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To: PublicComments@bis.doc.gov
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Subject: RIN 0694-AF03

Attached please find the comments of the Semiconductor Industry Association in response to the U.S. Commerce Department's proposed rulemaking to add the Strategic Trade Authorization (STA) License Exception to the Export Administration Regulations (RIN 0694-AF03; 75 Fed. Reg. 76,653).

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February 7, 2011

Office of Exporter Services
Regulatory Policy Division
Bureau of Industry and Security, Room 2705
U.S. Department of Commerce
Washington, D.C. 20230

ATTENTION: RIN 0694–AF03

Re: Export Control Modernization: Strategic Trade Authorization License Exception (75 Fed. Reg. 76,653)

Ladies and Gentlemen:

The Semiconductor Industry Association ("SIA") is the premier trade association representing the U.S. semiconductor industry. Founded in 1977 by five microelectronics pioneers, SIA unites over 60 companies that account for nearly 90 percent of the semiconductor production of this country.

SIA is pleased to respond to the request for comments on the proposed rulemaking to add the Strategic Trade Authorization ("STA") License Exception to the Export Administration Regulations. SIA supports the Administration's Export Control Reform Initiative and agrees with the view expressed by the Administration that the current export control system is overly complicated, contains too many redundancies and attempts to protect too much.

SIA understands that as part of the export control reform effort, the Commerce Department has proposed the creation of License Exception STA, which would permit the unlicensed export, reexport and transfer abroad of commodities, software and technology to countries that the Bureau of Industry and Security ("BIS") has determined pose little risk of unauthorized use or diversion, if exporters, reexporters and transferors comply with certain requirements.

As a general matter, SIA supports license exceptions that reduce administrative burdens on exporters and add flexible and predictable export, reexport and transport options. However, while License Exception STA might provide benefit to some U.S. industries, SIA does not believe the proposed license exception would offer much value to its member companies principally because of the conditions and limitations it would impose on customers.

Potential Inclusion of Category 3 Items in Tier 1

The proposed rulemaking begins by stating that under a revised export control list structure, Tier 1 items (i.e., items critical to the military or intelligence advantage of the United States) would not be within the scope of License Exception STA. The proposed rulemaking goes on to note that the Administration is focusing on whether the export of items, among others, listed under Export Control Classification Number ("ECCN") 3A001 – the category which identifies a variety of general purpose integrated circuits – should be eligible for License Exception STA.

SIA is concerned about potential placement by the Commerce Department of items in ECCN 3A001 in Tier 1 or a revised Commerce Control List (CCL). An item should not be placed in a tier based upon on its classification under a particular ECCN; instead, the listing of an item in a particular tier should be based on the national security significance or military or intelligence advantage to the United States posed by the item itself. Broadly placing categories of items into Tier 1 is a flawed approach and risks over-controlling large numbers of items for the sake of simplicity or expediency.

In any event, SIA does not believe the items included under ECCN 3A001 should merit inclusion in Tier 1. Semiconductors and integrated circuits are mere components that are incorporated into end items and sub-assemblies and generally merit a lesser level of control than these end items. Indeed, the listing of integrated circuits for purposes of export control should be based on criteria that derive from the special features or characteristics of integrated circuits. On this basis, two principles should apply to the classification of integrated circuits:

1. An integrated circuit should be classified in a subsidiary category to the end item in which it is incorporated; it should not be listed in its own right but only as a component of an end item.

2. An integrated circuit component should have to meet two criteria:

   (i) it is an application specific integrated circuit ("ASIC") or custom integrated circuit and is not a general purpose or general commercially applied component; and

   (ii) it has identifiable technical parameters that are peculiarly responsible for the features that produce the military advantage or national security sensitivity in the end item in which the integrated circuit is incorporated.[1]

[1] The JEDEC Solid State Technology Association defines an ASIC as: "An integrated circuit developed and produced for a specific application or function and for a single customer."

License Exception STA Is not Likely To Be an Attractive Option for Semiconductor Exporters

Notwithstanding whether License Exception STA will be available for the export or reexport of semiconductor components controlled under ECCN 3A001, SIA has a number of concerns regarding the requirements for use of the proposed license exception:

