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**VIA E-MAIL, FEDERAL RULEMAKING PORTAL,**
**AND OVERNIGHT COURIER**
Regulatory Policy Division
Bureau of Industry and Security, Room 2099B
U. S. Department of Commerce
14th St. and Pennsylvania Avenue
Washington, DC 20230

**Re: Continental Tire and Continental Automotive Comments On Proposed Revisions to the Export Administration Regulation**

**Parts and Components of Military Vehicles, Surface Vessels, And Submersible Vessels**

**RIN Nos. 0694-AF17, Docket No: 110310188-1621-02**
**RIN 0694-AF39, Docket No. 110928603-1605-02**
**RIN 0694-AF42, Docket No. 110928603-1642-01**

Dear Sir/Madam:

We respectfully submit this comment letter on behalf of Continental Tire the Americas LLC (**"Continental Tire"**) and Continental Automotive, Inc. (**"Continental Auto"**) (collectively with their affiliates and subsidiaries, **"Continental"**). This letter comments on the following proposed revisions to the Export Administration Regulation (**"EAR"**), namely:

1. The December 6, 2011 proposed rules relating to military vehicle parts and components and related articles (the "**December Auto Proposed Rules**");

2. The December 23, 2011 proposed rules relating to parts and components of vessels of war and related articles (the "**Surface Vessel Proposed Rules**"); and

3. The December 23, 2011 proposed rules relating to parts and components of submersible vessels and related articles (the "**Submersible Vessel Proposed Rules**").

The December Auto Proposed Rules relate to the Commerce Department's July 15, 2011 proposed rules relating to parts and components of military vehicles and related articles (the "**July Auto Proposed Rules**"). The December Auto Proposed Rules discuss concepts outlined in, and request suggestions for further refinements to, the July Auto Proposed Rules.

Continental contributes materially to the U.S. market for automotive parts and components, including a broad range of products that are suitable for use on military and non-military vehicles. Continental submitted detailed comments concerning the July Auto Proposed Rules. This letter provides additional comments and suggestions relating specifically to the December Auto Proposed Rules, and also, with respect to Section 6 below, the Surface and Submersible Vessel Proposed Rules.

Continental appreciates the Commerce Department's request for public comment on proposed changes to the EAR relating to military vehicle parts and components. Properly implemented, these changes could help to relax unnecessary export restrictions on parts and components that have been modified for use on military vehicles but are not militarily significant. Under current law these parts and components can be subject to strict regulation under the International Traffic in Arms Regulations ("ITAR") — even when the modifications have nothing at all to do with military function and the parts and components are used worldwide in passenger cars, trash trucks, SUVs, construction vehicles, and off-road vehicles. This scenario (1) puts the U.S. at a distinct disadvantage with respect to exports and economic recovery, (2) devotes scarce governmental resources to licensing for harmless parts and components and related enforcement activity (at a time when there are far more real threats to U.S. security interests), and (3) most importantly, constitutes a major hindrance to the U.S. military's efforts to update its vehicle fleet and better equip our troops in a cost-efficient manner.

This letter encourages the Commerce Department to continue the process of reform and provides specific input on the above-referenced proposed rules.

## 1. List of Parts and Components with Little or No Military Significance

Responding to comments on the July Auto Proposed Rules, the Commerce Department listed in the December Auto Proposed Rules several additional categories of parts and components that, even when modified for use in military vehicles "are common (in function) to items widely used in civilian vehicles." Continental commends the Commerce Department's willingness to consider appropriate additions to the 0A606.y list proposed in the July Auto Proposed Rules.

The December Auto Proposed Rules note:

> These [additional] items include gauges such as speedometers; instrument panels/clusters; vehicle/engine sensors; vehicle engine monitoring sensors and displays such as check engine lights and their associated sensors; electronic braking systems; multiplexing systems to limit vehicle wiring; tire pressure

> monitoring systems, and data relating to tires (not including run-flats). Although these items might have to be modified for a particular military vehicle, such modifications typically relate [to] fit and are similar to the types of modifications that are made for civilian vehicles.

