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BY E-MAIL

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce, Room 2099P
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Washington, DC 20230
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ATTN: **RIN 0694-AF36**

RE: Alcoa Inc. – Comments on Revisions to the Export Administration Regulations: Control of Aircraft and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List

Dear Sir or Madam:

Alcoa Inc. ("Alcoa") appreciates the invitation to comment on the Department of Commerce, Bureau of Industry and Security's ("BIS") November 7, 2011 proposed revision to the Export Administration Regulations ("EAR") regarding aircraft and related items that the President determines no longer warrant control under Category VIII of the United States Munitions List ("USML").[1] Alcoa offers the following comments and suggestions to assist BIS in this rulemaking process.[2]

I. Alcoa Inc. and Alcoa Fastening Systems

Alcoa Inc. is the world leader in the production and management of primary aluminum, fabricated aluminum products and alumina. Alcoa has 59,000 employees spread over 31 countries and reported 2010 revenue of $21 billion. Through its Alcoa Fastening Systems ("AFS") business unit, Alcoa designs and manufactures fasteners, fastening systems and

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[1] Revisions to the Export Administration Regulations: Control of Aircraft and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List, 76 Fed. Reg. 68675 (Nov. 7, 2011).

[2] Alcoa is concurrently submitting comments to the Department of State regarding its related proposed rule, Amendment to the International Traffic in Arms Regulations; Revision of U.S. Munitions List Category VIII, 76 Fed. Reg. 68694 (Nov. 7, 2011).

installation tooling used in civil and military aerospace applications worldwide. AFS sells nearly $1 billion dollars annually in fasteners used in all forms of aircraft, civil and military.

II. Fasteners and Fastening Systems

Fasteners and fastening systems used in aerospace applications can range from relatively simple hardware devices, such as nuts, bolts, lockbolts, and screws, to more complex multi-component fasteners and fastening systems, such as panel fasteners, blind fasteners, and latches.[3] Their primary function, however, is always the same – they are used to join together the aircraft's parts and components. Because they simply hold things together, they perform the same function regardless of the components they connect, and their ultimate utility is independent of the end-item in which they are installed.

Generally, fasteners used in civil and military applications are functionally interchangeable, as the materials used on aircraft (*e.g.*, steel, titanium alloys, aluminum, and composites) are generally the same, regardless of whether they are civil or military end-items. The same kinds of fasteners developed from common principles are used in the same applications on civil and military articles: threaded bolts or lockbolts are used in structural applications such as wings and air frames, panel fasteners are used to fasten panels to some structure to allow repeated access, and blind fasteners are used when access for installation is only available from one side. Additionally, many of the original designs for aerospace fasteners are decades old and conform to consensus standards and/or established industry specifications and standards. Only in rare instances would the military or civilian nature of an aircraft application materially affect the design of the fastener. Rather, in most cases, AFS designs, configures or otherwise modifies aerospace fasteners through combinations of standard, generic features. Such combinations may be specific to a fastener used exclusively on a military aircraft, although they would have equal utility on civil aircraft. Examples of such scenarios include:

- A particular configuration of an otherwise standard titanium bolt is upgraded to Inconel 718 (a different raw material) for use on a low-observable military aircraft. While that particular configuration, using Inconel 718, may be unique to that aircraft, it does not possess any low-observable characteristics, and other bolts in similar forms made with Inconel 718 are commonly used on civil aircraft.

- A standard stud bolt used in a panel fastener made from alloy steel and commonly coated with cadmium is instead coated with a standard dry film lubricant for use on a military aircraft. The dry film lubricant increases the lubricity of the stud bolt at a higher cost, but does not change the basic function of the part and would have equal application on a civil aircraft.

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[3] AFS product lines commonly used by both civil and military aerospace customers include: blind bolts, blind rivets, fluid fittings, inserts and studs; installation and removal tools; latching systems; nuts; panel fasteners; pin fastening systems, bolts and screws; and lockbolt fastening systems. *See* AFS product brochure, *available at*: http://www.alcoa.com/fastening_systems/en/pdf/Aerospace_Products_Brochure.pdf.

