	138.4	138.4	138.7	137.9	138.3	138.2	139	137.2	136.5	138.2	137.3	138.1
2008	136.9	136.6	137.7	138	138.6	139.4	139.1	138.3	136.8	136.7	135.3	134.2	137.3



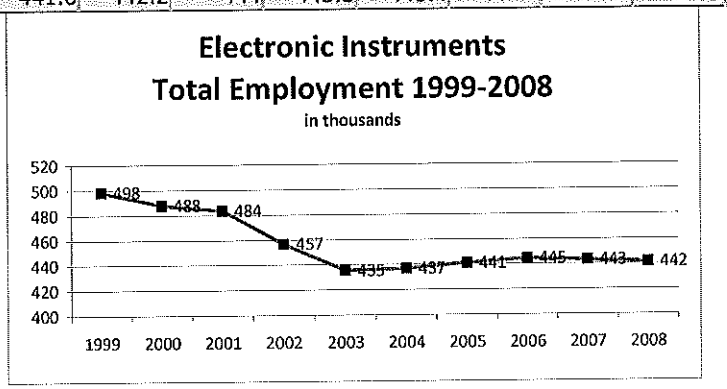
Source: Department of Labor
in thousands

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1999	59.2	59.5	59.7	60.1	60.2	60.2	60.9	61	61.1	61.5	61.6	61.2	61
2000	61.1	61.6	61.9	62.3	63	63	64	64.8	64.7	64.6	65.2	64.5	63
2001	64.2	63.8	64.3	62.6	61.5	60	59.8	59.4	59.7	59	58.7	57	61
2002	56.6	56.3	56.2	55.4	55	55	54.5	53.9	53.8	54.8	54.8	52.7	55
2003	51.3	50.6	50.1	48.7	47.4	47.9	47.3	46.9	47.4	47.8	47.7	47.6	48
2004	47.3	47.3	47.3	48	47.4	45.7	45.4	45.7	45.4	45.8	45.6	45.2	46
2005	45.1	45.2	44.7	45.4	45.1	44.5	44.5	44.5	43.9	43.7	43.7	43.4	45
2006	42.6	41.9	41.5	41.1	40.8	41.3	41.2	41.5	41	41.5	41.7	41.7	42
2007	40.9	40	39.6	38.1	37.3	37	36.9	37.8	37.1	37	37	36.2	38
2008	35.6	36	35.4	35.2	34.7	35	34.9	34.9	34.5	34.2	34.1	34.1	35



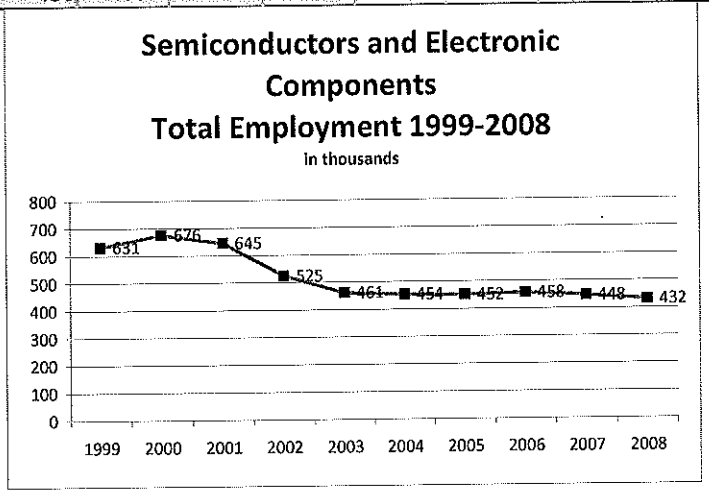
Source: Department of Labor
in thousands

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1999	505	504.7	503.1	500.6	499.7	499.5	499.7	497.4	494.4	492.2	491.9	491.6	498
2000	488.4	488.9	486.3	485	486.3	486.8	490.6	489.3	486.8	487.4	487.5	489.3	488
2001	489.9	488.5	488.3	487.3	486.4	488.5	489	486.2	478.7	475.6	473.1	472.1	484
2002	467.7	465.8	463.1	461.9	459.4	460.7	457.8	455.3	451	447.9	445.3	445.7	457
2003	446.2	442.2	440.1	435.9	434.1	434.5	432.3	433	431.1	431	432	432.3	435
2004	431.1	430.2	432.9	433	435.9	438.4	440.9	440.2	438	440.3	439.7	441.6	437
2005	439.8	439.9	439.4	438.9	439.3	441.7	444	443.3	440.3	441.6	442.1	441.6	441
2006	439.9	442.3	440.5	442.8	442.8	448.1	446.6	447.3	445.2	445.4	445.2	447.3	445
2007	445.8	447.1	443.2	442	444.1	445.2	444.4	443.9	440.8	439.5	439.8	442.1	443
2008	440.5	440	442.7	441.6	442.2	444	443.5	445.4	442.7	439.3	438.7	438.1	442



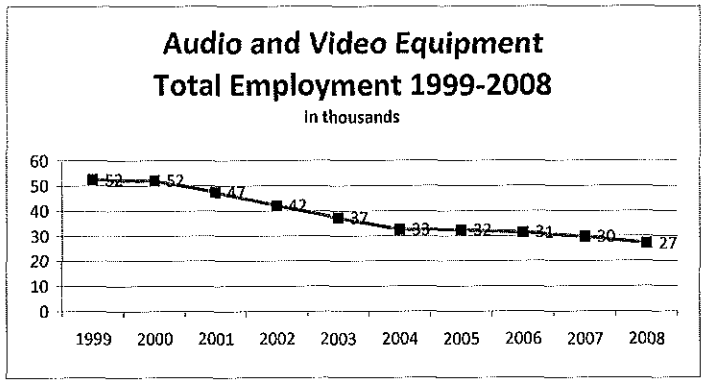
Source: Department of Labor
in thousands

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1999	624.8	624.1	625.1	626.1	627.8	632.2	631.7	630.9	630.9	633.4	637.2	641.7	631
2000	641.4	646.1	648.9	654.2	659.2	674	685.3	691.3	693.6	701.9	707.2	712.3	676
2001	714.5	712.8	703.8	686.2	669.7	652.5	631.9	615.8	603.9	593.6	583.3	576.7	645
2002	563.1	553.2	544.1	539.6	536.3	531.3	525.1	516.2	506	499.6	491.4	487.8	525
2003	479.9	475.1	472	468.1	464.2	462.3	457.7	455.8	450.9	447.8	448.8	450.2	461
2004	447	448.6	448.7	450.5	454	458.4	461.2	460.3	458.2	456.3	454.6	451.6	454
2005	448.6	449.3	449.7	449.7	450.7	455.1	454.8	455.1	453.6	452.2	452.1	453.1	452
2006	450.4	453.6	454.7	459.1	458.4	464.7	464.4	463.2	460	457	455.5	453.3	458
2007	455.4	452.4	449.8	448.3	448.4	452.8	450.7	446.2	442.1	440.2	441.3	442.3	448
2008	440.7	437	437.3	436	433.5	433.1	434.5	434.6	431.7	426.9	424	419.4	432



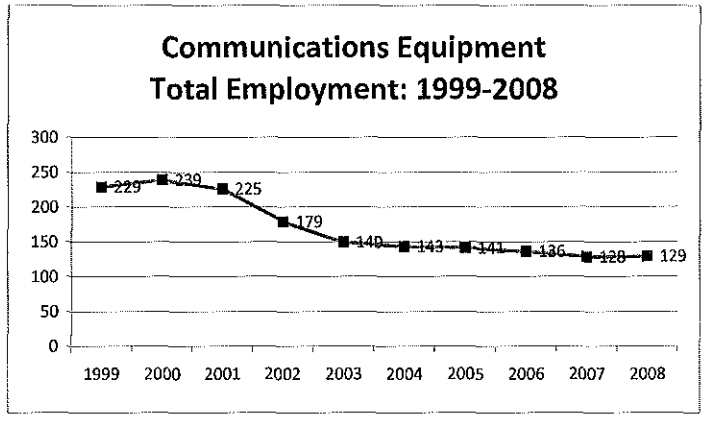
Source: Department of Labor
in thousands