As indicated in Continental's comments on the July Auto Proposed Rules, Continental agrees that items such as these have little or no military significance. Considering two additional factors raised by the Commerce Department in the December Proposed Auto Rules, the above-listed parts and components also (1) lack the capacity to conceal the presence or location of vehicles, and (2) are already offered for civilian vehicles inside and outside the U.S. in water-resistant, submersible and/or other heavy duty forms for use in construction, farming, off-road, high performance vehicles, and similar automotive applications. In many cases, these items are also widely available in waterproof or water-resistant form for civilian boating applications. Water proofing and water resistance also can be used to expand the useful life of a part or component and increase reliability, even in applications where no submersion of the part or component is anticipated.

The additional factors of (1) concealment and (2) water proof/resistant status provide no reason to treat the above items as militarily significant. Accordingly, to regulate, license, and enforce as if the above-listed items were militarily significant would involve unnecessary use of valuable agency time, taxpayer dollars, and industry compliance resources. More importantly, treating these items as militarily significant would continue to make these items expensive and difficult for the U.S. military to obtain and update.

## 2. Criteria for Determining Military Significance

The December Auto Proposed Rules request public comment on "appropriate criteria for determining which items classified under 600 series ECCNs should be limited to the AT reason for control." Continental appreciates the Commerce Department's work to identify characteristics that indicate military significance and submits that this effort is closely related to the Commerce Department's ongoing effort to define the term "specially designed," as discussed below.

The December Auto Proposed Rules list the following factors as criteria for determining whether items have little or no military significance:

(1) The items are widely used in civilian and military vehicles alike.
(2) Without these products, many military and civilian vehicles could not function at all.
(3) The items do not include offensive weaponry, armor, threat detection systems, or military command control and communication system.
(4) The items do not control or monitor offensive weaponry, armor, threat detection systems, or military command control and communications systems.

(5) The items are available from foreign sources in many locations around the world.

It is Continental's understanding that the Commerce Department is not suggesting that all of the above factors must be present in order for a product to lack military significance. There are many automotive parts and components that do not meet some of the above "tests" but clearly still lack military significance. For example, with respect to factor "(2)" above, many vehicles have historically lacked electronic braking systems, modern digital speedometers, and tire pressure monitoring systems. The fact that many vehicles can operate without these systems (albeit less safely and reliably) does not mean that these systems are militarily significant.

A regulatory approach that treats parts and components as having military significance where engineers have found more than one way to achieve what the part or component does would severely undermine the export reform effort as presented thus far. This is because there are often multiple ways to achieve any particular vehicle function. If every civilian and military vehicle contains a particular type of part or component, that is a good indicator that the part or component is not militarily significant. However, the converse is not necessarily true. The mere fact that some civilian and military vehicles do **not** contain that particular type of part or component does not render that type of part or component militarily significant. Focusing on one type of electronic braking system as an example, antilock brake systems can slow vehicles but many vehicles (including many U.S. military vehicles) lack such brakes. That does not mean anti-lock brakes are militarily significant.

In addition, any approach requiring all of the above five factors for 0A606.y status would unfairly discriminate against innovations in safety, fuel efficiency, ergonomics, and cost-effectiveness. With respect to factor "(2)" above (necessity for basic vehicle operation), innovations are generally unnecessary for basic vehicle operation. Also, with respect to factor "(1)" (widespread use in military and civilian vehicles) and factor "(5)" (availability from foreign sources in many locations around the world), newer developments in safety, efficiency, ergonomics, and cost-effectiveness are not militarily significant merely because they are not yet widely used or available worldwide.

In the December Auto Proposed Rules, the Commerce Department also stated it was considering whether to adopt "a function test for inclusion in paragraph 0A606.y, i.e. items that differ only in form or fit from items that perform a function that is common to both military and civilian vehicles but that must be adapted in form or fit to a military vehicle should be controlled at no more than the antiterrorism reason for control." Continental supports this alternative approach to determining military significance as another way of addressing factors "(1)," "(2)," and "(5)" above.

