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Regulatory Policy Division, Bureau of Industry and Security
US Department of Commerce
Room 2099B, 14th Street and Pennsylvania Avenue NW
Washington DC 20230

ATTN: BIS 2011-0033

RE: Control of Aircraft and Related Items No Longer Warrant Control on USML (Docket No. 110824536-1499-01)

On behalf of Rolls-Royce North America Holdings Inc. (the Company), I am pleased to respond to the November 7, 2011 Federal Register Notice requesting comments on the proposed amendments to USML Category VIII of the International Traffic in Arms Regulations.

Rolls-Royce has reviewed the proposed changes, and has the following comments.

With few exceptions, Rolls-Royce is pleased with the proposed amendments to USML Category VIII. Rolls-Royce's comments and suggestions are primarily aimed at adding clarifying language, removing perceived redundancies and aligning USML export reform goals of having a positive list.

(1) In order to distinguish the items controlled in USML Category VIII versus the new "600 series" items in Category 9A610 of the CCL, it is recommended that the proposed **121.1(a)** be amended to the following:

Aircraft, **specifically designed, developed, configured, modified or adapted for military purposes** as follows:

(2) Rather than have a separate **121.3(a)** entry, Rolls-Royce recommends that 121.3(a) is moved to be inclusive within Category VIII. We believe 121.3(a)(1-6) are descriptors for 121.1(a) entries and should be incorporated into 121.1(a).

(3) **121.1(a)(11)** seems too broad. We recommend this entry be deleted or revised and aligned with 121.3(a)(6). The broad terminology used seems to counter the goal of creating a more positive list. This is inconsistent with the intent for current ITAR

platforms not specifically enumerated moving to the EAR "600" series. While 121.3(a)(6) attempts to clarify what a "mission system" is, the majority of military aircraft would contain at least one of the systems described.

(4) Consider revising **121.1(f)** to say "Developmental **military** aircraft and "specially designed" parts, components, accessories, and attachments therefore. **This includes aircraft which are being developed principally to demonstrate and/or validate new technologies or improvements to current technology with specific applicability to defense articles.**"

(5) Revise **121.1(h)** to say, "Components, parts, accessories, attachments and associated equipment **for items specifically enumerated under 121.(a) as follows:…**"

(6) With one of the key goals of export reform being to create a more positive list of controls, Rolls-Royce feels that **121.1(h)(2)** falls short. In general, the items outlined in 121.1(h)(2) represent gearbox and shaft components that are not unique or predominant to military applications. While some of the technologies are relatively new to the aerospace industry, they are not inherently military. For example, Rolls-Royce civil Model 250 engines exceed "internal pitch line velocities of 15,000 feet per minute". Rolls-Royce recommends that 121.1(h)(2) either be moved to the new "600 Series" in its entirety or be amended to define true military unique thresholds through positive controls.

(7) **121.1(h)(1)** appears to be controlling items for reduced observability. We recommend capturing the parts and components for reduced observability and not specific aircraft.

(8) **Rolls-Royce recommends deleting 121.1(h)(14)** as STOVL technology has commercial benefits. Any sensitive technologies could be rolled into **121.(h)(9).**

(9) While Rolls-Royce agrees with the intent of **121.1(h)(19)(iii-iv)**, the implementation of these controls would be difficult. It is not uncommon for classified items to be developed and manufactured using both classified and unclassified data. Rolls-Royce suggests deleting **iii and iv**.

(10) ITAR versus EAR Export Authorizations: The transfer of parts to the EAR CCL Category 9 subcategory 600 should not result in additional licensing requirements. However, as a result of the transfer, there will be a loss of ability to utilize specific exemptions/licensing for military parts and the associated technical data. The majority of the exceptions will be severely limited for use as well. The use of the following exemptions/licensing will be affected by the transfer:

- ITAR 123.4(a)(1) Imports for Overhaul, Service or Repair/TMP – The exemption allows for a four year period where the exception only authorizes a one year period. This is an additional burden to industry.
- DSP-73/TMP – The DSP-73 allows for up to four years while the exception only allows for one year. This is an additional burden to industry.

- ITAR 125.4(b)(5)/TSU – TSU is not available for use and STA and GOV are limited by the proposed language in the Federal Register Notice.
- TAA and MLA re-export/retransfer authorization – There is no additional re-export/retransfer authorization equal to TAAs and MLAs. This will require additional license from the Department of Commerce on a transaction by transaction basis.

(11) Under amended **Part 740, Supplement 4**, .x parts and components are ineligible for license exception STA. Rolls-Royce believes that the license approval rate for .x parts and components to STA countries is likely to be near 100%. Therefore, it is recommended that Supplement 4 be deleted or amended to allow license exception STA for .x parts and components.

(12) The Build-to-Print definition proposed for **Part 772.1** of the EAR is too restrictive. Given that this is an EAR definition as opposed to an ITAR definition, restricting assistance seems to suggest a control for defense services. Also, while the ITAR definition of build-to-print includes "specifications" the EAR definition of Build-to-Print excludes "specifications". Additionally, while engineering drawings are releasable, it could be viewed that drawings are not releasable if the drawings contained any information listed in the sub-items. For example, if an engineering drawing had a note regarding a method for coating a component, it could be interpreted as "detailed manufacturing know-how".

These concerns could be mitigated as follows:

"Build-to-Print Technology" is "production" "technology" that is sufficient for an inherently capable end user to produce or repair a commodity from engineering drawings, specifications, computer models and quality acceptance, test and inspection criteria. Supplemental information regarding the following is not within the scope of "build-to-print technology":

(i) "development" "technology", such as design methodology, engineering analysis, detailed manufacturing or process know-how;
(ii) production engineering or process improvement aspect of the "technology" or
(iii) requiring assistance from the provider of the technology to produce or repair the commodity, beyond providing clarification or interpretation of the information provided (e.g. drawings, specifications, computer models, and quality acceptance, test and inspection criteria)

(13) The proposed ECCN 9B610 regarding test, inspection and production equipment *and related commodities* is seen as additional controls or new controls to both the EAR and ITAR. The proposed language is too open ended and looks to add additional control to the hardware. The removal of the language "and related commodities" and addition of clarifying language will help close the open-ended control. ECCN 9B610 should therefore read as follows:

9B610 Test, inspection and production "equipment" "specially designed" for the "development" or "production" of commodities enumerated in ECCN 9A610 **and having embedded technology that is exclusively or predominately used in the "development" or "production" of the enumerated end item.**

(14) Specially Designed: There are two proposed definitions for "specially designed". The first was from the Department of Commerce and the second from the Department of State. Rolls-Royce appreciates the desire to clarify this term however the two definitions are inconsistent. We prefer the latest definition as proposed by the Department of State.

Sincerely,

William J. Merrell
Vice President, Global Trade Compliance
Rolls-Royce North America Inc.