From: "Strosnider, Kimberly" <kstrosnider@cov.com>
To: PublicComments@bis.doc.gov
Date: Tue, Feb 8, 2011 7:54 AM
Subject: Comments in Response to Proposed Rule: RIN 0694-AF03(BIS-2010-0038)

Dear Mr. Arvin:

On behalf of our client Oceaneering International, Inc., please find attached comments in response to the Proposed Rule regarding the establishment of a Strategic Trade Authorization License Exception to the Export Administration Regulations, which was published December 9, 2010 in the Federal Register (75 Fed. Reg. 76,653). A hard copy of these comments, along with their enclosure, is being delivered to you today by courier.

If you have any questions about these comments, please let me know.

Regards,

Kim Strosnider
Covington & Burling LLP
Washington, D.C.
Tel. No.: (202) 662-5816 Fax No.: (202) 778-5816 E-Mail: kstrosnider@cov.com<mailto:kstrosnider@cov.com>

This message is from a law firm, Covington and Burling LLP, Washington, D.C., and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender (Kim Strosnider, kstrosnider@cov.com<mailto:kstrosnider@cov.com>) by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

CC: WARVIN@bis.doc.gov

OCEANEERING®

Oceaneering International, Inc.
11911 FM 529
Houston, Texas 77041-3000
Telephone: (713) 329-4500
Fax: (713) 329-4951
www.oceaneering.com

BUSINESS CONFIDENTIAL

February 7, 2011

Via Hand Delivery and
E-Mail (publiccomments@bis.doc.gov)

Mr. William Arvin
Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Room 2705
Washington, DC 20230

Re: Oceaneering International, Inc.: Comments in Response to Proposed Rule Regarding License Exception Strategic Trade Authorization (RIN 0694–AF03)

Dear Mr. Arvin:

Oceaneering International, Inc. ("Oceaneering") is pleased to submit these comments in response to the proposed rule published in the *Federal Register* on December 9, 2010, entitled "Export Control Modernization: Strategic Trade Authorization License Exception" (the "Proposed Rule").[1] For the reasons set forth herein, and in parallel comments we are submitting simultaneously regarding proposed revisions to the Commerce Control List ("CCL") of the Export Administration Regulations ("EAR"), [2] Oceaneering respectfully submits that unmanned, tethered submersible vehicles classified under Export Control Classification Number ("ECCN") 8A001.c.2 on the CCL should not be controlled in Tier 1 of a three-tier system, as the Proposed Rule suggests may be under consideration. Further, such ROVs should be fully eligible for License Exception Strategic Trade Authorization ("STA"). Finally, we also respectfully submit that Angola should be added to the list of 125 additional destinations in the proposed third part of License Exception STA, EAR § 740.20(c)(2)(ii), to which qualified exports, reexports, and in-country transfers may be made.

Accordingly, for the reasons set out in these comments, Oceaneering respectfully requests the following:

---

[1] 75 Fed. Reg. 76,653 (Dec. 9, 2010).

[2] *See* Advance Notice of Proposed Rulemaking, "Commerce Control List: Revising Descriptions of Items and Foreign Availability," 75 Fed. Reg. 76,664 (Dec. 9, 2010).

BUSINESS CONFIDENTIAL

(1) ECCN 8A001.c.2 items should be placed in Tier 2 or Tier 3 of the CCL, not Tier 1.

(2) The proposed "STA exclusion paragraph"[3] that would be added to ECCN 8A001 should be amended to delete the reference to 8A001.c, thus making unmanned, tethered submersibles fully eligible for export, reexport, and in-country transfer under License Exception STA. We suggest that this paragraph be revised to read:

> *8A001 . . . STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any commodity in 8A001.b-or 8A001.d.*[4]

(3) Angola should be added to the list of countries in EAR § 740.20(c)(2)(ii), to which certain exports, reexports, and in-country transfers may be made pursuant to License Exception STA.

Oceaneering designs, manufactures, and operates unmanned, tethered subsea remotely operated vehicles ("ROVs") that are deployed on oil rigs and drill vessels worldwide, providing critical support to the oil and gas industry. As is more fully explained below and in our related comments, these ROVs are available from many non-U.S. sources, and indeed are designed and/or manufactured in at least 10 other countries, including Singapore, Thailand, Malaysia, Russia, India, Australia, Canada, and Western Europe (Norway, Italy, and the United Kingdom). Moreover, these tethered submersibles, which have become widespread in industry, do not appear to provide a "critical" military or intelligence advantage to the United States. Accordingly, they do not merit control in Tier 1, as the Proposed Rule states is being considered. Rather, 8A001.c.2 ROVs are more appropriately controlled in Tiers 2 or 3 and should be fully eligible for License Exception STA, including for the authorizations proposed to be provided in EAR § 740.20(c)(2)(i) and (ii).

