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United Technologies

February 06, 2011

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
Room 2099B
14th St and Pennsylvania Ave., NW
Washington, D.C. 20230

Attn: RIN 0694-AF39

Re: Revisions to the Export Administration Regulations (EAR): Control of Submersible Vessels, Oceanographic Equipment and Related Articles that the President Determines No Longer Warrant Control under the United States Munitions List (76 Fed. Reg. 80291, December 23, 2011)

Dear Mr. Lopes:

United Technologies Corporation ("UTC")[1] appreciates the opportunity to submit these comments on the Bureau of Industry and Security's ("BIS") proposed rule on revisions to the Export Administration Regulations ("EAR") regarding the control of submersible vessels, oceanographic equipment and related articles the President determines no longer warrant control under the U.S. Munitions List ("USML").[2] The notice seeks input on the changes to the EAR to address the movement of items currently controlled under USML Category VI - Vessels of War and Special Naval Equipment and USML Category XX – Submersible Vessels, Oceanographic and Associated Equipment, to the Commerce Control List ("CCL") in new ECCNs 8A620, 8B620, 8C620, 8D620, and 8E620. The proposed rule also defines the availability of certain license exceptions for the newly created ECCNs.

As stated in our comments on other recent proposed rule changes, UTC strongly endorses 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.

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[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.

[2] UTC is submitting comments on the U.S. Department of State's parallel proposed rules to amend the ITAR to revise USML Categories VI (Surface Vessels of War and Special Naval Equipment) and XX (Submersible Vessels and Related Articles).

For UTC companies, a portion of defense trade licensing activity relates to defense articles and defense services falling under USML Category XX. UTC's marine products for submersible vessels, oceanographic and associated equipment includes electric power and management sub-systems, atmosphere monitoring and management, fire detection and suppression, among others.

I. COMMENTS ON ECCN 8x620

A. ECCN 8A620.d.3.b

Non-magnetic diesel engines with non-magnetic parts other than crankcase

We believe "crankcase" should be "crankshaft."

B. ECCN 8A620.y

1. Parts with Little or No Military Significance. In the Supplemental Information section of the proposed rule under the discussion entitled "Scope of this Proposed Rule" section, BIS indicates that "[p]aragraph y. would consist of specific types of commodities that, if "specially designed" for a commodity subject to control in ECCN 8A620, warrant less strict controls because they have little or no military significance." UTC submits that there are more than the 20 specific types of parts, components, accessories and attachments potentially falling within the proposed EAR definition of "specially designed" and yet have little or no military significance that warrant the imposition of NS or RS controls under the CCL. In addition to making much needed changes to the definition of specially designed, as discussed below, we urge the agencies to carefully and exhaustively populate the list of parts and components in the .y paragraph.

UTC recommends that the following types of part, components, and associated equipment be added to the items delineated in 8A620.y:

- Floats for 8A620.e commodities
- Cabin doors and door seals
- Crew and cabin seats and bunks
- Fire or smoke detection, prevention and suppression systems[3]
- Junction boxes

[3] Fire or smoke detection, prevention and suppression equipment is functionally indistinguishable between military and civil marine vessels (as well as land vehicles and aircraft). The functions are performed by components such as temperature sensors, smoke or CO2 detectors, protective or suppression materials and related electronics for the interaction of the components and subsystems. The design and construction of these components and the detection, prevention and suppression subsystems only vary by form and fit for the particular vessel, sized and packaged to fit that vessel and its fire detection, prevention and suppression needs. These components have no military significance.

We also request that 8A620.y.5 be revised to clarify that it includes metal hydraulic, fuel, oil and air lines that are straight, bent, flexible, braided or with varying internal cross sectional area.

Even with a more exhaustive identification in paragraph .y of additional specific types of parts and components, we recognize that it is not necessarily practical to affirmatively identify every item (or type of item) on those surface vessels that may be considered to be "specially designed" for a commodity covered under 8A620 or a defense article in USML Category XX yet have little or no military significance. As discussed below, we recommend changes to the definition of "specially designed", and particularly the parts and components exclusions, to avoid overly broad control of a large and diverse array of minor, militarily insignificant items used on submersible vessels, oceanographic equipment and related articles. UTC believes that control of such items, to the extent they qualify as "specially designed," under 8A620.y is appropriate. Accordingly, we suggest adding the following entry to 8A620.y:

> "Minor parts of the following type: threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common type hardware (e.g., washers, spacers, insulators, connectors, diodes, resistors, grommets, bushings), springs, wire, seals, packings, blankets, insulation, decals, and name/information plates."

C. License Exception STA paragraph under ECCN 8A620

In the License Exception STA paragraph under 8A620, the proposed rule refers to "Supplement No. 4 to Part 774." We believe the reference should be to Supplement No. 4 to Part 740. Furthermore, Supplement No. 4 is not published in this proposed rule.

