Mark Sagrans
1007 Market Street
D-7054-1
Wilmington, DE 19898
Telephone: (302) 774-4356
Fax: 1-302-355-2860

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BY E-MAIL

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
14th & Pennsylvania Ave, NW
Washington, DC 20230

ATTN: **RIN 0694-XA37**

RE: E.I. du Pont de Nemours & Co. – Comment on Retrospective Regulatory Review Under E.O. 13563

Dear Sir or Madam:

E.I. du Pont de Nemours & Co. ("DuPont") welcomes the Administration's Export Control Reform Initiative and hereby responds to the Department of Commerce, Bureau of Industry and Security ("BIS") August 5, 2011 Notice of Inquiry titled "Retrospective Regulatory Review Under E.O. 13563."[1] In this comment, DuPont proposes a solution to the overly complicated and outmoded controls on certain widely available chemicals and chemical processing equipment under the Export Administration Regulations ("EAR"). DuPont believes this solution would lessen the licensing and compliance burdens on both BIS and industry, thereby allowing BIS to better focus its efforts on the most critical national security and foreign policy priorities.

I. Issue and Summary of Proposed Solution

Many of the current controls on chemicals and chemical processing equipment are outmoded in the light of global availability and hinder U.S. companies' competitiveness in the

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1 76 Fed. Reg. 47527 (August 5, 2011).

global market. These unnecessary burdens exemplify the very problem that the Administration seeks to resolve through the Export Control Reform Initiative. The solution DuPont proposes is both practical and efficient, because BIS can use the existing structure of the EAR Commerce Country Chart found at Supplement No. 1 to Part 738 ("Country Chart") and the EAR Commerce Control List found at Supplement No. 1 to Part 774 ("CCL") to more efficaciously authorize the export of certain chemicals and chemical processing equipment to countries with, as the terms of the AG Guidelines for Transfers of Sensitive Chemical or Biological Items ("AG Guidelines") provide for, "consistently excellent non-proliferation credentials."[2] The DuPont proposed solution would thus be consistent with the United States' obligations as a member of the Australia Group ("AG") and is well within the Department of Commerce existing scope of authority.

II. Proposed Solution

The DuPont proposed solution requires three steps. The first step is to identify countries that meet the "consistently excellent non-proliferation credentials" standard found at Guideline No. 2 of the AG Guidelines. United States has discretion under the AG Guidelines to apply expedited licensing measures to such countries. The second step is to indentify, with input from industry, those controlled chemicals and processing equipment that are presently widely available in global markets outside of the AG Partner States. The third step is to revise the CCL to utilize the now semi-dormant third column of Chemical and Biological Controls on the Country Chart ("CB Column 3"). Once completed, DuPont's plan would allow for the more efficacious authorization of exports for the identified chemicals and equipment to the list of acceptable countries.

A. Step One: Create a Country List

DuPont believes the most prudent way to construct a list of countries that meet the AG Guidelines' standard of "consistently excellent non-proliferation credentials" (hereafter, the

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[2] Australia Group Guideline No. 2 *available at* http://www.australiagroup.net/en/guidelines.html.

"CENPC List") is to begin with the 125 countries BIS originally proposed as being suitable for Strategic Trade Authorization ("STA") for "[t]ransactions subject to national security controls of lesser sensitivity" and the 37 countries BIS proposed as being suitable for STA for transactions controlled for multiple reasons.[3] The resultant list of 162 countries would then be further modified by either adding or removing particular countries that may or may not meet the AG Guidelines' standard for reasons such as those offered below. DuPont believes basing the CENPC List on these proposed STA countries is appropriate because BIS has already determined that these "destinations pose little risk of unauthorized uses" and that "U.S. national security and foreign policy justify authorizing transactions [to these countries] without the delay and expense of obtaining an export license."[4] While the final vetting of a CENPC List would of course lie with BIS, DuPont respectfully suggests the following further modifications:

- Remove any of the 32 countries currently subject to CB Column 3 controls, the most relevant CB controls for this exercise (*e.g.*, Bahrain, Georgia, Jordan, Kazakhstan, Qatar, Saudi Arabia, and Taiwan).
- Remove any countries designated as controlled for National Security purposes and so listed under Country Group D:1 at Supplement No. 1 to Part 740 of the EAR (*e.g.*, Cambodia and Laos).
- Remove any countries not a party to the Chemical Weapons Convention ("CWC") or the Biological Weapons Convention ("BWC") (*e.g.*, Andorra, Chad, Comoros, Djibouti, Guinea, Kiribati, Marshall Islands, Mauritania, Micronesia, Namibia, Nauru, Samoa, and Tuvalu).
- Finally, adding Cyprus to the draft CENPC List because it is a current AG Partner and signatory to both the CWC and the BWC.

