AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

The Voice of the International Trade Community Since 1921

February 7, 2011

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

Regulatory Policy Division
Bureau of Industry and Security
Room 2705
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

REF: Regulations.gov ID – BIS-2010-0038

REF: RIN 0694-AF03

Re: Comments on Strategic Trade Authorization License Exception

Dear Sir or Madam:

On behalf of the American Association of Exporters and Importers (AAEI), we respectfully submit the comments below concerning the Bureau of Industry and Security's (BIS) proposed rule on the Strategic Trade Authorization License Exception published in the Federal Register on December 9, 2010 (75 Fed. Reg. 76,653).

AAEI has been a national voice for the international trade community in the United States since 1921. AAEI represents the entire spectrum of the international trade community across all industry sectors. Our members include manufacturers, importers, exporters, wholesalers, retailers and service providers to the industry, which is comprised of brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of these enterprises are small businesses seeking to export to foreign markets. AAEI promotes fair and open trade policy. We advocate for companies engaged in international trade, supply chain security, export controls, non-tariff barriers, import safety and customs and border protection issues. AAEI is the premier trade organization representing those immediately engaged in and directly impacted by developments pertaining to international trade. We are recognized as the technical experts regarding the day-to-day facilitation of trade.

1. General Comments on Proposed License Exception STA

AAEI appreciates the opportunity to comment on the proposed Strategic Trade Authorization (STA) License Exception that is being issued in connection with the Administration's Export Control Reform effort. AAEI strongly supports the Administration's goal of eliminating barriers and obstacles to exporting U.S. goods and technology while ensuring that export controls remain only on those goods, software and technology that are critical to national security and foreign policy. Proposed License Exception STA is certainly a significant step forward in the export control reform process.

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2. Specific Comments on Proposed License Exception STA

While we are pleased with the overall concept of License Exception STA, we have the following suggestions and concerns:

A. Eligible Destinations - Proposed License Exception STA consists of three separate and distinct authorizations, based on the destination and reason for control. Products classified in certain Export Control Classification Numbers (ECCNs) would be eligible to be exported under License Exception STA to 37 countries; others to 39 countries (the 37 plus Albania and Israel); and others to 125 countries. In order to indicate the eligible ECCNs, the Commerce Control List would be modified to indicate that the particular ECCN is eligible for STA. However, based on the proposed amendments to the License Exception language in the CCL, it is not entirely clear which ECCN is eligible to be exported to which destinations and which ECCNs are subject to the excluded without having to determine the reason for control of the ECCN. In order to make Proposed License Exception STA as clear and user-friendly as possible, we recommend that an annotation or language of some type (such as 37, 39, 125), be included with the applicable license exception language in a particular ECCN to ensure that there is no confusion regarding the countries eligible for License Exception STA. Alternatively, a matrix could be prepared that is included in the EAR or published on the BIS website showing which ECCNs are eligible for certain countries.

B. Eligible Products - While we understand that the scope of products eligible for License Exception STA is limited by multi-lateral export control regime considerations and the current review of the Commerce Control List, that is intended to result in a tiered approach to certain products and technologies. Nevertheless, because License Exception STA is intended to authorize exports, reexports and transfers to "destinations that pose little risk of unauthorized uses" we encourage BIS to state in the final rule that it will continue to conduct a regular review of ECCNs eligible for License Exception STA and set up a process whereby exporters could submit a request to BIS setting forth the reasons that a particular ECCN should be eligible for License Exception STA.

C. Conditions for Using License Exception STA - The proposed rule would impose a number of conditions on the use of License Exception STA. Our comments on each of these requirements are below:

1. Exporters would be required to furnish consignees with the ECCNs for each of the items exported under License Exception STA.

Comment: As described in item 3 below, the 'Prior Consignee Statement" must also include the ECCNs for each item exported. Therefore, we recommend that this requirement be eliminated.

2. Reexporters and transferors would be required to provide subsequent consignees with the ECCN provided by the exporter or prior reexporters or transferors.

Comment: We understand BIS's intent. While U.S. exporters can instruct their consignees and their customers to provide this notice, it will be difficult or impossible for U.S. exporters to verify that this condition has been satisfied.

3. Exporters, reexporters and transferors would be required to obtain a written "Prior Consignee Statement" identifying the items to be shipped and restating the ECCN(s) provided to the consignees by the exporters, reexporters or transferors.

Comment: This provision requires such a statement to be obtained "prior to shipping the item". We assume that this notification does not have to be provided in connection with each and every shipment, but that a one-time notification to a particular consignee in connection with a particular ECCN would be sufficient. Further, that such a statement could be included in the purchase order or contract.

4. Exporters, reexporters and transferors using License Exception STA would be required to use a special destination control statement.

Comment: Again, we understand BIS's intent. While U.S. exporters should be able to provide the new Destination Control Statement (DCS) to their customers and consignees, it will be difficult or impossible for U.S. exporters to verify that their customers will provide this DCS in connection with reexports and transfers.

D. Reporting Requirements - To enable the U.S. to meet its Wassenaar Arrangement reporting requirements, the proposed rule amends section 743.1 of the EAR to require the continued reporting to BIS of certain items exported under License Exception STA. In order to minimize the burden to exporters, we encourage the U.S. to raise the need for and benefits of such reporting prior to the next Wassenaar Arrangement Plenary session.

3. Conclusion

AAEI appreciates the opportunity to comment on the proposed rule that would amend the EAR to add License Exception STA. While we believe that this proposed rule will facilitate exports by decreasing the number of licenses that U.S. exporters would have to obtain from BIS, we encourage BIS to consider these comments when drafting the final rule. Given the favorable impact on exporters, we hope that a final rule on License Exception STA can be issued in the near future.

AAEI looks forward to continuing to work with BIS on similar efforts that reduce the number of export licenses that companies have to obtain, such as the proposed Intra-Company Transfer (ICT) License Exception that was published in the Federal Register On October 3, 2008, but has not yet been implemented.

AAEI would be pleased to discuss these comments in more detail with BIS leadership and staff.

Sincerely,

Marianne Rowden
President & CEO

cc: Nona Clarke, Co-Chair, AAEI Export Compliance & Facilitation Committee
Douglas N. Jacobson, Co-Chair, AAEI Export Compliance & Facilitation Committee Phillip Poland, Co-Chair, AAEI Export Compliance & Facilitation Committee