United Technologies Corporation
1101 Pennsylvania Avenue, NW
10th Floor
Washington, DC 20004
(202) 336-7400

February 7, 2011

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

Attn: RIN 0694-AF03

Re: Export Control Modernization: Strategic Trade Authorization License Exception (75 Fed. Reg. 76653, December 9, 2010)

Dear Mr. Arvin:

United Technologies Corporation ("UTC")[1] appreciates the opportunity to submit these comments in support of the Bureau of Industry and Security's ("BIS") proposed rule to add a new license exception Strategic Trade Authorization ("STA") to §740.20 of the Export Administration Regulations ("EAR"). License exception STA would authorize exports, reexports, and in-country transfers of specified items to destinations that pose little risk of unauthorized diversion, and for which U.S. national security and foreign policy justify allowing transactions without the delay and expense of obtaining a license.

UTC strongly supports the Administration's Export Control Reform Initiative, and its stated goal of strengthening national security and the competitiveness of key U.S. manufacturing and technology sectors by focusing on current threats and the changing technological landscape. Of paramount importance in achieving this goal is reforming both the U.S. Munitions List ("USML") and the Commerce Control List ("CCL"), and aligning associated export licensing policies, to achieve a more positive, transparent and predictable structure that concentrates munitions and dual-use export controls on the most sensitive items. BIS's proposed new license exception STA, in conjunction with the proper "tiering" of dual-use items pursuant to the Administration's control list criteria, should speed legitimate dual-use trade and technology exchange among trusted allies and parties while preserving and focusing licensing controls on the items most critical to national security.

[1] UTC is a global, diversified corporation based in Hartford, Connecticut, supplying a broad range of high technology products and services to the aerospace, power generation, security, transportation, and building systems industries. UTC's companies are industry leaders, among them Hamilton Sundstrand aerospace and industrial systems; Pratt & Whitney aircraft engines, space propulsion systems and industrial turbines; Sikorsky helicopters; Carrier heating, air conditioning and refrigeration systems; Otis elevators and escalators; UTC Fire & Security electronic security and fire safety systems; and UTC Power fuel cell and power systems. With 2009 revenues of $52.9 billion, UTC is the 18th largest U.S. manufacturer and 37th largest U.S. corporation. In 2009, *Fortune* named UTC its "Most Admired" aerospace and defense company for the 9th time in the past 10 years. UTC has been named to *Forbes* Platinum 400 list of Best Managed Big Companies in America and the Dow Jones Sustainability Index every year since 1999, and a Global 100 most sustainable corporation in the world by Corporate Knights, Inc. each year since 2005.

License exception STA would allow for license-free transfers of items controlled on the CCL to three different country groupings based on the underlying reason for control of the item, the destination, the sensitivity (or "tier") of the item, and its end-use. In general, the proposed provisions and conditions of STA are reasonably balanced and should not impose an undue burden on exporters that elect to use the exception. However, we recommend that BIS: (1) clarify condition 2 in §740.20(d) requiring a prior consignee written statement, and (2) maintain and expand eligibility under §740.20(c) for commodities and technology within ECCNs 9A001 and 9E003.

1. Clarifications to §740.20(d)(2)

A. §740.20(d)(2). As a condition of transfers under the proposed STA license exception, the exporter (or reexporter/transferror) must obtain a written statement from its prospective consignee "prior to shipping the item." In the case of a transaction that involves multiple shipments, this wording is unclear with respect to whether a written statement is required for each separate shipment of a qualifying item to the same consignee. Transactions pursuant to long-term business relationships typically involve multiple shipments to the same consignee over an extended period of time. A requirement to obtain a separate written statement prior to each individual shipment would greatly increase the amount of paperwork an exporter must obtain and retain. We recommend BIS clarify that the exporter, reexporter, or transferror must obtain a written statement from its consignee "prior to *the first shipment of the item(s)...*" As long as the statement identifies in §740.20(d)(2)(i) all items to be shipped to the consignee, subsequent shipments should not require a separate prior consignee statement.

B. §740.20(d)(2)(vi). Section §740.20(d)(2)(vi) requires the consignee to agree to provide copies of the written statement and all other export, reexport, or transfer records "relevant to the items referenced in this statement to the U.S. Government as set forth in 15 CFR 762.7." Section 762.7, Producing and Inspecting Records, notes that records are to be made available "upon request." To prevent potential misinterpretation of subparagraph (vi), we recommend BIS clarify the language to add the words "upon request" as follows: "...relevant to the items referenced in this statement *upon request by* the U.S. Government as set forth in 15 CFR 762.7."

2. Eligibility for §740.20: ECCNs 9A001 and 9E003

In the Supplementary Information section of the proposed rule, BIS explains that the Administration is focusing on whether items within the scope of certain ECCNs should, in whole or in part, be ineligible for License Exception STA. Of particular importance to UTC, the proposed rule seeks input on items in ECCNs 9A001 and 9E003, on the grounds that these ECCNs in whole or in part may contain Tier 1 commodities or technologies. These ECCNs cover a wide range of aero gas turbine engines and technologies, much of which does not meet the stated criteria for treatment under Tier 1 or, for certain items, Tier 2. UTC recommends a tiered approach to ECCNs 9A001 and 9E003 to allow for appropriate differentiation among the items in these categories when applying licensing policies and establishing eligibility under the proposed STA License Exception in §740.20.

Within CCL Category 9, ECCNs 9A001 and 9E003.a/h control aero gas turbine engine items that span a wide range of sensitivity. 9A001 controls aero gas turbine engines capable of extended supersonic operation, and commercial aircraft engines in certification. 9E003.a/h controls single crystal turbine blades, engine control law algorithms, and a simple flap in the engine bypass duct. We propose a tiered approach to 9A001 and 9E003:

A. ECCN 9A001. Developmental commercial engines are classified under 9A001, yet become 9A991 once certified by the civil aviation authority in a country listed in Supplement No. 1 to EAR Part 743. There is no technology or performance difference between a pre- and post-certified engine. We propose that engines destined to be commercially certified and intended for use in non-military manned aircraft be treated, at a minimum, as Tier 2 and be eligible for the STA exemption in §740.20(c)(1). The mechanism to achieve this would be to create a sub-entry (9A001.a.1) that could be specifically eligible for the STA exemption.

B. ECCN 9E003. 9E003.a/h controls "development" and "production" "technology" for a wide range of aero gas turbine components. Within "production" "technology" is a wide range of items, with production know-how being the most sensitive and a simple blueprint being the least sensitive. According to the proposed §740.20, "technology" "required" for the "development" or "production" of 9E003.a.1 through a.5, a.8, and 9E003.h is not eligible for the full scope of the STA exception. We propose that both "development" and, particularly, "production" "technology" in those subparagraphs be tiered among Tier 1, 2 and 3 based on the sensitivity and availability, and that this structure maintain widespread eligibility of technology for various categories of authorization under the STA exception.

* * *

UTC appreciates the opportunity to present its views on the proposed rule and applauds BIS' proposal to reform current policies and implement a new License Exception STA. We recommend that BIS clarify aspects of the conditions for use of the exception, and maintain broad eligibility for STA within ECCN's 9A001 and 9E003 by differentiating among Tier 1, 2 and 3 items based on current state and availability of technology and its significance to maintaining U.S. military advantage.

For additional information, please contact the undersigned at (202) 336-7467 or, with regard to technical proposals for ECCNs 9A001 and 9E003, Ari Novis at Pratt & Whitney at (860) 557-2353.

Sincerely,

Peter S. Jordan
Director, Senior International Trade Counsel
United Technologies Corporation