AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

The Voice of the International Trade Community Since 1921

December 22, 2011

Via E-Mail: publiccomments@bis.doc.gov

Regulatory Policy Division
Bureau of Industry and Security
Department of Commerce,
1401 Constitution Avenue, NW.
Room 2099B
Washington, DC 20230

Re: Comments on Proposed Revisions to the EAR: Control of Aircraft and Related Items the President Determines No Longer Warrant Control under the USML

Docket No.: 110824536-1499-01
RIN: 0694-AF36

Dear Sir or Madam:

On behalf of the American Association of Exporters and Importers (AAEI), we respectfully submit the comments below concerning the Proposed Rule on aircraft and related items to be transferred from the United States Munitions List (USML) to the Commerce Control List (CCL) published by the Bureau of Industry and Security in the Federal Register on November 7, 2011 (76 Fed. Reg. 69,675).

AAEI has been a national voice for the international trade community in the United States since 1921. AAEI represents the entire spectrum of the international trade community across all industry sectors. Our members include manufacturers, importers, exporters, wholesalers, retailers and service providers to the industry, which is comprised of brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. AAEI promotes fair and open trade policy. We advocate for companies engaged in international trade, supply chain security, export controls, non-tariff barriers, import safety and customs and border protection issues. AAEI is the premier trade organization representing those immediately engaged in and directly impacted by developments pertaining to international trade. We are recognized as the technical experts regarding the day-to-day facilitation of trade.

1. General Comments

AAEI appreciates the opportunity to comment on the review of the items which the President has determined no longer warrant control on the USML and would be controlled on the CCL as part of the Administration's Export Control Reform initiative. AAEI has participated in consultations with Administration and Congressional staff regarding recommendations for export control reform of the current statutory and regulatory regime.

1050 17th Street, N.W; Suite 810; Washington, DC 20036; Telephone 202/857-8009; Fax 202/857-7843; Email hq@aaei.org

AAEI strongly supports the goal of creating a "positive list" of controls which is compatible with U.S. national security interests and multilateral export control regimes. AAEI also recommends that U.S. national security controls be risk-based and streamlined in order to reduce delays in obtaining any required export authorizations.

Our members also strongly support the resulting benefit of the export control reform efforts, including easing the compliance burden on exporters, where appropriate, by permitting use of the *de minimis* rule and EAR exceptions, particularly Strategic Trade Authorization (STA) and Limited Value Shipment (LVS), and by eliminating the need for Manufacturing License Agreements, Technical Assistance Agreements and ITAR registration and related fees.

2. Specific Comments

A. License Exception STA

BIS should clarify whether the end-user of a part exported contemplated by license exception STA is the end-use by the manufacturer to which the part will be exported or the end-use by that manufacturer's customer. For example, it is not entirely clear whether the end-use of a part exported for an aircraft is the actual production of the aircraft or the aircraft's owner and operator.

This issue is complicated further when the aircraft would not be subject to the EAR by virtue of the *de minimis* value of the U.S.-origin parts. License exception STA should clarify whether the definition of "end use" for STA purposes is affected when the ultimate use of an item into which an exported U.S.-origin part is incorporated is not subject to the EAR.

It would also be helpful to clarify that Prior Consignee Statements can be obtained via facsimile prior to shipment as is the case in other exceptions such as Technology and Software Restricted (TSR).

B. Specific ECCNs

Proposed ECCN 9A610.h. would cover "canopies," but the proposed rule does not clarify whether the ECCN would also cover other types of windows or transparencies, such as door windows, cabin windows or lenses etc., regardless of their special characteristics such as ballistic protection or electromagnetic interference (EMI). Transparencies for aircraft other than canopies should be identified in the ".y" subcategory of the final version of ECCN 9A610.

BIS should also consider whether mass-produced minor aircraft parts, such as aircraft fasteners, should be listed in subparagraph ".y". This change in approach would alleviate the need to develop a definition of "specially designed" that addressed the control of such items. Even if such items were specially designed due to exclusive use in controlled aircraft, the .y classification would yield an appropriate (AT only) level of control for such items.

C. Licensing Volumes and Processing Times

Military aircraft parts and components currently covered by USML Category VIII represent the highest volume of export licenses processed by DDTC. Once those items are transferred to the CCL the number of export license applications processed by BIS will increase. While it is expected that many of the items covered by ECCNs 9A610, 9B610, 9C610, 9D610 and 9E610 will not require an export license since they will be eligible to be exported under License Exception STA, the workload at BIS will still be much higher than current levels.

According to BIS's Annual Report for fiscal year 2010 (the most recent public information available) the average processing time to review a license was 29 calendar days. By contrast, according to the metrics posted on DDTC's website, during the past 12 months DDTC's average license processing time ranged between 16 and 27 calendar days, and in November 2011 the average license processing time was 18 calendar days. Above all, exporters need predictability in license processing times so they can plan production and delivery. While we understand that BIS is making the arrangements necessary to increase the number of licensing officers, it would be unfortunate and ironic if export license processing times increased as a result of export control reform.

3. Conclusion

AAEI and its member companies greatly appreciate all the work and effort being undertaken by the Departments of State, Defense, Commerce and other agencies to achieve the goals of export control reform. AAEI would be pleased to discuss these comments in more detail with BIS leadership and staff.

Sincerely,

Marianne Rowden
President & CEO

cc: Douglas N. Jacobson, Co-Chair, AAEI Export Compliance & Facilitation Committee
Phillip Poland, Co-Chair, AAEI Export Compliance & Facilitation Committee