### 3. Process to Add to List of Items Lacking Military Significance

In the July Auto Proposed Rules and the December Auto Proposed Rules, the Commerce Department recognized that various automotive parts and components lack military significance

even if they are modified for use in a military vehicle. Indeed, there are literally thousands of categories of automotive parts and components that should fall into this category.

While Continental recognizes that reviewing and adding many more products to the 0A606.y list in the future would require additional agency resources, without a process to add more products to the list in the future, export reform may cause more problems than it is intended to resolve. The ITAR contains a "commodity jurisdiction" process whereby automotive parts and components can be designated as EAR99 or otherwise controlled only to a limited number of destinations. The EAR, as modified by the July Auto Proposed Rules and the December Auto Proposed Rules, would lack such a process, potentially requiring a full rulemaking process for even the most inconsequential parts to be added to the list, and self-classification into 0A606.y would not be possible in light of fact that 0A606.x has been proposed as a "catchall." While a process to add items to 0A606.y on an ongoing basis would require agency resources, these resources would be offset by the reduced licensing burden associated with thousands and thousands of different types of modified (but militarily insignificant) automotive parts going to hundreds of destinations — each and every item requiring a license unless covered by an exception.

As an alternative to adopting a process by which additional products can be determined to lack military significance, it would be far more efficient and rational to adopt a definition of "specially designed" that would rule out the need for militarily insignificant parts and components to be separately listed in the first place. Another alternative would be to create a "positive list" of products or functions that are militarily significant and substantially "deregulate" other automotive parts and components.[1] Either alternative would give the U.S. military better access to and lower prices for the commercially available technologies it needs to update its fleet and better equip U.S. military personnel, all while saving taxpayers money. Continental appreciates the Commerce Department's efforts to develop a definition of "specially designed" that results in "higher walls around fewer items."

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[1] The Commerce Department acknowledges in the December Auto Proposed Rules that making ECCN 0A606.x into a "positive list" of parts, components, accessories, and attachments that merit restrictions on export would be "consistent with the Administration's goal of creating, to the extent possible, positive lists of controlled items." However, the Commerce Department indicates that "another Administration objective is to make sure that items 'specially designed' for defense articles that are now USML controlled items but that would not be USML controlled items after any proposed jurisdictional changes not fall out of export controls completely." While Continental respects the Commerce Department's desire to prevent dangerous military technologies from falling into the wrong hands, subjecting every commercial part, component, and related technology that is modified in any way for use on a military vehicle to broad U.S. export control restrictions is not a reasonable way to achieve this goal. Moreover, unless this "shotgun" approach is mitigated by a definition of "specially designed" that excludes militarily insignificant parts and components, treating 0A606.x as a "catchall" could severely or completely undermine other stated Administration goals, such as having a "positive list" of controlled items and building "higher walls" around fewer items that really merit control. Further, export controls based on end-use and end-user, trade sanctions, embargos, and other targeted measures already provide safeguards that further reduce any perceived risk in promulgating a positive list of parts and components or functions that are militarily significant.

**4. Information Needed to Adapt Militarily Insignificant Parts and Components for Military Vehicles**

The December Auto Proposed Rules state that the Commerce Department is considering recommendations to "limit the controls on form, fit and function data needed to provide militarily insignificant items for military vehicles to the anti-terrorism reason." The Commerce Department encouraged additional comments on this issue.

This issue is critical to meaningful export reform because, without basic information on what is needed for a particular vehicle application, manufacturers cannot provide parts to meet that need. Large multinational companies that respect U.S. export control laws will be unable to offer many of their commercially available technologies to the U.S. military (because of export control compliance, cost, and delay concerns) if this is not resolved.

Modifying parts and components almost always requires the supplier to obtain, make available to its workforce, and sometimes pass down to its supply chain, some minimal information about the vehicle for which the part or component is being modified. Without such information, the part cannot be fitted and integrated into the vehicle mechanically or electrically, cannot be rendered ergonomic and safe for users, and often cannot be covered by the manufacturer's warranty. For example, a speedometer or engine sensor must be made to the proper size and this requires the manufacturer to know the size of the slot in the dashboard or instrument panel into which it will fit. Similarly, an antilock brake system cannot readily be made to function properly without information about how heavy the vehicle is, whether there is enough space under the hood for the unit's control module, and the amount of electrical voltage, electrical current, and brake fluid flow available for running the system.