- License Exception STA would impose significant requirements on exporters, reexporters, transferors and consignees. These burdens are of particular significance with respect to customers. Customers in allied nations rely on license exception Additional Permissive Reexports (APR) so they can proceed under the law and regulation of their home country in their export and transfer activities. Most will find it objectionable in principle to have to submit instead to the extra-territorial jurisdiction of the United States. Moreover, it is often difficult to get foreign customers to agree to sign documents subjecting them to U.S. export controls. Antagonizing customers is simply too great a risk in order to avoid the administrative burdens of export licenses. In such circumstances, U.S. companies would likely prefer to apply for a validated export license than use License Exception STA.
- The requirement for a completely new destination control statement for only those transactions undertaken pursuant to License Exception STA is unnecessary. All consignees who are party to such a transaction are already required to agree in writing to abide by U.S. export control laws and regulations. The requirement for the use of a different destination control statement for those items exported, reexported or transferred under License Exception STA introduces more complexity into an export control system that is already overly complicated and contains too many redundancies.
- The requirement that the Export Control Classification Numbers for items shipped pursuant to License Exception STA be included on all export control documents for a given transaction adds an information burden that does not affect the existing obligations of the parties to the transactions.
- The absence of the People's Republic of China ("PRC") as an eligible destination under the proposed License Exception STA greatly reduces the value of the license exception to SIA member companies. According to a recent PricewaterhouseCoopers report, in 2009, the PRC's $93 billion semiconductor market represented 41 percent of the world market while the $38 billion U.S. market was the world's second largest market. The report found that "China's semiconductor consumption market has grown many times faster than the worldwide market as a result of two driving factors: the continuing transfer of worldwide electronic equipment production to China and the above-average semiconductor content of that

equipment" due to its large participation in mobile markets such as cell phones.

Intra-company Transfer License Exception

A far more constructive and attractive license exception than STA would be an Intra-company Transfer ("ICT") License Exception. SIA has long urged the Commerce Department to create an intra-company transfer license exception that authorizes U.S. companies to provide access to export-controlled technology, products and equipment within the perimeters of their global operations.

SIA acknowledges that BIS previously considered the creation of an ICT license exception and published a proposed rule in the *Federal Register* in October 2008 (Establishment of License Exception Intra-Company Transfer (ICT), 73 Fed. Reg. 57,554). Unfortunately, the proposed License Exception ICT would have imposed a substantial application process as well as a number of time-consuming and continuing administrative tasks. These measures would have greatly impeded any streamlining benefits that the license exception might have offered over existing licensing alternatives. Indeed, the proposed rule looked less like a license exception and more like today's burdensome Special Comprehensive License with additional requirements.

SIA member companies operate globally and must contend with substantial case-by-case export licensing requirements on an intra-company basis. This activity spans "deemed exports" of technology to controlled country foreign nationals as well as actual exports and reexports of commodities and technologies to foreign subsidiaries. It is generally characterized by multiple, repetitive, low risk transactions that require an inordinate amount of export licensing activity and resources.

Deemed export license applications have resulted in major complications affecting the employment and treatment of foreign nationals in the United States and in overseas facilities. Since foreign nationals comprise over half of masters and three quarters of Ph.D. graduates from U.S. universities in semiconductor related fields, foreign nationals are an important segment of the existing and prospective employees for U.S. high technology companies. The need for global companies to have a global workforce and the attractiveness of working for world-class U.S. technology companies also drives this situation. Unfortunately, the history of the deemed export rule is one in which U.S. high technology companies often must ask their newly-hired foreign national employees to sit idle during the lengthy process of obtaining a deemed export license. This is harmful to the company and the employee. It has a disproportionately negative effect on the ability of SIA member companies to attract and retain highly-skilled workers.

SIA member companies are heavily invested in the United States, but also operate substantial production, R&D and other facilities around the world. This global reach frequently requires companies to transfer equipment, technology and other items to their foreign sites that require individual validated licenses. The process necessitates case-by-

case filing of license applications as well as requests for license renewals and upgrades. It also entails having to contend with license conditions that range from technology limitations to specified operating procedures to record keeping requirements. The need to obtain transaction-by-transaction licenses for actual intra-company exports can negatively affect the operations of foreign sites or subsidiaries. Delays in the issuance of a license can slow production, research and other activities; similarly, license conditions can constrain the activities of U.S. subsidiaries in ways that limit productivity and innovation. At the same time, there is no compelling reason to believe that the current transactional approach would protect U.S. security interests with any greater efficacy than a holistic intra-company license exception.

SIA member companies need flexibility to operate within their global subsidiaries and to organize and rationalize their global workforces. This is essential to their global competitiveness and their global leadership in technology development. Current U.S. export licensing requirements fall short of providing the needed flexibility.

SIA views the creation of an appropriate ICT license exception as a needed step to minimize some of the unnecessary problems associated with the rules for deemed and actual exports. Like License Exception STA, however, the degree to which exporters could actually benefit from any license exception will depend in large part on whether it can, in fact, reduce effort, delay and uncertainty relative to the current licensing alternatives.

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SIA appreciates the opportunity to comment on the proposed rule and looks forward to continuing its cooperation with BIS on these issues. Please feel free to contact the undersigned if you have questions regarding these comments.

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