Below, we set forth background on Oceaneering and its ROV operations. Then we address the tier placement of 8A001.c.2 ROVs; the rationale for making 8A001.c.2 items fully eligible for export, reexport, and in-country transfer pursuant to the proposed new license exception; and the addition of Angola to the list of destinations to which certain exports, reexports, and in-country transfers may be made pursuant to the new license exception.

I. Background on Oceaneering and Its ROV Business Operations

Oceaneering, headquartered in Houston, Texas, was founded in 1964 as an air and mixed-gas diving business operating in the Gulf of Mexico. The company has since grown to be a global provider of diversified engineered products and services, primarily to the offshore oil-and-gas industry.

---

[3] These "STA exclusion paragraphs," as they are referred to in the Proposed Rule, are used to designate national-security-controlled items that are ineligible for the last two authorizations of License Exception STA, which permit certain exports, reexports, and in-country transfers to Israel and Albania and, if the end use of the item is civil, to 125 additional destinations.

[4] ECCN 8A001.b controls manned, untethered submersible vehicles having certain characteristics and 8A001.d controls certain unmanned, untethered submersible vehicles.

BUSINESS CONFIDENTIAL

Oceaneering's ROV business unit focuses on manufacturing and operating ROVs to support deepwater oil and gas exploration and production. Oceaneering designs and manufactures its ROVs principally in Morgan City, Louisiana, and is the largest U.S. manufacturer of ROVs. These items are controlled for export purposes pursuant to ECCN 8A001.c.2 because they (a) are unmanned and tethered, (b) are designed to operate at depths exceeding 1,000 meters, and (c) have a fiber-optic data link between the ROV and a control system aboard the rig or vessel from which the ROV is operated.

The ROVs are used to perform a variety of drill support and underwater construction services for oil and gas companies (and their contractors/subcontractors) in the U.S. Gulf of Mexico and offshore of numerous other oil-and-gas producing countries. To support those operations, Oceaneering receives dozens of export licenses per year from the Bureau of Industry and Security ("BIS").

Oceaneering competes with numerous foreign suppliers of ROV services. Many of these foreign suppliers build their own ROV systems or purchase systems from ROV manufacturers outside the United States. Moreover, many of these foreign companies appear to face less stringent export-related restrictions on their ROVs than does Oceaneering. In short, Oceaneering faces a highly competitive international marketplace for its ROV services, and thus it is especially important to the company—and to its ability to maintain its U.S. manufacturing base—to be able to comment on proposed License Exception STA. Such a license exception, if available to support exports and reexports of 8A001.c.2 ROVs, could immeasurably aid Oceaneering as it strives to compete internationally by giving it the flexibility to deploy ROVs offshore of many of the leading oil- and gas-producing countries without the need for individual export/reexport licenses.

II. CCL Tier Placement of Unmanned, Tethered Remotely Operated Subsea Vehicles

The separate notice relating to revision of the CCL includes a detailed discussion of a proposed three-tier system for items subject to the EAR. According to the Proposed Rule that is the subject of these comments, the Department of Commerce is considering placing in Tier 1—the most stringently controlled of the three tiers—items classified under ECCN 8A001.

In addition, the Proposed Rule states: "Any items the Administration ultimately determines to be within the scope of Tier 1—*i.e.*, items that are critical to maintaining a military or intelligence advantage for the United States and almost exclusively available from the United States—will not be within the scope of License Exception STA." The Proposed Rule then lists 29 ECCNs that it says may "in whole or in part, not be eligible for License Exception STA." Among those ECCNs is 8A001.

With respect to the placement in a three-tier system of 8A001.c.2 unmanned, tethered submersibles, we refer to our comments on the *Federal Register* notice regarding revisions to the CCL. A copy of those comments is enclosed with this response, and we ask that they be considered incorporated by reference into our comments on this Proposed Rule.