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1999	52.9	52.7	52.2	51.9	52.3	52.7	51.9	52.2	52.5	52.4	52.7	52.5	52
2000	51.9	52.1	51.6	52.1	51.7	52.3	52.6	52.4	52.5	52.5	52.1	51.5	52
2001	50.9	50	50.2	48.9	46	47.8	47.4	47.3	46.7	45.6	44.3	44	47
2002	43.2	42.7	42.1	42.1	39.8	42.1	42.3	42.3	42.2	41.7	41.7	41.8	42
2003	40.2	39.5	39.1	38.1	37.9	37.4	36.9	35.8	35.4	35.6	34.7	34.3	37
2004	33.1	33	32.7	32.4	32.3	32.3	32.7	32.3	32.5	32.2	32.1	32.6	33
2005	32	32.3	32.7	32.5	32.8	33.1	32.9	32.3	31.6	32.4	32.3	32.3	32
2006	32.1	32	31.7	31.7	31.3	31.3	31.4	31.3	30.8	30.9	30.9	31	31
2007	30.5	30.2	30.2	29.8	29.4	29.5	30.5	30.6	29.8	28.5	28.9	28.3	30
2008	27.9	27.4	27.1	26.8	27.1	27.5	27.3	27.1	26.8	26.7	26.4	26.2	27



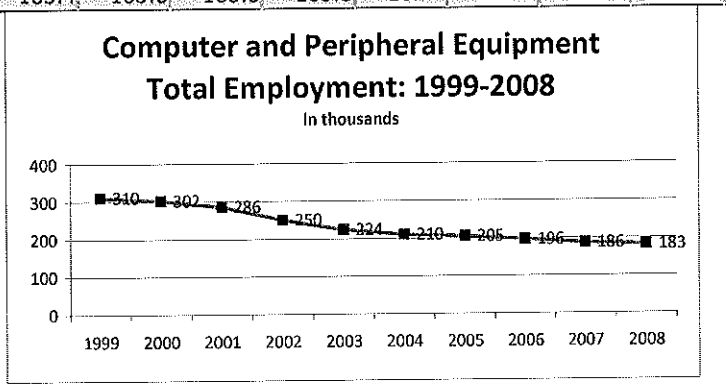
Source: Department of Labor
in thousands

													Annual
1999	229.7	228.4	227.6	227.3	227.4	228.5	227.7	227.6	228.6	229.7	230.7	231.2	229
2000	231.9	233	231.2	233.5	234.9	237.7	240.4	242.6	241.7	243.9	244.4	247.5	239
2001	246	244	243.2	237.5	234.3	229.9	222.7	217.5	212.8	210.9	204.2	201.4	225
2002	194.6	192.5	189.8	188.1	185.4	180.4	177.1	172.8	170.3	170.5	163.8	162.2	179
2003	157.1	156.6	154.2	152.6	151.3	149.3	148.1	145.6	144.2	144.8	144	143.1	149
2004	143.8	143.5	142.6	142.2	142.4	143.3	144.2	144.2	142.4	142.8	142.2	142	143
2005	144.4	143.5	141.1	141.2	141.2	141.9	141.7	140.7	139.9	140.7	140.2	140.5	141
2006	138.9	139.8	139.3	138.9	138.9	139	136	134.8	133.3	131.6	131.5	131.8	136
2007	130.5	130.4	128.8	127.8	126.8	127.6	127.2	127.4	127.2	127.2	128	128.6	128
2008	128	127.3	127.7	128.7	129	130.5	129.1	128.8	129.2	130	129.9	129.4	129



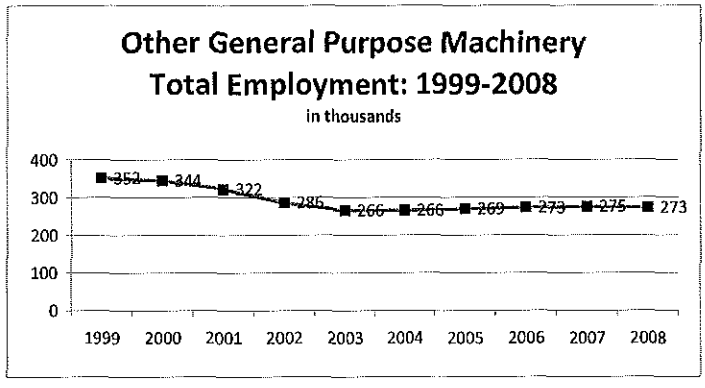
Source: Department of Labor
in thousands

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1999	311.6	310.9	310.4	311.6	311.5	315.4	311.7	309.3	308.9	306.8	306.4	306.3	310
2000	307.4	303.5	302.5	296.4	295.8	297.2	303.8	305.5	303.2	302.7	301.7	303.5	302
2001	306.7	304.5	300.7	296.8	296.8	290.5	284	279.3	273.2	270.7	266.3	264.4	286
2002	261.9	259	257.6	254.5	252.8	251.4	249.8	244.2	242.5	241.8	242.2	242.7	250
2003	234.7	231.1	231.4	229.9	227.4	227.7	223.2	219.3	217.9	216.4	215.4	213.9	224
2004	213.7	213.2	213.3	212.2	212.9	212	209.6	209.7	208.6	205	204.5	205.1	210
2005	205.4	204.4	204.5	204.9	205.7	207.7	207.2	206.2	205.4	204	202.8	202.4	205
2006	197.7	196.9	197.7	196.6	197.8	198.6	197	196.2	194.7	193.6	193	194.1	196
2007	188.7	188.7	188	187.5	187.8	186	186.2	185.1	184.7	183.6	183.4	184.2	186
2008	182.8	183.2	183.3	183.4	183.6	183.3	183.3	182.7	182.8	182.3	181.8	180.7	183



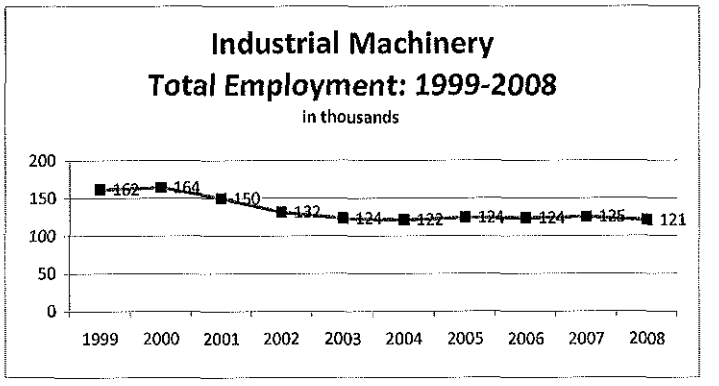
Source: Department of Labor
in thousands

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1999	356.9	356.7	354.4	352.5	352.5	352.3	352.4	350.6	349.2	348.7	347	349.3	352
2000	346.4	345.7	345.3	345.6	345	346.7	345.8	344.2	342.3	341.4	340.7	341.2	344
2001	339.1	337.5	335.2	330.7	329	326	320.4	318.8	313.2	309.6	303.7	302.3	322
2002	296.6	293.9	291.6	290.3	288.3	287.8	285	283.4	279.9	279.2	277.2	277.3	286
2003	275.2	272.8	270.5	268.3	267.2	267.7	264.8	262.1	260.1	260	260.2	261	266
2004	261.1	262.7	264.8	265.6	265.6	267.8	268	267.1	265.6	266	267.3	268.6	266
2005	268	268.9	268.1	267.3	267.4	268.1	269.2	269.2	268.2	273.3	271.9	272.3	269
2006	271.3	271.8	273.1	273.5	273.1	272.9	273	273.6	273.3	273.5	274.9	275.5	273
2007	274.3	274.5	274.8	275.5	274.8	277.4	278.9	275.3	274.3	274.1	274.4	276.2	275
2008	275.8	275.1	276	274.1	272.1	273.1	274.4	272.4	271.2	271.8	268.1	267.5	273



