December 20, 2011

Via E-Mail (publiccomments@bis.doc.gov)

Attn: Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
Room 2099B
14th St. and Pennsylvania Ave., NW
Washington, DC 20230

Re: RIN 0694-AF36: Comments on Proposed Revisions to the Export Administration Regulations (EAR): Control of Aircraft and Related Items the President Determines no Longer Warrant Control Under the United States Munitions List (USML)

Lockheed Martin Corporation (Lockheed Martin) is pleased to submit comments on the proposed rules issued by the U.S. Department of Commerce, Bureau of Industry and Security and by the U.S. Department of State, published in the Federal Register on Monday, November 7, 2011 (76 Fed Reg. 215.) Taken together, the proposed rules describe the articles that warrant continued control under Category VIII (aircraft and related items) of the U.S. Munitions List (USML) and address how articles that are no longer controlled under Category VIII would be controlled under the Commerce Control List (CCL).

I. GENERAL COMMENTS: THE PROPOSED RULES IN THE CONTEXT OF EXPORT CONTROL REFORM

Lockheed Martin commends the Departments of State and Commerce for their continued commitment to implementing export control reform. The proposed revisions to Category VIII of the USML, published in conjunction with corresponding revisions to the CCL, are positive steps toward the creation of an export control regime that strengthens U.S. national security, focuses on the items of greatest sensitivity, reduces the number of required license applications for less-sensitive items, and may make U.S. companies more competitive abroad.

Under the proposed rules, suppliers for Lockheed Martin aircraft in the 36 countries eligible for License Exception Strategic Trade Authorization (STA-36) will be able to resupply these programs without submitting a license application for the export of many parts and components. Moreover, the reduction in license applications will likely benefit purchasers in foreign allied and partner nations, who will now be able to receive parts and components more expeditiously. In turn, Lockheed Martin expects that this will make U.S. companies' products more attractive to foreign purchasers who have, in the past, viewed cumbersome U.S. licensing requirements as impediments to trade in export-controlled items.

While the proposed rules, when implemented, are expected to have potential positive benefits for export of many defense system parts and components, Lockheed Martin does not expect the rule to have many direct benefits on export licensing for its military aircraft systems. Based on a review of the end items that would remain controlled on Category VIII of the USML, we anticipate that licenses issued by the U.S. Department of State will continue to be required to support international defense trade for all aircraft manufactured by Lockheed Martin for all destinations. In particular, the criteria identified in Section 121.1 VIII(a) of the Department of State proposed rule are expected to capture all aircraft manufactured by Lockheed Martin and its domestic and international industry partners, as well as aircraft that Lockheed Martin markets but does not manufacture.

Technology, and how it is defined and categorized, is the "input" to the licensing regime; licensing policies and management must then take into account how technologies are to be used, by whom, and for what purpose. As a consequence, without implementation of additional reform measures to address the context in which controlled technology is actually exported and shared, Category VIII changes (and the list review-oriented exercise generally) will have only a modest effect on facilitating international defense sales and programmatic collaboration with our friends and allies. "Reform" should be focused on creating a licensing framework that is as effective and efficient as possible. To address this issue, Lockheed Martin recommends that the Administration maintain focus on completing proposed defense export licensing management reforms.

As President Obama said in August 2010, the Administration's export control reform effort should "focus our resources on the threats that matter most, and help us work more effectively with our allies in the field. . . . And by enhancing the competitiveness of our manufacturing and technology sectors, they'll help us not just increase exports and create jobs, but strengthen our national security as well." Without additional reforms that make it more attractive for our allies and partners to work with us to achieve our national security objectives, control list reform – and Category VIII changes in particular – will not have the intended result of fundamentally reforming how the United States participates in priority joint defense programs.

In its vision of export control reform, the Administration has recognized this imperative and identified several reform initiatives to promote and facilitate defense trade and cooperation with U.S. allies and partners. In particular, Lockheed Martin strongly supports the Administration's stated commitment to implement a "program licensing" framework that will have immediate benefits for U.S. Government international cooperative defense development programs. An effective program licensing framework for priority platforms and destinations would greatly enhance U.S. defense program efficiencies and costs and strengthen strategic partnerships abroad.

