From: "Cuddy, Kevin (GE, Corporate)" <Kevin.Cuddy@ge.com>
To: PublicComments@bis.doc.gov
Date: Mon, Feb 7, 2011 5:18 PM
Subject: STA RIN 0694-AF03

Please find the attached comments on the proposed STA License Exception from General Electric Company.

If you have any questions, please do not hesitate to contact me.

Regards,

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February 7, 2011

Mr. William Arvin
Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, N.W., Room 2705
Washington, DC 20230

Re: Export Control Modernization: Strategic Trade Authorization License Exception [RIN 0694-AF03]

Via email: publiccomments@bis.doc.gov

Dear Mr. Arvin,

On behalf of General Electric Company (GE), we hereby submit the following comments in response to the Bureau of Industry and Security's (BIS) December 9, 2010 Notice of Proposed Rulemaking, 75 Fed. Reg. 76,653 (Proposed Rule). Our comments will focus on: (1) the eligibility of items under the proposed Strategic Trade Authorization License Exception (STA), and (2) whether certain technology controls meet, in whole or in part, the Tier 1 criteria.

As will be discussed in more detail below, GE supports the Proposed Rule and concurs that the proposed STA and the inclusion of Significant Item (SI) as a reason for control eligible under this license exception would reduce the expense and delay of obtaining an export license. To that end however, GE believes that the scope of the Proposed Rule is too narrow. In fact, the STA license exception, as currently drafted, overlaps significantly with GE exports that are currently exported without a license requirement. In its effort to "further focus export controls on the most critical national security priorities", BIS should broaden the scope of its STA license exception. Only by removing the license requirement for additional ECCN items that are low-risk and currently under a license requirement will the STA exception fulfill its purpose.

1. **GE Supports the Proposed STA for Reducing the Expense and Delay of Obtaining an Export License, but Urges BIS to Expand the Scope of the License Exception.**

GE believes that in order to expand the effectiveness of the STA, BIS should review the scope of the authorization to allow for the license-free export of additional items to low-risk destinations. GE requests BIS reconsider certain excluded ECCNs for STA eligibility and specifically recommends making the items listed below eligible under STA.

a. ECCNs 9E003.a.2, 9E003.a.4, 9E003.a.5, 9E003.a.8, 9E003.h and Should Be Eligible for STA.

GE Aviation currently holds 16 licenses for the export of items classified under ECCN 9E003 subparagraphs a.2, a.4, a.8, and h for countries identified in Section 740.20(c)(1) of the Proposed Rule. As proposed, these items are ineligible for the STA exception. These technologies have already been developed in the European Union (EU). In accordance with the Wassenaar Arrangement, current EU dual-use regulations allow EU members to export this technology to other EU members without an export license. EU members can also export this type of technology without a license to the United States, Canada, Australia, Japan, New Zealand, Norway, and Switzerland under the Community General Exception Authorization (CGEA). Thus, similar EU technology may be exported to 25 of the 37 destinations identified in Section 740.20(c)(1), making US license requirements for this technology unnecessary and ineffective. The US export regime should, therefore, align itself with the Wassenaar and EU regimes by including these items within the scope of the proposed STA exception.

In addition, GE Energy exports certain items under ECCN 9E003.a.5. This technology is available outside the United States, particularly related to power generation technology. Most hardware geometry is currently not export controlled, as it is difficult to control access to the hardware once the machines are in the field and part/turbine exports generally do not require a license. GE Energy submits that this technology is likely available in other countries, such as India, Russia and China, that have advanced technical competencies.

b. ECCN 9A001 Should be Considered Eligible for STA.

ECCN 9A001 items should also be eligible for the STA. GE currently holds 30 licenses for the export of ECCN 9A001 to destinations listed in Section 740.20(c)(1) of the Proposed Rule. By excluding these items from the scope of the STA, GE would be required to obtain a license to export an aircraft engine to a commercial aircraft training center, but would not need such a license if the same engine were to be installed on a commercial airplane in the same location. Consistent with the rationale outlined above for the ECCN 9E003 subparagraphs, under the European Union's dual-use regulations EU members can export ECCN 9A001 commodities without an export license to 32 countries, including the United States. As such, including ECCN 9A001 within the scope of the STA would be consistent with the treatment of similar commercial items, while posing no added risk to the national security of the United States.

c. ECCNs 2B352 and 2E001 Items Should also be Eligible for STA.

GE Healthcare holds approximately 81 licenses for the export of ECCNs 2B352 and 2E001 items, which include bioreactor and filtration technologies respectively, to destinations listed in Section 740.20(c)(1) of the Proposed Rule. As currently drafted, these items are ineligible for the STA exception. Such items and related technology are widely available with a correspondingly low national security advantage.

For example, comparable cross-flow technology and products are available from Indian companies such as Bangalore Biotech Labs Pvt. Ltd., Millipore (INDIA) Pvt. Ltd., Pall India Pvt. Ltd.; Chinese companies such as Pall China (Changchun), Sartorius Stedim Biotech (Beijing) Co. Ltd., Millipore China Ltd., and Argentine companies such as MPH Eng. S.R.L. In addition, comparable bioreactor technology and products are available from Indian companies such as Bangalore Biotech Labs Pvt. Ltd., Millipore (INDIA) Pvt. Ltd., Pall India Pvt. Ltd., Sartoris Stedim India Pvt. Ltd.; and Chinese companies such as Sartorius Stedim Biotech (Beijing) Co. Ltd., AmProtein-China Inc., and Thermol China Corp.

