AeroSpace and Defence
Industries Association of Europe

Export Control Committee

12th September 2011

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Regulatory Policy Division
Bureau of Industry and Security
Room 2099B
U.S. Department of Commerce
14th St. and Pennsylvania Ave. NW
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USA

Cc; Mr Timothy Mooney, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce

Dear Sir,

**Response to the Federal Register Notice: July 15, 2011, Vol 76, RIN 0694-AF17 Proposed Revisions to the Export Administration Regulations (EAR), control of items the President determines no longer warrant control under the United States Munitions List (USML).**

The US Federal Register of July 15th 2011 (Vol 76 RIN 0694-AF17) advised that the Department of Commerce is proposing to revise the Export Administration Regulations (EAR), to regulatory construct the transfer of items on the USML that no longer warrant control under the AECA to be controlled under the EAR, as well as to establish for certain such items to be eligible for License Exception Strategic Trade Authorization (STA).

It called for interested parties to provide comment by September 13th 2011.

This response is provided by the Export Control Committee of ASD, the AeroSpace and Defence Industries Association of Europe. ASD represents the aeronautics, space, defence and security industries in Europe in all matters of common interest with the objective of promoting and supporting the competitive development of the sector. ASD pursues joint industry actions which require to be dealt with on a European level or which concern issues of an agreed transnational nature, and generates common industry positions.

ASD has 28 member associations in 20 countries across Europe and represents over 2000 companies with a further 80 000 suppliers, many of which are SMEs. The industry sectors employ around 696,000 people, with a turnover of 154.7 billion €.

ASD welcomes the opportunity to comment on the Department of Commerce's proposed rule on control of items the President determines no longer warrant control under the United States Munitions List (USML).

In principle, ASD supports and welcomes the Department's efforts to make these regulatory changes. However we would like to take the opportunity to put your attention to some possible contingency consequences.

There is a possibility that there will be occasions where it will be needed to obtain both State (USML) and Commerce (EAR) export licenses for a single transaction, for example, when components of an ITAR-controlled end item might be controlled under the EAR and delivered separately as spare parts. This is particularly of concern at delivery of contracted major weapons systems which normally includes not only the major ITAR-controlled weapon system but also the intended EAR-controlled associated spares.

There might be an increase in instances of confusion over jurisdiction for some items being on the USML, and other related items on the CCL, so we would welcome a clearer language which would eliminate jurisdictional confusion as has existed previously for some commodities (ex. satellite parts and components).

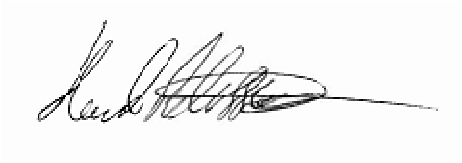
Moving items from the USML to the CCL indicates that licensing volumes will also be transferred from State to Commerce. This raises a concern from industry that licensing processing times might increase if proportionate resources are not added to Commerce. We recommend that appropriate resources be committed in order to allow Commerce to timely perform its additional work.

A particular concern is regarding increased compliance and administrative burdens on exporters and re-exporters to implement the proposed changes, such seemingly exists in the form of substantial work with reclassification of items from the USML to the CCL and additional record keeping/reporting requirements. As an example, it appears likely that many thousands of items will have new licensing jurisdiction and classification codes, which in many instances will need to be verified with manufacturers prior to changes being made in databases. Another example is that changes in data markings from ITAR to EAR legends would need to be done. The cost and effort to accomplish changes to internal controls will be substantial, as will be risk of non-compliance. We recommend the administration to evaluate the possibilities of incremental implementation, issuing of clear guidelines and acceptable industry actions, and the set up of appropriate forums that includes industry representation to address real-time issues.
An area for consideration of clarification and guideline is regarding the definition of "specially designed". We suggest to precise it in the following way; "specially designed for a military function instead of military use." This is based on that almost anything commercial could have a military use hence the term is to broad and imprecise.

We understand the administration's concerns of moving items from the USML to the CCL in a way not to harm national security or impede on international obligations but would welcome the suggested "de minimis" 10% limit for the closer allies to be raised to the original 25% level of the EAR, befitting the seeming purposes of transfer of items from the USML to the CCL.

ASD is looking forward to a continuous dialogue regarding US Export Control reform efforts.

Very truly yours,



Henrik Petersson
Chairman ASD Export Control Committee