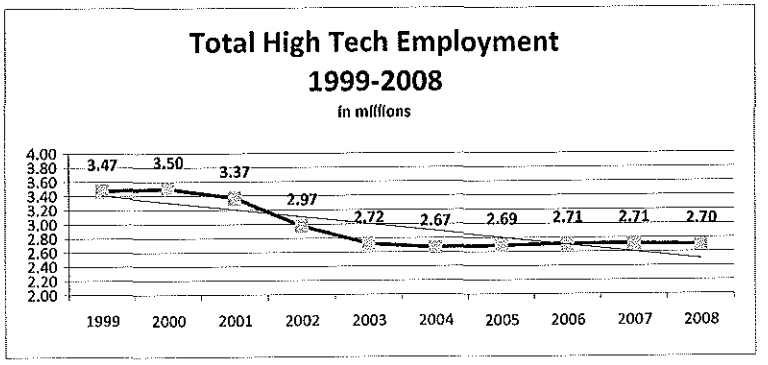
Source: Department of Labor
In thousands

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1999	164	162.9	162.4	162.2	161.7	161.8	162.1	161.5	160.9	160.5	161.2	160.5	162
2000	160.1	160.7	160.8	161.7	163.6	165.9	166.6	165.8	165.5	166	166.2	165.6	164
2001	163.2	160.6	159	157.2	154.3	152.1	148.5	146.8	143.8	140.5	138.2	137.3	150
2002	134.9	134.9	134.5	133.3	132.6	132.1	131.1	130.5	129.7	128.8	128.9	129.1	132
2003	127.7	126.5	125.6	123.8	123.7	124.1	122.3	122.4	121.8	121.2	121.5	121.7	124
2004	119.9	120.1	121.5	121.4	120.5	121	121.8	121.8	121.9	121.9	122.5	123.6	122
2005	122.8	123.3	123.6	124.7	126.2	126.3	125.9	124.8	122.8	123.5	124	123.8	124
2006	122.5	123.4	123.5	123	123.3	123	124.2	124.1	123.9	123.8	124.8	125.8	124
2007	126.1	125.2	125.8	124.2	125.5	125.8	125.6	125.1	124.3	125.3	125.4	126.4	125
2008	123.3	123.9	123	121.4	122.3	122.5	121.3	121.2	119.4	117.9	116.7	116.7	121



Source: Department of Labor
in thousands

	3332	3339	3341	3342	3343	3344	3345	3346	3353	3359	3364	5112	Total High Tech Em
1999	162	352	310	229	52	631	498	61	210	184	547	235	3.47
2000	164	344	302	239	52	676	488	63	210	191	517	261	3.50
2001	150	322	286	225	47	645	484	61	197	180	511	269	3.37
2002	132	286	250	179	42	525	457	55	175	152	470	253	2.97
2003	124	266	224	149	37	461	435	48	160	140	442	239	2.72
2004	122	266	210	143	33	454	437	46	154	137	442	236	2.67
2005	124	269	205	141	32	452	441	45	152	136	455	238	2.69
2006	124	273	196	136	31	458	445	42	155	139	474	244	2.71
2007	125	275	186	128	30	448	443	38	157	138	489	255	2.71
2008	121	273	183	129	27	432	442	35	159	137	504	264	2.70



Source: Department of Labor
in thousands; except column N in millions

ployment

AMT
The Association For Manufacturing Technology
Over 100 Years of Building Global Productivity

provided by
Strategic Information and Research

U.S. Import Penetration in China
4/14/2009

U.S. Import Penetration in China
U.S. and China Production data from 1994-2008

Source(s): GTIS, China Customs, Gardner Publications Metalworking Insiders' Report, U.S. Department of Commerce

Note(s): Chinese Production data includes revenue from contract machining and tools and dies.

Prepared by Stephen Kashnikow, Industry Economist, AMT
Contact info: Ph: (703) 827-5256, e-mail: skashnikow@amtonline.org

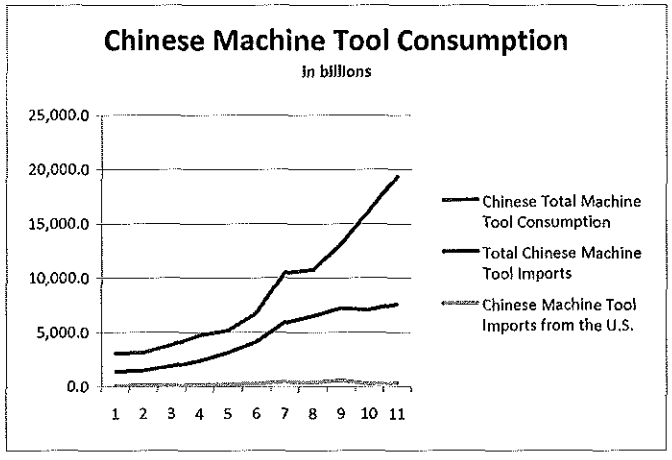
U.S. Import Penetration in China

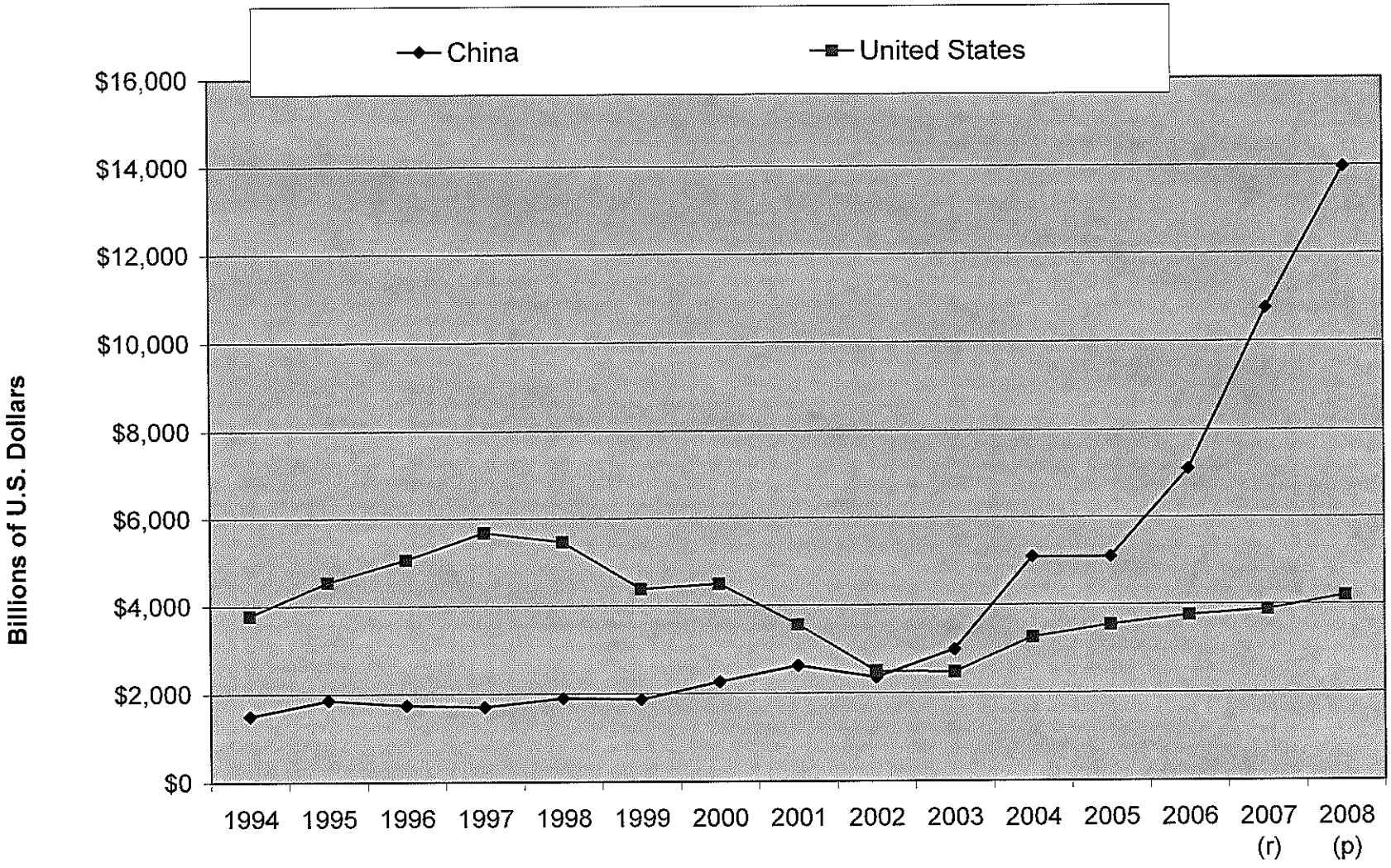
Values in billions of U.S. Dollars
1998-2008