II. OTHER COMMENTS

A. Definition of "Specially Designed"

The proposed definition of "specially designed" in EAR § 772.1 plays a fundamental role in determining the structure and scope of the revised CCL, including proposed ECCNs 8A620, 8B620, 8C620, 8D620 and 8E620. The clear aim is to eliminate, to the greatest extent possible, the need to divine the designer's intent or apply other subjective concepts to determine jurisdiction and classification. Further, the definition must reduce over-control and unnecessary licensing or other authorization requirements for the broad universe of parts and components transferred to the CCL that have little or no military significance. As proposed, however, the definition is confusing, difficult to administer, and may result in overly broad control of benign parts and components contrary to the objectives of the list reform effort.

The proposed definition breaks items down into two groups: (1) *items other than parts or components*, i.e., end-items, materials, accessories and attachments, software and technology; and (2) *parts and components*. Each group has its own set of tests.

1. **Items other than parts and components (subparagraph (a)).** To qualify as a "specially designed" item, the item must be enumerated on the CCL and, as a result of "development", have properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions of the controlled item. This construction is a welcome move away from subjective intent criteria, but it does not completely eliminate ambiguity and interpretational questions surrounding the phrase "peculiarly responsible", *i.e.*, the significance of an item's properties to the stated performance characteristics or functions. This phrase can be viewed to mean the properties are both necessary and sufficient to achieve or exceed the stated performance parameters. As it did for the definition of "required" technology and software in Part 772.1, Commerce should include adequate examples of the application of this concept to specific items.

2. **Parts and components (subparagraph (b)).** The limiting language of subparagraph (a) is not used in the proposed definition of specially designed parts and components. Read literally, it captures practically every part and component of every military item enumerated on the CCL or USML, unless they are themselves enumerated in a parts and components category on the CCL or USML or fall within one of the four limited exclusions under subparagraph (d).

Our experience is that an inordinate amount of time and resources is consumed trying to determine the jurisdiction and classification of minor, militarily insignificant parts. Many are purchased from distributors and it is often difficult, if not impossible, to determine design intent, predominant usage in the market place, or even the range of present actual applications. Due to this experience, the suggested revision to 8A620.y identified earlier concerning minor parts would be beneficial as it would cover minor parts used on a commodity subject to control under 8A620 or USML Category XX, when use on multiple types of civil items cannot be confirmed.

B. Implementation.

UTC believes that the transfer of items of lesser military significance from the USML to the CCL will result in reduced cost and improved business flexibility. However, the transition of potentially tens of thousands of parts and components, each with a multiplicity of associated technical documents, will require a very substantial effort requiring a transition period to train staff, determine new jurisdictions and classifications, adjust ERP systems and other automated tools, change document markings, and coordinate with suppliers, distributors and customers. The philosophy of the phase-in should be to avoid unnecessary costs and schedule delays. To ease concern and possible confusion over this transition, the rule should explicitly address the phase-in of changes, as follows:

1. **Phase-in of changes.** Permit a phase-in of changes through interim and final rules. The EAR underwent a similar change in 1996, and the transition was implemented with an interim rule effective April 24, 1996, with compliance not compelled until November 1 of the same year. A similar extended implementation time frame would allow companies to change computer systems, update marking

procedures, and start the process of reviewing the jurisdiction and classification of a large number of items. Due to the size and complexity of the effort, we recommend a nine month phase-in period.

2. 'Grandfathering'. Permit 'grandfathering' of existing item jurisdiction and classification. This essentially makes the transition of items from the USML to CCL optional. Items would be re-categorized when there is a business case to transition eligible items.

3. Existing and in-process licenses and agreements. Permit 'grandfathering' of existing and in-process licenses and agreements. There may be cases where amending a Department of State authorization may be faster than applying for a new BIS license. In this case, the item(s) would necessarily retain the jurisdiction stated in the authorization. Continuing to license an item under the original jurisdiction should not preclude transitioning a Category VI or Category XX item to the CCL without agency agreement.

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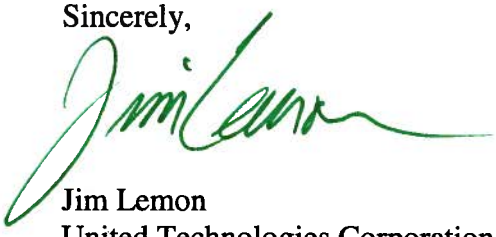
For additional information, please contact the undersigned at (202) 336-7462 or, with regard to technical proposals, Howard Pfeifer at Hamilton Sundstrand at (860) 654-9941.

Sincerely,



Jim Lemon
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