Defense trade reforms, which demonstrate that the United States is committed to implementing an efficient and expeditious export licensing framework for sophisticated areas of defense cooperation, are absolutely critical – providing the predictability and transparency to the defense trade system that increases U.S. competitiveness and facilitates greater international cooperation and sales. Moreover, the ability for U.S. companies to compete for international defense trade opportunities has an impact on economic growth and jobs at home, as the President noted, in the important manufacturing and technology sectors. Succeeding in these international markets will

help achieve U.S. national security objectives and strengthen defense ties with these key allies and partners for decades to come.

We recognize that the Administration's extensive effort to redefine the export control lists, including Category VIII, as part of the President's Export Control Reform initiative, has required significant resources – both personnel and time – over the past two years. In 2012, implementation of these control list reforms will require even more attention. However, a renewed focus on reforms that promote defense cooperation with our allies and partners should be complementary to these other export control efforts, not mutually exclusive.

Regulatory authorization to implement a program licensing framework already exists. The proposed reforms to Category VIII, in particular, will be greatly enhanced by the cost and supply chain efficiencies that would result from a program licensing scheme for priority joint military aircraft development programs, such as the F-35 Lightning II. In addition, the commercial benefits would extend far beyond prime defense contractors to hundreds of aircraft parts and component suppliers.

Coupled with control list reform, implementation of a successful program licensing framework would increase the efficiency, predictability, and transparency of the U.S. export control system, and result in the systematic and comprehensive reform envisioned by the President.

II. SPECIFIC RECOMMENDED CHANGES TO THE PROPOSED RULES

In addition, Lockheed Martin has identified several potential issues with the proposed rules, and therefore recommends the following changes to increase their effectiveness and requests clarification on several critical definitions and issues. Lockheed Martin requests that the Departments of State and Commerce pay particular attention to addressing the issues discussed below to ensure that a new licensing framework improves the current system or – at a minimum – maintains the status quo. Regulatory changes that have the unintended result of being more onerous than current requirements are not beneficial for U.S. national security or economic interests and will not further the stated objectives of comprehensive Export Control Reform.

A. ITAR License Exemptions v. EAR License Exceptions

Lockheed Martin appreciates that the Administration's export control reform efforts are not intended to result in an increase in licensing requirements or a decrease in the flexibility afforded to the exporter in connection with proposed transfers of formerly-ITAR-controlled items to the CCL. As stated in the Notice of Proposed Rulemaking, "BIS believes that . . . restrictions on items currently on the USML would be reduced." 76 Fed. Reg. 68680. However, in certain instances, the transfer of certain Lockheed Martin parts and components from the USML to the CCL may increase restrictions on these items by eliminating license exemptions available under the ITAR without creating corresponding equivalent license exceptions available under the EAR.

1. Foreign Military Sales (FMS)

Most significant, the process for exporting parts and components under the Foreign Military Sales ("FMS") program would be significantly altered after the transfer of such parts and components to CCL jurisdiction. Currently ITAR 126.6(c) allows for the transfer without a

license of defense articles, technical data, and defense services sold, leased or loaned by the Department of Defense to a foreign country under FMS, provided that specific requirements are met and that transfers of defense articles and technical data are made by authorized freight forwarders. If certain Lockheed Martin parts and components are controlled under the CCL rather than the ITAR, this license exemption does not appear to remain applicable, because under the current CCL, an ITAR exemption could not serve as authorization to export a CCL item that would otherwise require a license.

There is no comparable FMS license exception available under the EAR. While STA might be available in certain circumstances, in other instances, it would appear that specific licensing would be required. For instance, Lockheed Martin sends many parts and components to destinations outside the STA-36 countries. If specific licensing would be required, it is not clear whether the Department of Defense would request the authorization to permit such exports or whether the manufacturer or prime contractor would need to apply for the license. Further, if the specific parts and components are transferred from the ITAR to the CCL, it is unclear how services related to these articles would be treated under the ITAR, and whether the license exemption available in ITAR 126.6(c) still would apply. As shown below, we suggest clarifying how FMS authorizations will operate following the transfer of parts and components for military aircraft to the CCL, either through the suggestion following the chart below or otherwise.