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Chinese Total Machine Tool Consumption	3,048.9	3,145.8	3,850.7	4,738.8	5,189.0	6,734.9	10,466.5	10,775.0	13,167.1	16,181.6	19,365.0
Total Chinese Machine Tool Imports	1,391.2	1,509.3	1,890.7	2,405.9	3,152.5	4,134.3	5,906.6	6,497.1	7,254.2	7,083.1	7,598.1
Chinese Machine Tool Imports from the U.S.	101.6	128.1	133.8	212.0	244.8	275.4	481.3	382.1	602.2	267.7	369.8
U.S. Import Penetration in China	3.3%	4.1%	3.5%	4.5%	4.7%	4.1%	4.6%	3.5%	4.6%	1.7%	1.9%
Percentage of Chinese Imports from U.S.	7.3%	8.5%	7.1%	8.8%	7.8%	6.7%	8.1%	5.9%	8.3%	3.8%	4.9%

Source of data: GTIS, China Customs, Gardner Publications *Metalworking Insiders' Report, U.S. Department of Commerce*

Notes: U.S. import penetration in China is Chinese machine tool imports from the U.S. over Chinese total machine tool consumption. Percentage of Chinese imports from U.S. is Chinese machine tool imports from the U.S. over total *Chinese machine tool imports*




China
United States
Billions of U.S. Dollars
$16,000
$14,000
$12,000
$10,000
$8,000
$6,000
$4,000
$2,000
$0
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007 (r)
2008 (p)

Production of Manufacturing Technology

Year	China	United States
1990		3,469.0
1991		3,171.9
1992		3,073.7
1993		3,222.5
1994	1,500.2	3,780.1
1995	1,857.0	4,547.1
1996	1,742.0	5,062.7
1997	1,700.0	5,683.4
1998	1,893.0	5,470.9
1999	1,864.0	4,391.0
2000	2,259.0	4,498.1
2001	2,623.0	3,558.6
2002	2,350.0	2,490.0
2003	2,980.0	2,469.9
2004	5,100.0	3,258.1
2005	5,100.0	3,539.6
2006	7,100.0	3,759.9
2007 (r)	10,750.0	3,879.6
2008 (p)	13,965.0	4,202.2

Source: U.S. Department of Congress, Gardner Publications Metalworking Insiders' Report

Note: Chinese Production data includes revenue from contract machining and tools and dies.

	Column1
NATO + 3	43%
Rest of the World	33%
Mexico	10%
China	7%
Singapore	4%
Brazil	4%

To resize chart data range, drag lower right corner of range.

	High Tech Exports as % of Total Exports
2001	38%
2002	36%
2003	34%
2004	34%
2005	33%
2006	33%
2007	31%
2008	28%

Source: Department of Commerce

To resize chart data range, drag lower right corner of range.

Mercury Computer Systems, Inc. provides embedded computing systems and software that combine image, signal and sensor processing with information management for data-intensive applications. With deep expertise in optimizing algorithms and software and in leveraging industry-standard technologies, we work closely with customers to architect comprehensive, purpose-built solutions that capture, process, and present data for defense electronics, homeland security, and other computationally challenging commercial markets. Mercury is based in Chelmsford, Massachusetts, and services customers worldwide through a network of direct sales offices, subsidiaries and distributors. International revenues represented approximately 15% (approximately $30M) of total net revenue during the 2008 fiscal year ending June 30, 2008.

Mercury's international customers show increasing reluctance to buy U.S. products subject to export controls, particularly ITAR, when they have a viable alternative. Their concerns are:

1. The administrative requirements consume time and effort (and therefore cost) by our customer

2. Transactions take longer: time for initial review of order, time to file and receive approval for export license, time to administratively process material returned for repair or replacement.

3. In addition to having to plan further ahead, the amount of additional time required varies, which further complicates planning.

4. Some customers perceive Mercury's efforts to comply with export regulations as too strict, and have expressed preference in dealing with companies they perceive as more flexible.

5. The terms of export licenses and agreements restrict and encumber subsequent business by Mercury's international customers.

6. The restrictions on export of data and services complicates the process of delivering responsive, high-quality customer support.

7. The processes and documents for licenses and agreements are complex and unwieldy.

8. It's not possible to confidently predict the determination of jurisdiction (Commerce or State) or the approval/disapproval of licenses and agreements.

9. Determinations of jurisdiction and approvals may not be durable and stable.

Examples:

Customer A (European company) does not want to restrict their opportunity to export products using Mercury components, and requested a clear statement that Mercury believed the products involved would not be

controlled by ITAR.

Customer B (European company) stated clearly that Mercury's bid would most likely be ruled out if it included ITAR products.

Customer C (European company) includes ITAR as a significant factor in its "make" vs. "buy" analysis, resulting in a "make" decision that excludes the U.S. (Mercury) product.

Customer D (European consortium) had seen its program experience much delay and uncertainty due to an ITAR problem with a component (not provided by Mercury). As a result, the member companies have become wary and avoid ITAR products wherever possible.

Customer E (European consortium, similar membership to D above) expects to re-initiate a delayed program, and is expected to carry their ITAR wariness to architectural decisions for the new program.

TechAmerica
WHERE THE FUTURE BEGINS
THE ASSOCIATION OF COMPANIES DRIVING INNOVATION WORLDWIDE

April 20, 2009

Sent via email to: publiccomments@bis.doc.gov

Office of Technology Evaluation, Room 2705
U.S. Department of Commerce
Bureau of Industry and Security
14th St. and Constitution Ave. NW
Washington, DC 20230

RE: Federal Register: February 19, 2009 (Volume 74, Number 32)
Docket No. 0812221638-9166-02

Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions

Dear Sir or Madam:

TechAmerica is pleased to provide comments on the above-referenced Notice of Inquiry published by the Bureau of Industry and Security. The following member company examples, written communications of the European Space Agency (ESA) and reference articles provide factual evidence indicating U.S. –origin parts and components are being excluded by foreign and U.S. companies when making purchasing decisions.

Member Company Examples

Company A manufactures components, that fall into Category XV(e) of the ITAR. It encounters increasing difficulty selling into the European space market because of the "no-ITAR" policy adopted by a number of important European buyers (European Space Agency, Thales, etc.). The European reaction to the ITAR has provided European competitors who offer products with the exact same specifications and characteristics as Company A, an extreme competitive advantage. The ITAR designation for the products has thus damaged Company A's European business in a two-fold manner: it has reduced their ability to sell to European buyers, because of their reluctance to source ITAR parts; and, it has created a vacuum in which Company A's European competitors have accelerated development of European-made radiation tolerant microcircuits - creating foreign availability for the product.

European satellite manufacturers no longer rely on an American solution for radiation tolerant microelectronics. Company A has lost tens of millions of dollars over the years because of this increasing "shut out" of its products, which has translated into a lack of hiring in its domestic facilities.