Continental recognizes that some information about military vehicles and their sub-systems is militarily significant, namely, certain detailed information about offensive weaponry, armor, threat detection, military command control and communications equipment, and concealment of a vehicle's presence or location. However, basic information that is needed to design, modify, or test a militarily insignificant military vehicle part or component should not be controlled in the same way as information about weaponry, armor, threat detection, command control and communication equipment, and vehicle concealment.

There would be little or no benefit at all in having paragraph 0A606.y if U.S. law continues to regulate under far stricter controls the basic information needed to manufacture items controlled by that paragraph for specific vehicle applications. For large, international supply chains, if controls are not substantially relaxed on such basic form, fit, and function information, even to supply items that the rules acknowledge to be militarily insignificant, thousands of employee licenses and other approvals would likely still be required (unless an exception applies to every

foreign person and every lower level supplier who will have access to the form, fit, and function information).[2]

Information and technology concerning weapons, armor, threat detection, military command control and communications systems, and concealment of a vehicle's presence or location, could continue to be regulated as militarily significant without subjecting basic form, fit, and function information needed to supply 0A606.y items to control for "national security" reasons or other similarly restrictive reasons for control. Relaxing controls on form, fit, and function information needed to supply militarily insignificant parts and components would enable the U.S. military to get better, faster, and less expensive access to the technologies it needs to update its fleet, protect and provide basic comfort to the warfighter, and conserve U.S. taxpayer dollars, while focusing information and technology controls on the particular instances where militarily significant information and technology is present.

Export reforms will be of little practical value if this issue is not addressed and controls relaxed where necessary to reflect the global economy and modern automotive supply chains.

**5. Definition of Specially Designed**

On December 6, 2011, the State Department published a proposed rule indicating that the Departments of Commerce and State are working together on a new definition of the term "specially designed." Continental supports the effort to define this key term in a manner that is consistent across both agencies and consistent with the definition proposed in the Federal Register on December 10, 2010.

The December 2010 definition of "specially designed" required that an item satisfy all three "prongs" of the definition to be treated as "specially designed. That definition read as follows:

> Specially designed. The term "specially designed" means that the end-item, equipment, accessory, attachment, system, component or part (see ITAR § 121.8); or "software"; has properties that:
>
> (A) Distinguish it for certain predetermined purposes
> (B) Are directly related to the functioning of a defense article, and
> (C) Are used exclusively or predominantly in or with a defense article identified on the USML.

[2] For many large vehicle part and component manufacturers, the EAR's Strategic Trade Authorization ("STA") license exception would do little to mitigate the heavy cost of providing adapted parts and components for the U.S. military market. This is because these companies operate in, have employees who are nationals of, and have suppliers in countries that are outside of the thirty six (36) eligible for favorable treatment under license exception STA. While the Commerce Department has decided to limit the use of license exception STA to thirty six (36) nations with respect to items that are truly militarily significant, as the Commerce Department has recognized by proposing to regulate 0A606.y items only for anti-terrorism ("AT") reasons, parts and components that have little or no military significance need not be treated in the same manner.

The definition of "specially designed" will be critical to ensuring that the export reforms being proposed by both agencies have a material and positive effect. Accordingly, Continental encourages the Commerce Department and State Department to adopt a definition that reflects the emphasis of the December 2010 definition on (1) exclusive or predominant use in military vehicles; (2) direct relationship to the military function of the vehicle; and (3) characteristics that distinguish an item for predetermined military-specific purposes.