The result of this exercise is a draft CENPC List of 129 countries, all of whom are participants in the AG, the CWC, and/or the BWC, not under current CB Column 3 restriction and have been previously determined by BIS to pose little risk of unauthorized uses. (A list of

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[3] Export Control Modernization: Strategic Trade Authorization License Exception, 75 Fed. Reg. 76,653 (proposed Dec. 9, 2010).

[4] Id. at 76,654.

these countries is provided as **Attachment 1.**) Authorizing license exception qualified exports to these destinations, especially for items with wide global availability outside the AG, is clearly consistent with the AG Guidelines. AG Guideline No. 2 states, "it is a matter for the Government's discretion to determine whether and to what extent to apply expedited licensing measures in the case of transfers to destinations it judges possess consistently excellent non-proliferation credentials."

B. Step Two: Identify Widely Available Chemicals and Equipment

In response to BIS's request for comments published in the Federal Register on December 9, 2010,[5] DuPont suggested a method of 'tiering' chemicals controlled under ECCN 1C350.[6] In its comment, DuPont proposed adjusting the tiers by which BIS proposed controlling the export of chemicals based upon a given chemical's availability outside of the AG Partner States. DuPont viewed BIS tiering proposal as an excellent opportunity to update U.S. export controls related to chemicals and chemical processing equipment. Specifically, DuPont believes that a tiered approach might have more appropriately controlled the trade of chemicals and chemical processing equipment based on the chemicals' and processing equipment's respective availability from solely or predominantly within the AG Partner community versus those widely available outside the AG. Although BIS has since decided to delay tiering of CCL-controlled items, DuPont believes the controls on these widely available chemicals and chemical equipment remain too rigid to allow U.S. chemical companies to remain competitive in the global market. Because DuPont knows its proposal would impact the chemical and chemical processing equipment industries at large, we propose that a comprehensive list of applicable chemicals and processing equipment be constructed by the effected industries themselves. The simplest and most transparent method to gather this information is through a Notice of Inquiry or Proposed Rule from BIS seeking such input. One consequence of this approach, for example, suggested already in our previous tiering response, might be that sodium cyanide under ECCN 1C350.d.17

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[5] Commerce Control List: Revising Descriptions of Items and Foreign Availability, 75 Fed. Reg. 76,664 (Dec. 9, 2010).

could qualify for control under CB Column 3 whereas potassium cyanide, captured under ECCN 1C350.d.12, might remain controlled under CB Column 2.

C. Step Three: Revitalizing CB Column 3

In 2005, BIS revised the EAR to expand controls on chemicals to make the EARlicensing requirements "consistent with the AG" guidelines.[7] In so doing, BIS effectively gutted CB Column 3 controls. The only current function is to require exporters to obtain a license to export such low-to-no risk items as vaccines, immunotoxins, medical products, and diagnostic and food testing kits to Anti-Terrorist controlled destinations under Export Control Classification Number ("ECCN") 1C991. Furthermore, when BIS removed the specific CB Column 3 designation from **all but one** ECCN on the CCL it removed any distinction of proliferation risks between non-AG countries and for the purposes of licensing requirements. Nearly seven years later, DuPont respectfully suggests that many of the items captured by these dramatically expanded licensing requirements do not require such controls due to ever-increasing global availability outside the AG Partner States and due to BIS' more contemporary country level of relevant risk analysis. The 2005 expanded controls have made it more difficult for the U.S. chemical and chemical equipment industries to compete in the global market, as well as creating a significant and unnecessary administrative, license-processing burden for BIS. Fortunately, in 2005, BIS left in the EAR the very tool needed to modify licensing requirements to remedy this situation: revitalize CB Column 3.