ITAR products and the retransfer thereof must be licensed and generally do not qualify for de minimis treatment (i.e. there is no allowance of retransfer for incorporated components without further licensing). Because China is listed as an embargoed country in Section 126.1 of the ITAR, there is a presumption of denial of ITAR exports, including temporary consignment of incorporated satellite components, to China. As a practical matter, this renders Chinese launch of any foreign-produced satellite with U.S. content unallowable. This means that non-Chinese satellite manufacturers who pursue the more cost-effective launch solution that China offers, *cannot* include ITAR components in their satellite – even if the value of those ITAR components is less than 1% of the value of the complete satellite. This is despite the fact that the Chinese could not access or divert ITAR components already integrated into a foreign-designed and built satellite. It is our understanding that commercial satellites were moved to the Department of State from the Department of Commerce to ensure that launch know-how was not shared with the Chinese. It is unclear to us how prohibiting launch in China of foreign-made satellites with ITAR parts and components furthers this policy goal, particularly if component manufacturers have no direct interface or shared financial interest with the satellite end-user, the insurance community, or the launch provider. TechAmerica European competitors have hit a proverbial jackpot from the designation of satellite parts and components as ITAR by not having to compete with American sources for both Chinese-designed satellites and satellites designed by European or South American companies that will be launched by the Chinese. Note that these European competitors are providing parts with the exact same specifications and characteristics as U.S. products to these end users.

U.S. commercial customers have been interested in the components sold by Company A described above, but several have chosen not to purchase Company A's solution because they did not want the ITAR "see-through" rule moving their entire project (a luggage screener) from the Department of Commerce to the Department of State. U.S. commercial customers are extremely wary of including ITAR parts and components in their commercial systems (even when the ITAR product offers a sound technical solution), because of the added burden ITAR produces. Because Company A's product is on the USML due to a "technical trigger," foreign-produced products with similar technical characteristics may be purchased instead by U.S. commercial customers wishing to remain ITAR-free, because they would not necessarily fall under the USML when imported into the U.S. Thus, U.S. commercial customers have an incentive to look to European competitors for the same solution that Company A offers. This company has seen increasing competition from foreign manufacturers in the U.S. market both because they may offer non-ITAR solutions and because they produce parts with the same characteristics and specifications.

Registration fees have produced an extreme burden for some of Company A's facilities that manufacture low-value parts and components (valued at $40-100/each), where each sale that requires a license is usually worth $1,000 to $5,000. ITAR rules require that a license application be supported by a purchase order or letter of intent, so Company A generally cannot apply for licenses in anticipation of repeated sales to the same customer. So it is forced to submit a license application each time it receives a small order for ITAR-controlled space-related items.

Under the revised DDTC fee structure, every registrant pays a minimum registration fee of $2,250/year. Registrants who process from 1-10 licenses per year pay an additional $500 to register the next year for a total of $2,750 - so the overhead cost of the first 10 licenses is about $275/license already - potentially as much as a 27.5% additional overhead cost for Company A for smaller sales. So the clear incentive would be to spread out these additional overhead costs over as many sales as possible.

However, companies that process more than 10 licenses are charged a $250 additional registration fee per additional license processed. For high-volume users, there is a cap on that additional fee of 3% of the overall value of the licenses processed. Depending on overall annual license volumes, the 3% cap starts to save a registrant money only if the average license value is less than about $8,333. For Company A, these additional per-license fees can still add $30-$250 dollars of overhead cost to low-value transactions, even if the 3% cap comes into play. This forces Company A either to increase its prices to customers to recover these additional regulatory costs, reducing its market competitiveness, or to absorb these costs and lower its margins on already low-margin sales, negatively affecting profitability.

Company A has recently lost a $250,000 sale of an NS controlled item (avionics test equipment) to China because of the MOFCOM certificate requirement. The customer was able to find a European supplier who could provide the customer with an alternate solution but who did not require the customer to obtain a signature from a chairman-level official within the company, a requirement for a MOFCOM certificate.

Company B has been informed by their European representatives that neither EADS nor Thales will permit their buyers to select an ITAR controlled microwave component (amplifier, synthesizer, oscillator). Company B suspects they have such policies because they do not wish to disclose the end-use to the U.S. Government agencies. Company B has come to this conclusion based upon the fact that they are so evasive on providing end-user statements for even EAR jurisdictional commodities. What they do instead is provide a form statement that merely assures the American supplier that they understand U.S. export laws and that the items being purchased will not be used in Nuclear, Biological or Chemical weapons system. They never actually provide end-user statements.

Company C was approached by a team consisting of Canadian and European companies to design an electronic component with an intended end-use in military aircraft. The design itself would be classified under ITAR due solely for its end use, not for its technical capabilities.

Company C was informed by the customer that they fully expect the final product (the electronic component within the aircraft) to fall under the ITAR, and they believe they have the capabilities to handle the required licensing for parts that will ship between the US and Canada. However, they stated that having the design technology also fall under ITAR and thus subject to TAA licensing, makes the overall design project too lengthy and complicated. Due to this, the European companies specifically stated that the design must not include any U.S. technology.

At this point, it appears that the customer is unwilling to take the time required for a CJ decision on whether this data can be classified as Dual-Use, and is actively seeking European designers for the project.

European Space Agency (ESA)

Reference: http://sci.esa.int/science-e/www/area/index.cfm?fareaid=1

From the ESA technology roadmap:

- General Agreement on the interest of making available ITAR-free space qualified Deep Sub-Micron (90nm and below – 65nm then 45nm) ASIC technology in Europe. Embedded and stand-alone High Speed Serial Links are a necessary complement.
- Widespread high interest in the availability of ITAR-free space reprogrammable FPGAs. Evolution of the Atmel family of space FPGA (40Kgates -> 280Kgates ->350/750Kgates -> 1-2MGates…)
- Large (>1Mgates) reprogrammable rad hard European FPGAs are a key component for future ITAR-free payloads and platforms

Under mission needs in ESA technology roadmap:

- European independence from foreign export control (e.g. US ITAR)

Project Objectives
Reference: http://telecom.esa.int/telecom/www/object/index.cfm?fobjectid=28086

- The objective of this project is to provide an optimized short time solution for small-medium size satellites, involving ITAR free solutions, as much as possible with regard to competitiveness and schedule, making extensive re-use of SPACEBUS product line heritage and flight records.

DLR ESA Workshop
Reference: http://www.dlr.de/rd/Portaldata/28/Resources/dokumente/esa/Winkler.pdf
Slide 8 – Product Evolution

- ITAR Issue
  Special emphasis will be given to the ITAR-issue with respect to risk (delay of deliveries) and export restrictions

- It is the goal to establish an ITAR-free platform configuration. The evolution of the product may require R&D activities for the development of ITAR-free equipment.

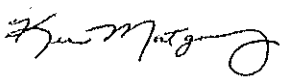
Articles Addressing the Exclusion of U.S. Parts and Components

Newsweek "Why America is Lost in Space"
http://www.newsweek.com/id/182544/output/print

Conclusion

Thank you for the opportunity to provide comments on this Notice of Inquiry. TechAmerica members stand ready to work with the U.S. Department of Commerce and the other U.S. Government agencies to address the serious effects the regulations identified above have on the policies of foreign and U.S. companies to exclude U.S. parts and components.

Sincerely,



Ken Montgomery
Senior Director, International Trade Regulation

Kathleen Lockard Palma
Counsel, International Trade Regulation

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via email

April 20, 2009

Parts and Components Study
Office of Technology Evaluation
Bureau of Industry and Security
Room 2705
U.S. Department of Commerce
14th St. and Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Re: Parts and Components Inquiry

Dear Sir or Madam:

The General Electric Company ("GE") submits the following comments in response to the Commerce Department's Bureau of Industry and Security's ("BIS") January 5, 2009, Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions (74 *Fed. Reg.* 263). GE welcomes the opportunity to comment on this important issue.

Background on GE

GE is one of the oldest, largest and most innovative companies in the United States, with operations in over 100 countries, more than 300,000 employees and 2007 revenues of more than $170 billion.
As a company dedicated to technology leadership and innovation, as well as worldwide operations and sales, all of GE's diverse businesses deal with some form of export controls making us a key stakeholder in export control issues. GE is both a supplier of US-origin parts, components and systems and a purchaser of US-origin parts and components for non-US origin systems.