As the enclosed comments explain in detail, ECCN 8A001.c.2 unmanned, tethered ROVs should be placed in Tier 3—or at least in Tier 2—of a three-tier CCL structure being considered by BIS. These ROVs (a) neither provide the U.S. with a "critical" military or intelligence advantage, nor are they WMDs or related items, and (b) these ROVs are widely available abroad, including being developed

BUSINESS CONFIDENTIAL

and/or manufactured in at least ten (10) countries other than the United States. Accordingly, unmanned, tethered submersibles that meet the control criteria of ECCN 8A001.c.2 should be placed in Tier 2 or Tier 3.

III. Eligibility for License Exception STA

In conjunction with the placement of ECCN 8A001.c.2 items in Tier 2 or Tier 3, Oceaneering also respectfully submits that these unmanned, tethered ROVs should be fully eligible for License Exception STA.

License Exception STA as proposed contains three different authorizations, in EAR § 740.20(c)(1), (c)(2)(i), and (c)(2)(ii). As the exception is currently drafted, ECCN 8A001.c.2 ROVs are eligible only for the first of the three authorizations (in EAR § 740.20(c)(1)), assuming all the conditions for the use of that part of the exception are met. For the reasons set out below, Oceaneering requests that the proposed "STA exclusion paragraph" to ECCN 8A001 be amended to delete the reference to 8A001.c, thus making unmanned, tethered ROVs fully eligible for export, reexport, and in-country transfer under all three parts of License Exception STA.

A. Proposed License Exception STA and Its Impact on ECCN 8A001 Exports/Reexports

Unmanned, tethered submersibles classified pursuant to ECCN 8A001.c.2 could benefit only from the first part of License Exception STA, which would appear in EAR § 740.20(c)(1), if the license exception is adopted in its current form. Items classified pursuant to ECCN 8A001 are controlled for national security (NS2) (as well as anti-terrorism (AT1)) reasons, and thus could be exported, reexported, or transferred pursuant to this new license exception to the 37 listed destinations. However, the use of this part of the exception provides little beyond what already is available under the EAR, since 8A001.c.2 ROVs already can be exported "no license required" to 35 of the 37 destinations to which this part of the license exception applies.[5] The only two countries among the 37 for which a Commerce Department export/reexport license currently would be required for these ROVs are Argentina and the Ukraine.

While Oceaneering welcomes the opportunity to use License Exception STA for qualifying exports/reexports to Argentina and the Ukraine, to the extent it has any, Oceaneering also is keenly interested in being able to rely on the other two authorizations in License Exception STA, which appear in § 740.20(c)(2)(i) and (ii), to help relieve the significant export/reexport licensing burden the company has faced. These other two exceptions allow exports, reexports, and in-country transfers of items subject to national security controls, such as 8A001.c.2 ROVs:

(1) To Albania or Israel under § 740.20(c)(2)(i) if the ECCN does not have an "STA exclusion paragraph" precluding the use of this part of the exception for the item at issue, and

---

[5] This assumes, of course, that no end-use/end-user restrictions result in a licensing requirement being imposed on those transactions.

BUSINESS CONFIDENTIAL

(2) To 125 additional countries under § 740.20(c)(2)(ii) when the end use of the item is civil (as it would be for all ROVs that Oceaneering deploys) and where use of this part of the exception is not precluded by a "STA exclusion paragraph."

In order to permit full use of the license exception for 8A001.c.2 items, BIS would have to amend the "STA exclusion" paragraph that has been proposed for addition to ECCN 8A001. This paragraph now states: ""*STA*: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any commodity in 8A001.b, 8A001.c or 8A001.d" (emphasis added).

For the reasons set out below, the deletion of 8A001.c from this exclusion paragraph—thus making the license exception fully available for 8A001.c.2 ROVs—is fully consistent with the United States' commitments to its regime partners in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, and also is merited by the nature of these underwater craft, which are far less sensitive militarily than are untethered submersibles controlled by ECCN 8A001.b and 8A001.d.

B. Permitting the Export/Reexport of Unmanned, Tethered Submersibles Under License Exception STA Is Fully Consistent with Wassenaar Obligations

According to the Proposed Rule, the proposed "STA exclusion paragraphs" that preclude use of the second and third authorizations within License Exception STA "closely track the Wassenaar Arrangement Sensitive List," which we understand means the Administration generally elected to include in these exclusion paragraphs items that appear on the Sensitive List. While unmanned, tethered submersibles do appear on the Wassenaar Sensitive List at 8.A.1.c, Oceaneering submits that permitting these items to be exported, reexported, and transferred in-country, under the controls imposed by License Exception STA, would be fully consistent with the U.S.'s Wassenaar commitments. Indeed, the Wassenaar Arrangements' "Best Practices" explicitly permit countries to authorize the export of items on the Sensitive List through license exceptions.