DuPont proposes that the CCL be amended to indicate CB Column 3, rather than CB Column 2 as a reason for control to the final list of ECCNs (or their paragraphs or subparagraphs) generated by industry and approved by BIS. Concurrently, BIS would amend the Country Chart to include a CB Column 3 mark for every country **not** found to have consistently excellent non-proliferation credentials – *i.e.*, those countries excluded from the CENPC List. Thus, chemicals and processing equipment that are widely-available outside of the AG Partner

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[7] Expansion of the Country Scope of the License Requirements that Apply to Chemical/Biological (CB) Equipment and Related Technology; Amendments to CB-Related End-User/End-Use and U.S. Person Controls, 70 Fed. Reg. 19,688 (April 14, 2005).

States would fall from CB Column 2 to CB Column 3 and could be exported without license to the CENPC countries because of their significantly lesser proliferation and re-export risk.

III. Conclusion

DuPont appreciates the Department of Commerce Notice of Inquiry and the opportunity to propose a remedy to the 2005 expansion of control of certain chemicals and chemical processing equipment. DuPont understands that its proposal requires a thoroughly vetted list of items and destination countries, but urges BIS to take the first step toward implementing these changes in order to bring the U.S. export controls on chemicals and chemical processing equipment up to date. If BIS were to settle on a list of countries and ECCNs for chemicals and processing equipment widely available outside of the AG Partner States, then implementing a revised CB Column 3 to control exports outside the CENPC List of countries would be a dramatic step towards the type of export control reform the Administration seeks. In addition, this change would have a positive impact on U.S. competitiveness in the global chemicals market. Chemicals are one of the largest exports of the United States. Nearly 800,000 Americans rely on jobs in the chemistry industry. Developing and producing the products of chemistry creates a ripple effect that is responsible for almost five million American jobs and 26 percent of America's GDP that touches nearly every sector of our economy including agriculture, construction, technology, manufacturing and retail trade. Removing unnecessary export control barriers and burdens would only contribute to the Administration's efforts to increase U.S. exports. Accordingly, DuPont respectfully requests that BIS publish a Notice of Inquiry directed at the chemical and chemical processing industry seeking information and industry input on this matter.

Should you have any questions or require further information, please do not hesitate to contact the undersigned at (302) 774-4356.

Respectfully submitted,

Mark E. Sagrans
Corporate Counsel

Attachment (1)

Attachment 1: Suggested CENPC List

Algeria	Gambia (The)	Norway
Antigua	Germany	Palau
Argentina	Ghana	Panama
Aruba	Greece	Papua New Guinea
Australia	Grenada	Paraguay
Austria	Guatemala	Peru
Bahamas	Guinea-Bissau,	Philippines
Bangladesh,	Guyana	Poland
Barbados	Honduras	Portugal
Belgium	Hong Kong	Romania
Belize	Hungary	Rwanda
Benin	Iceland	Saint Kitts & Nevis
Bhutan	India	Saint Lucia
Bolivia	Ireland	Saint Vincent and the Grenadines
Bosnia and Herzegovina	Italy	San Marino
Botswana	Jamaica	Sao Tome & Principe
Brazil	Japan	Senegal
Brunei	Kenya	Seychelles
Bulgaria	Kosovo	Singapore
Burkina Faso	Latvia	Slovakia
Burundi	Lesotho	Slovenia
Canada	Liechtenstein	Solomon Islands
Cape Verde	Lithuania	South Africa
Central African Republic	Luxembourg	South Korea
Chile	Macedonia (Former Yugoslav Republic)	Spain
Colombia	Madagascar	Surinam
Costa Rica	Malawi	Swaziland
Croatia	Maldives	Sweden
Cyprus	Mali	Switzerland
Czech Republic	Malta	Tanzania
Denmark	Mauritius	Thailand
Dominica	Mexico	Togo
Dominican Republic	Monaco	Tonga
East Timor	Montenegro	Trinidad & Tobago
Ecuador	Morocco	Tunisia
El Salvador	Mozambique	Turkey
Equatorial Guinea	Nepal	Ukraine
Estonia	Netherlands	United Kingdom
Ethiopia	Netherlands Antilles	Uruguay
Fiji	New Zealand	Vanuatu
Finland	Nicaragua	Vatican City
France	Niger	Western Sahara
Gabon	Nigeria	Zambia