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February 7, 2011

Export Control Modernization:
Strategic Trade Authorization License Exception
Bureau of Industry and Security, U.S. Department of Commerce

Re: Docket Number BIS-2010-0038
RIN 0694-AF03
Comment on Proposed rule, Federal Register Vol. 75, No. 236,
December 09, 2010.

The Japan Machinery Center for Trade and Investment ("JMC") hereby submits comments in response to the above-referenced notice published in the Federal Register on December 9, 2010.

JMC is an association of 270 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 JMC has assisted 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 including extraterritorial application of re-export regulations by the U.S. government. Therefore, JMC is concerned very much how proposed Strategic Trade Authorization License Exception ("STA") would affect imports from the U.S., re-exports from Japan and in-country transfer within Japan. In view of foregoing, JMC recommends that BIS address the issues below.

Before proceeding, we would like to thank BIS in advance for taking the following comments into account.

1. The requirement of furnishing the consignee with ECCN

One of the biggest troubles for the Japanese re-exporters (=importers) in practicing compliance with the U.S. export control regulations is that the Japanese importers can't obtain smoothly the ECCN that applies to the item exported from the U.S. in many cases. Japanese re-exporters have frequently faced with following difficulties in obtaining the

ECCN from the U.S. exporters:

- No ECCN is provided;
- Wrong ECCN is provided;
- It takes long time to obtain a right ECCN.

JMC has ever requested BIS to make it mandatory for the US exporters to furnish the Japanese exporters with the ECCN on this account. The proposed rule stipulated the requirement of furnishing the ECCN with its consignee and this requirement seemed to satisfy our request. But we are still concerned if the U.S. exporters would be capable of furnishing the ECCN timely in accordance with the requirement, and JMC would like BIS to clarify followings;

① Will re-exporters and transferors be freed from the requirement of providing subsequent consignees with the ECCN unless the U.S. exporter furnish ECCN in accordance with the requirement stipulated at § 740.20 (d)(1) i?

② In the case that the wrong ECCN is furnished and the re-exporter unintentionally ships the item to which license exception STA may not be applied, Is it the U.S. exporter who is primarily responsible for that kind of EAR violation? JMC believes the re-exporter should be exempted from the penalty in this case.

③ What measures will BIS take to ensure that the U.S. exporter furnish foreign importers with the right ECCN timely?

2. The statement requirement

(1) Prior Consignee Statement

At § 740.20 (d)(2) of the proposed rule, the requirements of obtaining from a consignee statement are prescribed. It stipulated that the exporter, re-exporter or transferor must obtain from the subsequent consignees, prior to the shipment, a written statement identifying the items and restating the ECCN provided by the exporter, re-exporters or transferors. Furthermore, the statements must acknowledge that the consignee:

- Is aware that items will be shipped pursuant to License Exception STA;
- Has been informed of the description of the items and their ECCN(s) by the exporter, re-exporter or transferor;
- Understands that shipment pursuant to License Exception STA precludes subsequent use of the paragraph (a) of License Exception APR for the items;
- Agrees not to export, re-export or transfer these items to any destination, end-use or end-user prohibited by the EAR;
- Agrees that, for items subject to a civil end-use restriction, the only end-use will be civil; and
- Agrees to provide copies of this document and all other export, re-export or transfer record

(2) Destination Control Statement

At §740.20 (d) (3)of the proposed rule, it stipulated that the Destination Control Statement (DCS) must be entered by the exporter, re-exporter or transferor on the invoice and on any other "export control document" that accompanies the shipment from its point of origin to the ultimate consignee or end-user for all export, re-exports and transfers (in-country) made pursuant to License Exception STA.

JMC is afraid that these statement requirements above and precluding subsequent use of the paragraph (a) of license exception APR would make the license exception STA inconvenient for foreign consignees because the requirements impose cumbersome practical burden on the foreign re-exporters and transferors though the license exception STA might be convenient for the U.S. exporters.
As to the Prior consignee statement, the subsequent consignees must agree with the various conditions detailed in the proposed rule in issuing the statements to the exporters, re-exporters or transferors. In order for the consignees, however, to keep the agreement not to re-export or transfer the item to any destination or end-user prohibited by the EAR for example, they have to learn the complicated EAR to identify which country or who is prohibited. It is hard task for any foreign consignee. The same thing can be said for the requirement of destination control statement. This requirement must be applied to all export, re-export or transfer made pursuant to license exception STA at end to end basis. But a foreign re-exporter who does not care about the U.S. export control regulations would be likely to issue this Destination Control Statement without verifying if the license exception STA could be really applicable to its shipment.
For those foreign consignees who do not have enough knowledge about EAR, the statement requirements of the license exception STA would impose heavier burden on the well-doing foreign consignees.

3. Conclusions

We hereunder sum up our comments on the proposed license exception STA:

(1) The proposed license exception STA would not necessarily be convenient to the foreign consignees if it would be introduced as it is described because of the cumbersome statement requirements imposed on them.

(2) Regarding the Japanese consignees who would re-export pursuant to the License exception STA, its statement requirements would bring only cumbersome burden without additional effective safeguard to the U.S. export controls, because Japan has fulfilled stringent export controls at same level as the U.S. in accordance with the international export control regime such as Wassenaar Arrangement, Missile Technology Control Regime, Australia Group, and Nuclear Suppliers Group.

(3) 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.

(4) JMC would like to reiterate what we suggested in our public comments submitted on March 6, 2009 responding to Request for comment on procurement of the U.S. origin parts and components --- Federal Register Vol.74, No.2 (January 5, 2009). There, we suggested that BIS should exempt the countries participating in the multilateral export control regimes indicated in (2) of this paragraph from the extraterritorial application of US export control regulations.

(5) If BIS, however, still has to implement extraterritorial application of the U.S. export control regulations and will introduce the proposed license exception STA, JMC wishes BIS to make amendment on the proposed rule as follows:

① Making it mandatory for the U.S. original exporters to provide all the concrete information needed to meet the conditions of the statement requirements of the license exception STA. This mandate makes it easier for the foreign consignees and transferors to meet the conditions in their re-exports by circulating the concrete information prepared by the U.S. original exporters to the subsequent consignees without looking into the complicated EAR.

② If this our request above would not be practical or feasible for the U.S. original exporters, the requirements of the prior consignee statement and the destination control statement should be exempted with respect to export and re-export to/from, and transfer in 37 countries listed at § 740.20 (c) (1), or, the paragraph (a) of license exception APR should be available to the foreign consignees in the 37 countries.

JMC would greatly appreciate your taking our comments into account for your policy review.
Regards,

Ad-hoc committee on Export Controls
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