Comments

GE supports rational and reasonable export controls to safeguard US-origin technology and products that are sensitive due to their importance to US national security. Many GE products subject to export control restrictions also contain technology that is critical to our advantages as a world-class manufacturer and are valuable trade secrets. GE does not believe that all US export controls should be eliminated. However, we do think that it is time to invest in revising the US export control system so that it is more efficient, predictable and transparent and directed to protecting current US national security interests.

In GE's experience, US export controls do affect the decisions of purchasers of US-origin parts and components in some instances. It is difficult to provide specific data on individual sales lost to a non-US competitor because of export controls in particular. The US supplier does not always get feedback

from a customer on why it lost a particular order. However, we believe US export controls do affect foreign purchaser decisions for at least three reasons:

(1) Export Controls Affect Price

Most, if not all, regulatory requirements have an impact on the price of the regulated product because the company must take steps to bring its activities into compliance with the relevant regulations. This is particularly relevant when the costs that US manufacturers face to bring their activities into compliance with US regulations are significantly higher than foreign competitors' analogous costs. Moreover, US companies face the significant costs associated with deemed export (and deemed reexport) compliance.

Because the US export control system is the sole regime that attempts to control reexports in a serious way, the reexport burden is significant to US manufacturers. While such controls would theoretically be the responsibility of the export customer, in reality US companies have to exert time and energy educating their customers about their responsibilities. Further, US-headquartered multinationals like GE must address the requirements in their own reexports.

Reexport controls are particularly an issue for items that are not subject to a de minimis exclusion, such as those subject to the ITAR and the items excluded from de minimis eligibility under the EAR. In such circumstances, to remain in compliance with US law, the non-US party is expected to obtain permission from the US Government for the sale of its end product. This is the case regardless of when the item was sent to the non-US party. Reexport compliance can be particularly tricky in the instance a non-US manufacturer is dealing with repairs and returns for items for which the original export status is unclear.

(2) Export Controls Can Impact the Reliability of US Suppliers

If a US supplier doesn't get everything right in the original export or otherwise an unforeseen export-control related issue arises in a particular transaction, it may require that the US supplier stop and obtain permission from the US Government prior to continuing to support a particular customer. This happens both under the EAR and under the ITAR. GE has certainly had the experience, particularly in the M&A context, where we recognize that a particular item may not have been appropriately authorized at the time of the original export. Under the EAR, this can create a General Prohibition 10 issue, where a party would have need to obtain permission from BIS before it could provide further service to or support of an item. Notwithstanding the extremely hard-working team that address these waivers in BIS, due to the complexity of the issues and the volume of such requests, it is not uncommon for it to take six months or more to obtain permission to provide routine service for something that was originally unauthorized, but could have been licensed. Similar issues arise on the ITAR side.

In these situations, GE is committed to obtaining necessary authorizations, however, the time it takes to resolve these issues does have a negative affect on our customer relationships. It is not difficult to see how a non-US supplier that has gone through one of these experiences may ultimately decide it's just easier to buy from outside the US.

Another example of where US export controls can create a reliability issue relates to supplying healthcare equipment to countries subject to OFAC sanctions under licenses authorized by the TSRA program. Companies generally cannot obtain licenses to supply spare parts for medical equipment that is classified as EAR99 if the spare part itself is not classified EAR99. This creates support and reliability issues, even though the parts would be supplied as one-for-one replacements within the

custody of the OEM and its agents. While strict controls are certainly appropriate on exports to such countries, we fail to understand how it makes sense to authorize a company to supply a medical device that involves a significant capital investment by a customer and not provide an adequate legal mechanism to allow the company to maintain the product. These types of issues can lead to a perception even outside the sanctioned country that US companies are unreliable suppliers.

Reliability concerns are particularly acute when authorization is needed to provide a proposal that contains export controlled data, for example a system or component that is custom-designed for non-US military end-use. In some cases customers descope the customized products and go with "commercial grade" solutions that may not have export controls and/or non-US product to avoid these restrictions. At the end of the day the product may not be optimal for the customer's intended use, but the customer may choose to move forward regardless.

One sales employee in a GE business that makes certain component products that require export authorization provided anecdotal information on this point. Customers in Australia reported initial interest in US-origin products because of good quality and value. However, this sales employee has found that some of his non-US customers have turned back to non-US suppliers because of the difficulty in getting proposals for hardware systems due to US export controls.

Another anecdotal example involves an export-controlled system sold to an Asian customer. While the GE business initially scoped the opportunity as multi-million dollar sale, the customer ultimately scaled back their use of export-controlled hardware due to the difficulties faced in getting approval for the initial controlled exports. This reduced the US sale value of the equipment to a fraction of that initial expected value.

(3) Non-US Competitors Point to US Export Controls in Competitive Supply Situations as a Reason Not to Choose US Suppliers

Even under the circumstances in which a particular item may be supplied without US Government authorization, GE has experienced "noise" from competitors related to US export controls. In particular, we have seen competitors attempt to argue that a customer shouldn't buy from GE because they'll have to deal with reliability issues due to GE's need to obtain authorizations from the US Government (even when no such authorization is necessary). This issue has arisen in bids for the supply of gas turbines that are confirmed to be EAR99.

A GE Compliance resource based outside of the US recently shared the following anecdote, which also illustrates this point. This person recently attended a training program in Germany that addressed US export controls. During the training program, there was discussion by several participants of their desire to avoid transactions where US export controls apply, including selection from non-US products where possible. Further, a participant expressed concern over when simply involving US-based persons in cross-border software creation process could invoke US jurisdiction and that for cautions sake the company may choose to exclude US resources from these projects.

An employee in sales outside the US for one of our businesses that makes some component products that require authorizations for export estimates that about 75% of his customers in the Europe, Middle East & Africa region would rather avoid US-origin products because of potential export control restrictions. This employee commented that some customers perceive US export control restrictions as subjecting them to the risk of a "USA political whim."

Another employee in the same business indicated that he hears regularly from internal sales resources outside the US that their products are often not considered for integrated solutions because of ITAR and export concerns.

* * *

In conclusion, we believe this is a real and significant issue that affects the ability of US companies to compete effectively worldwide. GE encourages the US government to examine whether there are any changes to its current controls on reexports, in particular, that could be adjusted in a way that would preserve US national security and foreign policy interests but have less impact on the ability of US exporters to compete in the global marketplace. If at the end of the day certain of the controls are more likely to result in a customer purchasing from a non-US competitor than go through the steps necessary to remain in compliance with US export controls, it is hard to see how that benefits US interests.

Please do not hesitate to contact the undersigned if you have any questions regarding these comments.

Sincerely,

Kathleen Lockard Palma
Counsel, International Trade Regulation

>>> "Gariepy, Melanie" <melanie.gariepy@Rolls-Royce.com> 4/20/2009 3:55 PM >>>

> Dear Sirs,
>
> Rolls-Royce Canada Limited ("RRC") is in the repair and overhaul (R&O)
> business of aircraft engines and the build of new industrial engines.
> RRC's facility is located in Lachine, Quebec, and the following is in
> response to your parts and components inquiry.
>
> As a R&O facility, we receive engines from around the world. Our Original
> Equipment Manufacturer's ("OEM") authorized suppliers are located world
> wide and the majority of which are located in the US. The difficulty that
> we start encountering with our US suppliers is in relation to the US Dept
> of State requirements for identifying end users, end-user certificates and
> export permits required for repaired items received and identified as of
> militay nature, however, these items are primarily of civil nature and
> application. Indeed, these requirements add additional burdens on RRC
> which in turn, increase our turn-around-time committed to our customers
> and increases our costs.
>
> Another issue we have is with dual use goods and technology. Companies
> are often inclined to simply register dual use goods and technology with
> the US Dept. of State (play it safe) rather than taking the time to really
> evaluate its real application or its dual use nature and clearing them
> under the US Commerce Dept. Furthermore, companies also forget about the
> Canadian exemption (sec. 126.5 ITAR).
>
> In light of the above, it has happened that RRC has decided to take an
> easier root and went with the same supplier who had branches in the United
> Kingdom.
>
> Kind Regards,
> Melanie Gariepy, LL.B.
> Parajuridique/ Paralegal
> ROLLS-ROYCE CANADA LIMITÉE
> 9500 Côte de Liesse, Lachine, Qc., H8T 1A2
> Tel. : (514) 828-1745
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>
>

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

April 20, 2009

U.S. Department of Commerce, Bureau of Industry and Security
Regulatory Policy Division
Room H-2705
Washington, DC 20230

BOEING

Subject: Request for Public Comments on the Effects of Export Controls on Decisions to Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions

Dear Sir or Madam:

Thank you for the opportunity to provide comments on the above-referenced matter. As you are aware, decisions not to use U.S.-origin parts may not be communicated to U.S. manufacturers directly and thus are difficult to quantify. Nevertheless, 'design-out' is a critical issue and we support BIS efforts to understand it more fully and take it into account in formulating export policy.