- A fluid fitting connector commonly made in Imperial sizes for both civil and military aircraft is reconfigured into metric sizes for use on a military aircraft to meet a European Union policy mandating the use of metric-sized parts on military aircraft. The metric fitting does not change the function of the connector.

- A latch used on civil and military aircraft is modified to adjust the preferred release pressure or to change the curvature to match the curvature of a military end-item. The latch as configured may be unique to the military aircraft, but does not incorporate technology or materials that are materially different to latches used on civil aircraft.

- A generic insert made from alloy steel with a "V"-shaped thread form (Mil-S-7742) is modified for use on a military aircraft to be made from A-286 stainless steel and with a "J"-shaped thread form (AS8879), in order to improve fatigue resistance. A similar, but not identical, insert made from the same A-286 stainless steel and with a "J"-shaped thread is used on a civil aircraft, and could be substituted for the military insert.

As discussed below, it is Alcoa's position that BIS should not consider fasteners and fastening systems that are designed, modified, or configured as described above for a military aircraft controlled on the EAR to be a "specially designed" item controlled under 9A610.x. Rather, aerospace fasteners and fastening systems should be controlled under 9A991.d.

III. Specific Comments on Proposed Revisions to the EAR

Under the proposed rule, parts, components, accessories and attachments that are "specially designed" for a military aircraft are controlled by new ECCN 9A610.x. Recognizing that fasteners, where designed, modified, or configured for a military aircraft, are functionally interchangeable with fasteners used on civil aircraft, and therefore do not merit the higher, National Security ("NS") level of control corresponding to category 9A610.x, BIS has expressly excluded fasteners from its proposed definition of "specially designed":

> Items . . . are also not considered "specially designed" in any category of the CCL if they are:
>
> A single, unassembled part used in multiple types of civil items, such as threaded fasteners (*e.g.*, screws, bolts, nuts, nut plates, studs, inserts), other fasteners (*e.g.*, clips, rivets, pins). . .[4]

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[4] *See* Proposed Revisions to the Export Administration Regulations: Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List, 76 Fed. Reg. 41958, 41981 (July 15, 2011).

BIS has also proposed language that, while not expressly referencing fasteners, would otherwise exclude most, if not all, aerospace fasteners from the definition of "specially designed." Section (d)(4) of the proposed definition would exclude parts and components:

> that can be exchanged with an EAR99 or AT-only controlled "part" or "component" on a one-for-one replacement basis without modification to the form, fit and function of the EAR99 or AT-only "part" or "component," and the EAR99 or AT-only part's or component's function is identical to the "part" or "component" at issue.[5]

In many cases, aerospace fasteners used on military aircraft are interchangeable, without modification, with fasteners presently classified as 9A991.d (AT-only) or EAR99, and would therefore be excluded from the definition of "specially designed."

Alcoa's review of the proposed regulation, read in conjunction with the proposed definition of "specially designed," indicates that it is BIS's intent to exclude <u>all</u> aerospace fasteners from control under 9A610.x, including single, unassembled parts, as well as fastening systems that combine the fastener parts set forth in the proposed definition (*i.e.*, screws, bolts, nuts, nut plates, studs, inserts, etc.) and other multi-component fasteners such as latches. Accordingly, aerospace fasteners and fastening systems of the same type used on civil and military items, should be classified under 9A991.d or EAR99.

While Alcoa understands that the definition of "specially designed" is still under consideration by BIS and DDTC, Alcoa respectfully requests, in order to further both agencies' goals, that the agencies ultimately adopt a definition that expressly excludes both fasteners and fastening systems. Such a precise definition would prevent the unintended consequence of inadvertently subjecting fasteners and fastening systems that are functionally interchangeable in civil and military applications to higher level of control than intended, a result that would negate the goal of focusing U.S. Government resources on controlling exports and re-exports of the most significant items.

IV. <u>Conclusion</u>

Alcoa appreciates BIS's significant efforts in revising the EAR and affording industry the opportunity to provide input. We hope that our suggestions with respect to controls on aerospace fasteners assist BIS in its reform efforts.

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[5] *Id.*

Should you have any questions or require further information, please do not hesitate to contact the undersigned at (724) 337-2071.

Respectfully submitted,

TJ Adcock
Director, Global Trade Compliance