Thus, BIS should broaden the scope of the STA license exception so that these widely available technologies do not require licenses.

d. Revision of STA Provisions.

Under Paragraph (3) in section "Conditions that Apply to License Exception STA", GE recommends the modification of bullet six so that it reads: "agrees to provide copies of this document and all other export, reexport or transfer record (i.e., the documents described in Part 762 of the EAR) relevant to the items referenced in this statement to the US Government **"upon request"**, as set for in Section 762.7. Currently Part 762 of the Export Administration Regulations does not specifically require that records be maintained for transfers. GE recommends that BIS amend Part 762 in order to reflect such a requirement or remove the recordkeeping requirement imposed on transfer records by the STA.

e. Addition of License Exception STA Exclusion Paragraphs to the ECCN.

For purposes of simplicity and consistency between license exceptions, GE urges BIS to reference the STA in the Commerce Control List (CCL) in the same format as the list-based license exceptions in the CCL. As such, GE recommends the use of "STA: Yes" or "STA: N/A" under each eligible ECCN entry. Correspondingly, GE recommends BIS's removal of Section 732.4(b)(iii) of the Proposed Rule, as it would then be unnecessary if the consistent format were used.

GE would also like BIS to reconsider some of the ECCNs excluded from eligibility under STA. It seems that some of these items are currently eligible for export without a license to most destinations eligible under the Proposed Rule. For example, commodities classified under ECCNs 1C010.c and 1C010.d are controlled for National Security (NS) and Anti-Terrorism (AT) reasons, under Country Chart columns NS2 and AT1. Per the current NS Control Policy, items controlled under NS2 will require a license to all destinations except Country Group A:1 and cooperating countries, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia. Therefore, exports to 33 of the 37 countries in Section 740.20(c)(1) of the Proposed Rule would be NLR. Additionally, exports of these items to Hong Kong, which is not listed under Section 740.20(c)(1), would also be NLR. As for re-exports, license exception APR would allow the re-export without a license of commodities from the Country Group A:1 and cooperating countries, provided it is in accordance with local law. Since these items may currently be exported to 33 of the 37 countries listed in 740.20(c)(1), we suggest BIS allow these items to fall within the STA exception so they may be exported without a license to the remaining four countries.

2. Certain Items Under 9E003 Should Not Be Treated As Tier 1 Items.

ECCNs 9E003.a.2, 9E003.a.4, 9E003.a.5 and 9E003.h should not be treated as Tier 1 items. Because the products included thereunder are widely available in other parts of the world, they do not meet the Tier 1 criteria as "critical to maintaining a military or intelligence advantage for the United States and almost exclusively available from the United States."

a. ECCN 9E003.a.2.

- Multiple dome combustors: Engines with multiple dome combustors have similar performance to other types of combustors. Although multiple dome combustors are used on a single GE commercial engine line, they are not currently used on any U.S. military engines.

- Combustors incorporating thermally decoupled liners: While preferred by some engine manufacturers, inclusion of a thermally decoupled liner is driven by engineering design preference rather than operating performance. This type of combustor does not confer a military advantage and the technology is available to manufacturers outside of the United States (Rolls Royce).

- Combustors incorporating non-metallic liners or shells: Combustors incorporating non-metallic liners or shells may present additional performance capability in certain cases, but the primary combustor advantage is generated by the combustor liner material rather than the combustor design.

b. 9E003.a.4:

Uncooled turbine blades and associated components: The techniques for design of uncooled turbine blades and associated components are common to lower temperature parts, but use higher capability materials. The limiting technology is the single crystal/ directionally solidified alloys[1] used in the production of these components. Design techniques for uncooled turbine blades and associated components are widely available at various international turbomachinery companies, including SNECMA in France, Rolls Royce in Great Britain, MTU in Germany, AVIO in Italy and IHI and Honda in Japan.

c. 9E003.a.5:

Heat transfer technology for cooling of hot gas flowpath components of land-based heavy-duty industrial gas turbines used for electricity generation. While industrial land-based heavy-duty industrial gas turbines do not fly, certain conditions allow for scalability of technology to aviation applications. The technology should still be controlled, but does not belong in Tier 1 along with the most critically controlled ITAR items.

d. 9E003.h:

"Development" or "production" "technology" for deriving the components/functional requirements/control algorithms necessary for the "FADEC system" to regulate engine thrust or shaft power: Since the FADEC introduction in the 1980s most aircraft have been powered by engines controlled by FADEC and have been installed on aircraft made by engine manufacturers in the U.S., Europe, Canada, Brazil, and Asia. Similarly, engine development and technical data (both FADEC hardware and software) is also widely available throughout the world.

Finally, GE would like to point out that an additional avenue for improving the transparency, efficiency, and effectiveness of the U.S. export control regime would be to re-visit the issue of the intra-company transfer (ICT) license exception. GE is supportive of the idea of an intra-company transfer license exception—not the 2008 proposed rule, per se, but of the concept more generally. As proposed in 2008, GE may not have utilized the ICT but that does not undermine the concept or the potential such

[1] Controlled by 9E003.a.1, and 9E003.a.5.

an exception could have on lowering licensing volumes for low-risk trade. Restarting interagency work on a new ICT is exactly the level of ambition GE believes this reform initiative should undertake.

In conclusion, we appreciate the opportunity to provide comments on the Proposed Rule. Please do not hesitate to contact the undersigned if you have any questions.

Sincerely,

/s/

Carol Fuchs
Counsel, International Trade Regulation
International Law & Policy
General Electric Company