Boeing's business is focused more on finished products than on parts and components and we are not best positioned to speak to that aspect of the Request. However, we encounter the effects of export controls on a daily basis. We see 'design-out' in a broad sense in three areas:

- Design out in relation to commercial satellites;
- Design-out of U.S. of origin equipment/machine tools from the production stream;
- Design-out of U.S.-origin encryption products; and
- Design-out of U.S.-origin parts incorporated into foreign aircraft.

We understood the request to cover both EAR and ITAR controls and respond accordingly.

Commercial Satellites

The effects of export controls on the U.S. satellite industry have been covered recently by several organizations, e.g. the non-profit Space Foundation's October 2008 white paper: "ITAR and the U.S. Space Industry" and the "Working Group on the Health of the U.S. Space and the Impact of Export Controls" whose February 2008 briefing can be found on the CSIS website.

It is Boeing's experience that U.S. export controls:

- Increase the cost of U.S. satellite offerings (approx 1-2 percent) because of the numerous export licenses required (marketing, program activities, launch, on-orbit support, insurance, parts/components, etc.) as well as associated management and compliance activities for each license, including DTSA monitoring;
- Limit the amount of information that can be shared with customers. This has a direct impact on the ability to forge strong customer relationships and generate new sales. It also creates an unfavorable image as a service provider – a critical issue for a multi-million dollar purchases with a decades-long operational life;
- Create schedule uncertainty due to the need to seek licenses at many steps in the process or to wait for issuance or commodity jurisdiction determinations;
- Foster an image of U.S. bureaucracy in customers' minds that is a significant initial hurdle to overcome and can be a discriminating factor in whether or not U.S. companies are selected;
- Present staffing challenges because of dual/third country national issues both in our work force and that of the customer, which in turn may implicate conflicting country privacy laws.

Boeing market data indicates that from 1998 to 2001, U.S. satellite market share was 80 percent and non-U.S. satellite market share was 20 percent. From 2002 until 2008, market share shifted to 60 percent U.S. and 40 percent non-U.S. Foreign satellite manufacturers have won an estimated 21 commercial contracts since 2004 at a loss of $3 billion to U.S. companies, see attached chart which reflects data compiled by Boeing.

We have seen that:

- Foreign competitors use U.S export controls as a marketing tool against U.S. industry;
- Customers include "ITAR Free" as part of their requirements for the purchase of satellite systems;
- Customers place short response dates in RFPs and tie payment schedules to U.S. companies' ability to receive export authorizations;
- Foreign competitors prefer not to team with U.S. companies for sub-assemblies due to U.S. export requirements.

Equipment/Machine Tools

The Boeing Commercial Airplanes business unit works with non-U.S. design and build partners on the purchase and supply of machine tools for commercial aircraft production abroad. Boeing's Integrated Defense Systems business unit is a manufacturer of non-destructive inspection equipment for use in commercial aircraft production. Both of these production elements are increasingly impacted by U.S. export controls.

Equipment purchases by foreign design and build partners represent multimillion dollar capital investments by those companies. Approvals of U.S. licenses to export inspection equipment or machine tools can take from one to twelve months. Often they come with conditions that are very difficult to implement, e.g. use on specific work packages or commercial aircraft platforms or limits to using the equipment to named manufacturers only. Schedule uncertainty and onerous conditions related to U.S. export licenses are leading domestic and overseas manufacturers to source equipment from outside the U.S. where export restrictions are considerably less restrictive and response times much shorter. Unfortunately, it is simply easier in some cases to recommend a non-U.S. sourcing strategy for equipment and machine tools.

Encryption Products

Boeing does not generally develop encryption products, rather we incorporate encryption into our products that is either publicly available (but still requires notification to the U.S. government) or purchased from a supplier. We often design U.S encryption out of our products because U.S. export controls are a deterrent and foreign procurement is easier.

In the case of encryption software that is either more advanced than U.S. encryption software and has not been reviewed by the U.S. government, or where U.S. government review places certain restrictions on the export, Boeing frequently recommends that its foreign employees and/or foreign customers purchase export controlled software/technology in their location if the same version is available for sale or can be easily obtained from non-U.S. sources. This is usually easier than using U.S.-origin encryption products. If Boeing develops software technology incorporating an encryption component that is available abroad, Boeing will disassemble the technology (if possible) before exporting it, extract the encryption component, ship the non-encryption portion of the product out of the U.S., and re-assemble it using locally purchased non-U.S. encryption components.

U.S. Aircraft Parts

As stated previously, the Boeing focus on delivered end-items allows less visibility to specific examples of product "design-out". However, design-out of U.S.-origin parts that are incorporated into large, high dollar value platforms, such as commercial aircraft, can have larger implications beyond lost sales and an unlevel playing field for both the U.S. parts manufacturer and the manufacturer of the larger item. There is a risk that design-out could have a direct adverse impact on U.S. policy with respect to countries that are subject to U.S. sanctions because it could make available to a sanctioned country an item of important consequence to U.S. foreign policy goals.