2. Other ITAR Exemptions

There are several other license exemptions currently available under the ITAR that do not have direct equivalents under the EAR. We have included a chart of several comparisons, but highlight some of the most significant ones here:

First, there is an exemption for temporary imports and subsequent exports for overhaul, repair, and other services (ITAR 123.4(a)(1) and (a)(2)). Numerous Lockheed Martin business units currently use these exemptions hundreds of times each year for testing and repair of aircraft parts and components. For example, when parts and components related to the Lockheed Martin C-130 aircraft system produced in the United Kingdom fail, they are sent to the United States for testing to determine the reason for such failure. After testing, the part or component would be either repaired or replaced and returned to the United Kingdom. Similar testing, repair, and replacement is conducted on parts and components for other Lockheed Martin aircraft sold worldwide.

After specific parts and components are transferred from the ITAR to the CCL, this exemption will no longer be available. While license exception RPL under the CCL will be available, RPL differs from the ITAR exemption in key ways. ITAR 123.4(a)(1) allows the exporter to temporarily import and subsequently reexport defense articles for inspection, testing, calibration, and repair, including overhaul, reconditioning, and one-to-one replacement of defective items, and 123.4(a)(2) allows items to be enhanced, upgraded, or incorporated into another item which has already been authorized for permanent export. License exception RPL, by contrast, allows only the export and reexport without a license of one-for-one replacement parts and the service

and repair of parts and equipment; RPL restricts any change to the functionality of an item.[1] In light of the frequency with which Lockheed Martin business units make use of this exemption and the instances where items may need to be upgraded or enhanced after testing in the United States, obtaining individual licenses from BIS for each part and component returned to the United States for testing and subsequently reexported would constitute a significant additional licensing burden.

Second, there is an exemption for export of data on basic operations, maintenance, and training (ITAR 125.4(b)(5)). Lockheed Martin uses this license exemption to export technical data in the form of basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export when sending updates and revisions to operations manuals for its lawfully-exported hardware. For example, Lockheed Martin frequently updates its maintenance procedures for flight line personnel; changes are not made on any particular schedule, but are driven by "lessons learned" or the need to change basic inspection, test, and repair procedures in support of new system upgrades. While license exception TSU would operate in a similar manner, and is available for 600-series technology, it is unclear whether TSU would include "training" information to the full extent of the ITAR exemption, as it references "the minimum technology necessary for the installation, operation, maintenance (checking), and repair", without mentioning "training." STA would be available in more limited circumstances, where the export is to an STA-36 country and the ultimate end-user is an STA-36 government or government entity. To the extent that TSU does not fully cover activities allowed under the current ITAR exemption, it appears that a license would be required for activities that do not qualify for license exception STA. Any reduction in the applicability of this exemption to these activities would place a significant licensing burden on Lockheed Martin.

Third, there is an exemption under Section 126.4(c) authorizing exports of defense articles for end-use by a U.S. government agency abroad, under specific criteria. License Exception GOV (Section 740.11) provides similar authority. However, it apparently is more limited, authorizing only exports directly to U.S. government (and certain foreign government) agencies ("personnel and agencies of the U.S. Government or agencies of cooperating governments"). Lockheed Martin makes significant use of the ITAR exemption to send defense articles to non-government entities abroad, for end-use by a U.S. government agency. For example, to export a component of a flight critical avionics system to an authorized contractor in a foreign country to repair/install on a U.S. Air Force F-16 stranded and hard down until the repair can be affected. To the extent that GOV is more limited, this would require Lockheed Martin to seek licenses, delaying the execution of important U.S. government programs.

[1] See Section 740.10(a)(2)(i) ("Items that improve or change the basic design characteristics, e.g. as to accuracy, capability, performance or productivity, of the equipment upon which they are installed, are not deemed to be replacement parts."); 740.10(b) ("[t]he servicing shall not have improved or changed the basic characteristics, e.g. as to accuracy, capability, performance, or productivity or the commodity or software as originally authorized for export or reexport.")

