From: <Denis.Redonnet@ec.europa.eu>
To: PublicComments@bis.doc.gov
Date: Tue, Feb 8, 2011 7:54 AM
Subject: RIN 0694-AF03 - Response of the European Commission to the Federal Register consultation concerning the proposed rule to create a Strategic Trade Authorisation (STA) License Exception

Dear Sir,

please find attached the response from the European Commission to the consultation mentioned above.

Regards,

Denis REDONNET

HEAD OF UNIT

WTO+OECD, Export Credits, Dual Use Goods

TRADE.F.1

Directorate General for Trade
European Commission

Office: CHAR 09/128

Tel: +32-2-295.54.24
Fax: +32-2-299.09.00

Email: denis.redonnet@ec.europa.eu

http://ec.europa.eu/trade/index_en.htm
<http://ec.europa.eu/trade/index_en.htm>

CC: Philippe.Meyer@ec.europa.eu; Geraldine.Emberger@ec.europa.eu; Roberto.PENA@eeas.europa.eu; Hiddo.HOUBEN@ec.europa.eu; . . .

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EUROPEAN COMMISSION
Directorate-General for Trade

Directorate F - WTO Affairs, OECD and Food-related Sectors

The Director

BY EMAIL ONLY

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Bureau of Industry and Security
Department of Commerce
publiccomments@bis.doc.gov

Subject: **Response of the European Commission to the Federal Register consultation concerning the proposed rule to create a Strategic Trade Authorisation (STA) License Exception**

Reference: **RIN 0694-AF03**

The European Commission would like to express its concern with the proposed rule creating a Strategic Trade Authorisation License Exception, in particular with regard to the proposed destination scope set out in § 740.20(c)(1). The list includes 37 destinations that would be authorised to receive items covered by the STA. The European Commission has noted that although this list is meant to cover low-risk destinations, it contains only 25 of the 27 Member States of the European Union, that is all Member States except Cyprus and Malta.

The European Union constitutes a single market in which the free movement of goods is ensured. Pursuant to the Treaty on the Functioning of the European Union and to Regulation 428/2009 establishing the EU export control regime, dual-use items can, with limited exceptions, circulate freely within the European Union. Authorisations are only required for the export of dual-use items from the European Union to a third country.

Under the proposed STA rule, export and re-exports of relevant items would seemingly be permitted to and within the 25 EU Member States, but not to Cyprus and Malta, which for businesses operating within the European Union, would constitute a direct violation of the freedoms provided by the EU Treaties.

It is worth recalling that both Cyprus and Malta fully adhere to international export control standards, which is confirmed by their membership status in international export control regimes. Despite political issues surrounding membership in some of the regimes, both Cyprus and Malta as EU Member States, fully implement the EU export control framework and enforce controls on all controlled items agreed in the Australia Group, Wassenaar Arrangement, Nuclear Suppliers Group and Missile Technology Control Regime.

On the business side, the non-inclusion of Malta and Cyprus, alongside the other EU Member States, on the list of destinations covered by the STA, would have significant consequences for businesses operating within the EU single market. In practical terms, companies could be faced with a conflict between the proposed requirements under the STA and the fundamental principle of freedom of movement of goods within the EU.

The European Commission is also concerned with the foreseen added administrative burden put on businesses operating in the EU, which would be recipients of items imported under the proposed STA. The European Commission will continue to monitor and assess the situation in this regard and may come back with further comments.

Based on the above considerations, the European Commission believes that the destination scope of the proposed rule should be amended to reflect both the practical and legal reality of having a single market within the European Union consisting of 27 Member States. Consequently, all 27 Member States of the European Union should be included in the top tier of privileged destinations.

If you would require any further clarifications on this issue, please contact Mr Piotr Rydzkowski in Brussels (Piotr.RYDZKOWSKI@ec.europa.eu) or Mr Roberto Pena in the Delegation of the European Union in Washington (Roberto.PENA@eeas.europa.eu).

Signe RATSO

Cc: Aguiar Machado, Balás, Kiener, Ehring, Ratso, Redonnet, Sandler, Garzotti, Herbouiller, Rydzkowski, Jaeger-Hanan, Brown, Juul-Joergensen, Meyer, Emberger, all directors (DG TRADE)

Houben, Pena (EU Delegation in Washington D.C.)