Recommendation

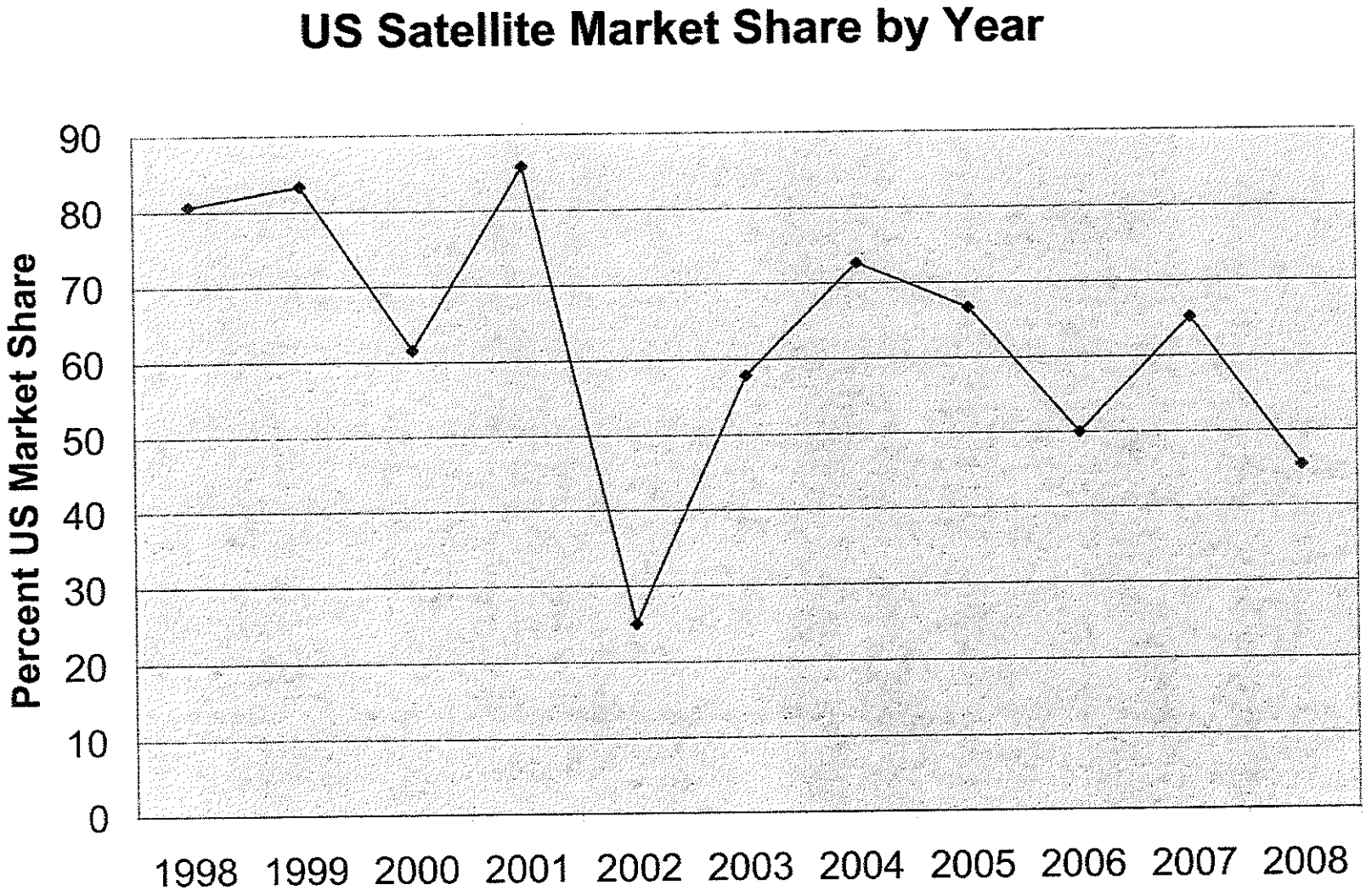
U.S. export controls do influence manufacturers' decisions to not use U.S.-origin parts and components in commercial products. The effect, whether the design-out includes parts and components or entire elements of the production stream, is that U.S. manufacturers lose business and the concept of a level playing field becomes less and less of a reality. Items are sourced from outside the U.S. where export controls, if they exist, are less restrictive and enable scheduling certainty and supplier reliability. As a consequence, U.S. export controls do not achieve their intended purpose of keeping items and technology out of controlled countries. They may have the unintended consequence of spurring technological development outside the U.S. This can only have a negative impact on the U.S. economy and perhaps on national security and the defense industrial base as the U.S. loses ground as the global technological leader in certain areas. Finally, U.S. policy should not be dependent on the thin thread of the *de minimis* rule, i.e., on whether a U.S. part or component is or is not designed out from a foreign end item. For that reason a comprehensive review of the *de minimis* rule from the perspective of design-out, foreign availability and the implications for U.S. national and economic security goals is becoming an imperative.

As a near-term step to improve this situation, more weight needs to be given to the fact that controlled items are available from non-U.S. sources when reviewing export licenses, rather than the narrow consideration of foreign availability outside of the Wassenaar regime. Such information could be provided by the exporter seeking the license. BIS could also put more emphasis on staying abreast of non-U.S. availability and incorporate this information into the annual CCL review. For the longer-term we urge the export control agencies to re-examine their controls and remove those that are not militarily critical from the USML and CCL and to review the *de minimis* rule.

Sincerely,

Norma Rein,
Senior Manager
Global Licensing Compliance & Policy
703-465-3655

Attachment: US Satellite Market Share by Year


US Satellite Market Share by Year
Percent US Market Share
90
80
70
60
50
40
30
20
10
0
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008

April 20, 2009

Sent via email to: publiccomments@bis.doc.gov

Office of Technology Evaluation, Room 2705
U.S. Department of Commerce
Bureau of Industry and Security
14th St. and Constitution Ave. NW
Washington, DC 20230

RE: Federal Register: February 19, 2009 (Volume 74, Number 32)
Docket No. 0812221638-9166-02

Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions

Dear Sir or Madam:

Texas Instruments is pleased to provide comments on the above-referenced Notice of Inquiry published by the Bureau of Industry and Security. We would like to comment on five areas we believe our customers decisions are impacted by U. S. Government controls on U.S. origin parts and components.

1. Encryption

While some progress has been made recently, the encryption regulations are complex and difficult to apply and administer. This causes delays in the development and sale of semiconductor components which incorporate encryption. These delays are factored into our customer's decisions to purchase our products, which are subject to US controls, versus those of semiconductor companies which are not subject to these arcane requirements.

We support the public comments submitted by both TechAmerica and Semiconductor Industry Association on March 9, 2009 in reference to RIN 0694-XA15 request for public comments on encryption.

Specifically, Texas Instruments believes that the effects of the current encryption regulations have a dampening effect on our ability to compete. For example, the extensive semi-annual reporting requirements place a huge administrative burden on companies to comply. From the business perspective, it is costly and time consuming to

collect and report the data. After a decade of such reporting, the purpose for this reporting has long since become redundant.

Most current encryption software, hardware, and components, as well as products including cryptographic functions, are subject to detailed review requirements in order to qualify for either mass-market status or for shipment under license exception ENC. Texas Instruments believes the utility of this requirement has largely eroded over time, and should be replaced with a self-classification process.

The review requirements are affecting an ever widening range of Texas Instruments products, as basic encryption now appears in a very wide range of end applications, including medical devices and cell phones. Almost all modern software has encryption functions, virtually all of them of the same types that have been reviewed before in thousands of other products.

Encryption is also unique in that items in the public domain, or that are generally available to the public, remain subject to the EAR, meaning that they retain controls to some destinations and end users. This creates a compliance burden to our company that is not required for other companies incorporating non-US origin encryption. Texas Instruments recommends that these public encryption items be exempt from EAR jurisdiction.

Mass market treatment should be accorded to commercial components that are designed and produced for use in mass markets or that are otherwise generally available. If a cell phone or other widely available product enjoys mass market status under the regulations, the components and related firmware/software/technology designed for such products should be treated equally.

2. Components for Commercial Satellites

Commercial satellites are controlled under ITAR. Certain commercial satellite components are also controlled under ITAR. We are encountering increasing difficulty selling into the commercial European space market because of the "no-ITAR" policy adopted by a number of important European buyers. The European reaction to the ITAR has provided European competitors an extreme competitive advantage. The ITAR designation for the products has thus damaged our ability to sell to European buyers, because of their reluctance to source ITAR parts. This creates a vacuum in which our European competitors have accelerated development of European-made integrated circuits for use in these commercial satellite programs.

3. De Minimis Rules.

Current application of the de minimis rules reflects the extra territorial reach of US export control rules. These rules have a chilling affect on customer relationships. De Minimis rules run counter to business strategies to be effective, efficient and timely in concluding business negotiations. Often language for these rules is the last point of contention in contract negotiations, especially for those customers that have non-US origin alternatives.

4. License Conditions & Reporting.

Texas Instruments has received license conditions that are inconsistent between a license for one customer versus another or from year to year, such as a Parts Control Plan. This creates a compliance burden and sometimes unhappy customers.

Additionally, the reporting requirement that sometimes accompanies license conditions is a burden for both our company and the customer. This quarterly reporting requirement increases the administrative burden and costs to companies like ours while largely being redundant. Under the current economic environment, we believe the reporting requirements should be eliminated.

5. License Process.

Lastly, the license process itself can affect a customer's decision to purchase Texas Instruments products versus European competitors, which can have a more efficient licensing process. Time to market is one of the key attributes that our customers measures Texas Instruments performance versus that of our competitors. When we experience delays in the licensing process which impact our time to market, Texas Instruments is faced with unhappy customers.

Conclusion

Thank you for the opportunity to provide comments on this Notice of Inquiry. Texas Instruments stands ready to work with the U.S. Department of Commerce and the other U.S. Government agencies to address the serious effects the regulations identified above have on the policies of foreign and U.S. companies to exclude U.S. parts and components.

Sincerely,

Greg Chalkley
Director, Global Trade Compliance
Texas Instruments Incorporated