Specifically, the "Best Practice Guidelines for the Licensing of Items on the Basic List and Sensitive List of Dual-Use Goods and Technologies," as agreed at the 2006 Wassenaar plenary meeting, state in paragraph 1:

> Global/general licences *or licence exceptions* may be granted for items on the Basic or Sensitive Lists where a Participating State considers that authorisation of exports by such means would not undermine the purposes of the Wassenaar Arrangement and would not be inconsistent with its export control laws and regulations or its other international commitments.

See http://www.wassenaar.org/publicdocuments/2006/docs/Best_Practice_Guidelines_-_for_press_2006.pdf (emphasis added).[6]

---

[6] This stands in contrast to the obligations for items on the Very Sensitive List, such as untethered submersibles, over which Participating States must exercise "extreme vigilance."

BUSINESS CONFIDENTIAL

Other Wassenaar members clearly take advantage of this principle in the Best Practice Guidelines. For example, the United Kingdom offers an "Open General Export License (OIL and GAS Exploration: Dual-Use Items)," dated April 21, 2010. This OGEL permits any item listed in an attached "Schedule 1"—including 8A001.c unmanned, tethered submersibles—to be exported from the United Kingdom, or from any other EU Member State "by any person established in the United Kingdom," to any of the destinations listed in a schedule, subject to certain conditions.[7] The schedule of eligible destinations is long, and includes a number of countries for which BIS would allow exports and reexports under License Exception STA, EAR § 740.20(c)(2)(ii).

Further, it appears that BIS has integrated a series of safeguards into License Exception STA that would provide important controls over exports, reexports, and in-country transfers of eligible items, and which should help to ensure that Sensitive List items to be exported, reexported, or transferred under the license exception can be controlled and monitored consistent with the U.S.'s national security interests and regime obligations. First, exporters would be required to furnish the consignee with the ECCN that applies to each item transferred under the license exception (and reexporters and transferors would be required to provide the ECCN to subsequent consignees). Second, exporters and reexporters would be required to obtain from their consignees, prior to the shipment, a written statement that identifies the items, restates the ECCNs, and provides other acknowledgements, including agreeing not to export, reexport, or transfer the item to destinations, end uses, or end users prohibited by the EAR and agreeing to maintain and provide records related to the transaction to the U.S. government upon request. Third, exporters and reexporters would be required to include a robust destination control statement on exports, reexports, and in-country transfers.

C. Unmanned, Tethered Submersibles Are Not So Sensitive As To Merit Exclusion from License Exception STA, EAR § 740.20(c)(2)

Commerce not only can make ECCN 8A001.c.2 ROVs fully eligible for License Exception STA, and still remain true to its Wassenaar obligations, but we submit that there also are sound reasons why it should do this. Tethered submersibles are simply not as sensitive from a national-security perspective as untethered submersibles, as evidenced by their very different treatment on the Wassenaar Lists. Unmanned tethered submersibles thus should not be listed with manned and unmanned untethered submersibles in the ECCN 8A001 STA exclusion paragraph. Moreover, excluding 8A001.c items from this STA exclusion paragraph would be consistent with the Administration's decision to allow manned, tethered submersible vehicles controlled by ECCN 8A001.a to be fully eligible for License Exception STA.[8]

---

[7] These conditions include the following: (i) the item must be exported for the purposes of construction tasks or hydrographic surveys in support of oil and gas industry contracts; (ii) the item must remain under the direct control of the exporter or its appointed personnel; (iii) no equipment exported may be sold, gifted, or left behind; and (iv) any loss of the equipment must be reported immediately to the Department for Business Innovation & Skills. The OGEL also is subject to certain registration and recordkeeping conditions.

[8] As noted above, the "STA exclusion paragraph" proposed for ECCN 8A001 excludes items classified under ECCN 8A001.b, 8A001.c, and 8A001.d. However, it does not exclude from full eligibility for License Exception STA items classified pursuant to ECCN 8A001.a, probably because 8A001.a items are not on the Wassenaar Sensitive List.

