December 22, 2011

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

VIA ELECTRONIC SUBMISSION ON WWW.REGULATIONS.GOV

RE: RIN 0694-AF36; Comments on the Proposed Rule: Revisions to the Export Administration Regulations (EAR): Control of Aircraft and Related Items the President Determines No Longer Warrant Control Under the USML.

Dear BIS Regulatory Policy Division:

These comments are provided on behalf of the Forging Industry Association (FIA). FIA is the primary trade association representing the bulk of forging capacity in North America. The North American forging industry is comprised of approximately 500 forging operations in 38 states, Canada and Mexico.

Forging is one of the oldest known metalworking processes, where metal is pressed, pounded or squeezed under great pressure into high-strength parts known as forgings. The process is usually performed by preheating the metal to a desired temperature before it is worked. Forged parts are strong and reliable and therefore, vital in safety-critical applications. Rarely seen by consumers, forgings are normally component parts inside assemblies, and many forgings go into both civilian and military aircraft.

FIA applauds the Administration's overall efforts to amend the Export Administration Regulations (EAR) in conjunction with amendments to the International Traffic in Arms Regulations (ITAR) Category VIII (aircraft and related articles) of the U.S. Munitions List (USML) to describe more precisely which military aircraft and related defense articles warrant control by the USML, which articles are subject to the Export Administration Regulations (EAR) administered by the Department of Commerce, and which articles require no export controls. We are also submitting similar comments to the Department of State's Directorate of Defense Trade Controls (DDTC) Response Team in response to their Proposed Rule: *Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category VIII.*

If our understanding of the proposed rule and our discussions with Administration officials are accurate, then upon finalization of these rules, **ONLY** those forgings that are "specially designed" for a specific list of U.S.-origin aircraft that have low observable features or characteristics (B-1B, B-2, F-15SE, F/A18E/F/G, F-22, F-35 and variants thereof, F-117, or United States Government technology demonstrators) will be subject to continued control on the USML. All other forgings "specially designed" for a military aircraft would be subject to the jurisdiction of the Department of Commerce's Commerce Control List (CCL), under the Export Administration Regulations (EAR), and consistent

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with multilateral export control regimes, including the Wassenaar Arrangement Munitions List (WAML).

The WAML's category 16 (which would be implemented in the newly proposed EAR ECCN 9A610.x) provides a control regime for forgings, castings and other unfinished products "specially designed" for specified end items such as weapons, ammunition, bombs, aircraft, etc. That control regime applies to unfinished products only *"when they are identifiable by material composition, geometry or function."*

> *Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 9A610.x are controlled by ECCN 9A610.x.*

Many forgings used in aircraft are shipped to the customer in "raw" form, and require substantial additional machining and manufacturing processes before being installed in the aircraft. In fact, the industry commonly refers to the "90/10 ratio" of what is shipped versus what ends up in the aircraft. As a result, many aircraft forgings are not *"identifiable by material composition, geometry or function"* when they are shipped to the customer. While these forgings may have a part number on them, FIA believes that a part number should not be enough to meet the terms of "*identifiable by material composition, geometry or function"*.

FIA supports an approach that retains USML control of any critical forgings that may contribute to the properties of key U.S.-origin aircraft having low observable features or characteristics, while ensuring that the majority of aircraft forgings will be subject to EAR control.

Thank you for the opportunity to comment on the proposed rule. FIA would be happy to answer any questions you may have regarding export control reforms and their effect on U.S. forgers. Please contact our Washington Representatives: Laurin Baker at 202-393-8525, or Jennifer Baker Reid at 202-393-8524 if you have any questions.

Sincerely,

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