Any definition of "specially designed" that results in militarily insignificant parts and components continuing to be controlled for "national security," "regional stability," and "United Nations" reasons will result in (1) less cooperation with allies; (2) continued high prices for and severely limited access to basic commercial technologies for the U.S. military; (3) unnecessary compliance system and IT system costs for companies operating in the U.S. and allied countries; (4) less innovation and competition in the U.S. military supply chain; (5) more delays in U.S. military procurements; (6) continued unnecessary licensing burdens on U.S. exporters; (7) unnecessary expenditure of licensing resources; and (8) unnecessary use of government resources to figure out a way to limit regulation of items that are not militarily significant but that still fall within a broad definition of "specially designed." These results would harm U.S. national security and economic interests rather than help them.

As indicated above under Section 4, export reform in the area of military vehicle parts and components will only be effective if the information needed to supply those parts and components is controlled at a level that is not higher than the parts and components themselves. The information needed to supply modified parts and components often includes basic form, fit, and function information about the vehicle (or higher-level component) in which the parts or components will operate. Accordingly, Continental urges the Commerce Department to ensure that, however the term "specially designed" is defined, suppliers can obtain the basic information they need to supply parts that are not "specially designed" or that "lack military significance" without having to obtain thousands of licenses and put in place expensive IT and compliance systems to protect basic information about the vehicle. As an example, if a modified engine temperature sensor is not treated as "specially designed," the supplier may still need basic information about the vehicle to ensure that the sensor works in the vehicle. If the supplier cannot record in its computer system the size of the engine slot that the sensor fits into without obtaining thousands of employee licenses or putting in place extensive IT and compliance systems to ensure "deemed export" compliance, many suppliers will simply find it too difficult and expensive to participate in the U.S. military market for such sensors, and the price and availability of the sensors will continue to be adversely affected.

### 6. Analog v. Digital Parts and Components

The following comment responds to the Surface Vessel Proposed Rules, the Submersible Vessel Proposed Rules, and the December Auto Proposed Rules.

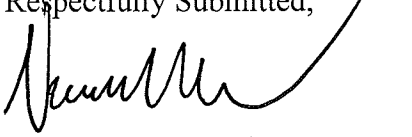
With respect to the proposed lists of parts and components with little or no military significance, the Commerce Department has distinguished in the Surface and Submersible Vessel Proposed Rules between digital technologies and analog technologies. While Continental agrees that many analog parts and components for surface and submersible vessels lack military significance, it would be arbitrary and unwarranted to conclude that all digital parts and components do have military significance, or to exclude them from the list of items with little or no military significance simply because they involve digital technologies.

Digital automotive technologies have been around for dozens of years and are now present in almost all modern automotive and vessel systems, whether for passenger cars, SUVs, construction and farm equipment, military vehicles, commercial vessels, recreational watercraft, and military vessels. The main advantages of digital parts and components over analog parts and components are (1) a reduction in signal degradation due to "noise" and various other factors; (2) interoperability with other modern vehicle parts and components such as vehicle controller area networks that are almost universally used in modern passenger cars, trucks, and other vehicles; and (3) the ability to track and display diagnostic, service, and repair codes not generally supported by analog parts and components. There is nothing inherently military about all "digital" parts and components, and it would be unwarranted to treat parts and components as more militarily significant simply because they are "digital." Notably, some analog parts and components are designed for military-specific uses and are more complex, more highly engineered, and manufactured to more exacting tolerances than some digital parts and components. Creating a digital/analog distinction in the EAR only would harm U.S. military interests and U.S. taxpayers by keeping U.S. military equipment running on older, more expensive, and often less reliable technologies.

Again, Continental strongly supports the work of the Commerce Department to reform U.S. export control laws and appreciates the Department's consideration of these comments. The Department's efforts are all the more welcome because of the direct benefits that the U.S. military, economy, and taxpayers would reap from bringing U.S. export controls into the twenty first century. As stated in Continental's comments on the July Auto Proposed Rules, export reform is not only about keeping dangerous items out of the hands of hostile parties. It is also about equipping our armed forces with the affordable modern technologies they deserve and need to perform at the highest level.

Thank you for your consideration of the above and for your on-going work to achieve meaningful export control reform.

Respectfully Submitted,



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