BUSINESS CONFIDENTIAL

As tethered underwater vehicles, 8A001.c.2 ROVs are physically connected to installed equipment on the rig or vessel from which they are operated by a pilot. The tether provides the medium for the ROV to receive power and instructions on where to move and how to operate. The tether typically has an "excursion length" (how far the ROV can travel from its "cage" or "garage," which is suspended vertically from the rig or vessel via an umbilical cable) of only 600 to 1,000 meters. These ROVs cannot be remotely-operated through a wireless link, and they do not have any onboard battery or power source. These ROVs are thus not autonomous underwater vehicles ("AUVs"). Moreover, they are not capable of being programmed before deployment, which might convey more of a military or intelligence advantage; they must be operated in real time by a pilot and support team.[9] The ROV is thus physically and electronically connected to its host rig or vessel by a tether and lacks the mobility or autonomy that would be required for it to pose a serious threat to U.S. national security.

Further, use of an 8A001.c.2 ROV requires a long list of expensive, exceedingly heavy equipment that together forms the "ROV system" and which makes it impractical to contemplate use or diversion of energy-industry ROVs in or to military purposes. In a typical Oceaneering deployment, this equipment, necessary for an ROV's operation, includes a deployment cage (approximately 10,900 lbs.), a winch (86,200 lbs. with cable), and an A-frame (52,220 lbs.). This is in addition to the ROV itself, which often weighs 8,000 to more than 10,000 lbs. The total topside weight of the ROV system, including the ROV, thus may approximate 240,000 lbs. (120 tons) or more. Just installing an ROV system takes weeks or even months, as the necessary parts of the system are carefully loaded onto and welded to the rig or vessel. Modifications of the rig or vessel are often required. And at the end of the deployment, additional weeks are required to uninstall and remove the system. In short, an ROV is not a nimble, easily deployable system, is not amenable to diversion, and has little utility beyond working closely with the rig or vessel to which it is attached.

As a tethered vehicle, physically connected to its rig or vessel and dependent on more than a hundred tons of equipment on that rig or vessel, these work-class oil- and gas-industry ROVs should not be so tightly controlled that they cannot benefit from the proposed new License Exception STA. Oceaneering therefore asks BIS to amend its proposed "STA exclusion paragraph" for ECCN 8A001 to exclude 8A001.c items, thereby making those items fully eligible for License Exception STA, and also asks that it place ECCN 8A001.c.2 ROVs in Tier 2 or Tier 3 of a three-tier system.

IV. The Addition of Angola to the List of 125 Countries in License Exception STA, EAR § 740.20(c)(2)(ii)

Finally, we respectfully submit that Angola should be added to the list of countries (numbering 125 currently) for which exports, reexports, and in-country transfers of eligible items may be made pursuant to License Exception STA, assuming that the end use of the item is civil, the item is controlled for the transaction only for national-security purposes, and the item is not the subject of a

---

[9] An 8A001.c.2 ROV must be controlled by a pilot working on the surface vessel or rig onto which the ROV-related infrastructure has been installed. In a typical oil and gas deployment, the ROV is piloted by an individual seated at a surface control console within a "control van" (a 20-foot container) welded to the surface of a rig or vessel.

BUSINESS CONFIDENTIAL

"STA exclusion paragraph." With its significant oil and gas reserves, Angola is an important market for international oil and gas industry companies, such as Oceaneering and other American companies. The country also seems to have had a stable government for a number of years. It has been nearly eight years since the President issued an Executive Order (EO 13298) terminating a national emergency with respect to the National Union for the Total Independence of Angola ("UNITA") and thereby ending licensing requirements that had been imposed by the Office of Foreign Assets Control.

Moreover, BIS has licensed items controlled for national security reasons (such as unmanned, tethered ROVs) for export/reexport to Angola, without license conditions that are any more onerous than those imposed on other similar exports/reexports. This would seem to indicate that Angola should be treated similarly to other West African nations and included in the list of STA-eligible destinations.

* * * * *

Please do not hesitate to contact the undersigned, by telephone at (713) 329-4780 or by e-mail at kkerins@oceaneering.com if you have any questions or need any additional information. You also may contact our outside counsel on export control matters at Covington & Burling LLP: Kim Strosnider (kstrosnider@cov.com; 202-662-5816) or Gabriel L. Slater (gslater@cov.com; 202-662-5159).

Thank you very much for considering these comments.

Respectfully submitted,

OCEANEERING INTERNATIONAL, INC.

Kevin F. Kerins
Senior Vice President - ROVs

cc: Stephen Hall, Office of Exporter Services

Enclosure