Exemptions/exceptions authorities – Summary:

EAR Exceptions (Commerce)	ITAR Exemptions (State)	Issues
N/A	126.6 - FMS	Concern that 600 series parts and components will no longer be eligible for the FMS exemption, and that designated FMS freight forwarders will now have to apply for licenses for countries outside of STA-36.
RPL	123.4(a) – US Repair/Return	RPL authorizes the export and reexport of one-for-one replacement parts for previously exported equipment and for servicing and replacement of those parts. Excluded from the definition of replacement parts and "servicing and replacement" under RPL are items that improve or change basic design characteristics (e.g. accuracy, capability, performance, or productivity) of the equipment into which they are installed. ITAR exemption 123.4 does not require strict one-for-one replacement and allows for items to be enhanced or upgraded.
STA	123.9(e) - NATO exemption	STA may not be available for shipments to NATO entities as it is unclear whether these are government agencies of the STA countries.
TSU	125.4(b)(5) – Basic Operations and Maintenance Training.	TSU permits "operation and maintenance" technology, while the ITAR exemption also permits basic training. Potential increase in the number of licenses required for basic training.
TMP	ITAR 125.4(b)(7) / Data Returned to the Original Source of Import	The ITAR exemption authorizes the return of defense technical data temporarily imported into the United States. TMP, by contrast, applies to "exports of items temporarily in the United States," it apparently is not available for 600-series technology; in any event it is unclear that TMP generally authorizes the return of technology to the original source of import (e.g., if the technology is not "in transit").
GOV	126.4 – Exports on Behalf of USG	Concern that 600 series items will now require a license if exported to a non-government person for end-use by a U.S. Government agency, outside STA-36 destinations.

- <u>Proposed Solution:</u> Lockheed Martin understands that the Administration plans to address exemption/exception issues in a transitional regulation to be proposed early in 2012. Pending the creation or amendment of exceptions in the EAR to parallel all ITAR exemptions, one viable approach would be for BIS to create a License Exception authorizing the use of ITAR exemptions (e.g., 126.6(c)) to authorize the export of 600-series CCL parts and components of ITAR defense articles (i.e., end-items and systems). This approach would maintain the status quo and preserve the flexibility currently available to industry and would avoid the imposition of unnecessary licensing requirements that would burden the U.S. Government and industry. Moreover, it would support the Administration's intention to facilitate the

ultimate integration of the dual-use control system with the defense exports control system, a key component of the ongoing Export Control Reform initiative.

B. Definitions

1. Specially Designed

Lockheed Martin understands that the definition for "specially designed" is still being discussed within the U.S. Government. For purposes of these comments, the definition previously published in FRN #1400-AC77 (December 2010) was used. This definition is a critical element of these proposed controls, lacks clarity, and is potentially still subject to change. Accordingly, it is not possible to assess the full impact of the proposed controls.

- Proposed Solution: Lockheed Martin recommends that the U.S. Government adopt the Defense Trade Advisory Group (DTAG) definition of "specially designed," as proposed at the 3 May 2011 Plenary session, which provides the necessary clarity. (See http://www.pmddtc.state.gov/dtag/documents/plenary_May2011_SpeciallyDesigned.ppt)

2. Aircraft

Having multiple definitions of aircraft adds unnecessary complexity to Category VIII. See §121.1 VIII(a) and §121.3(a). Although §121.3 is presented as an explanatory reference, it is essentially a definition which must be considered when determining if an item is controlled in §121.1 VIII(a). Furthermore, inclusion of "mission systems" as a discriminator at (121.1 VIII(a)(11) will result in the control of commercial aircraft which have a single system incorporated into the aircraft (e.g., military radio.) These mission systems remain controlled separately on the USML, including when incorporated into a commercial aircraft (i.e., the "see through rule"). It is unclear why their incorporation into a commercial aircraft should warrant subjecting the entire aircraft to control under the USML.

- Proposed Solution: Lockheed Martin recommends that §121.3(a) be incorporated within §121.1 VIII(a) and that §121.3(b) be shown as a reference note since it is not actually a control. §121.1 VIII(a)(11) and §121.3(a)(6) should be deleted, as it results in duplication of controls in other categories.

3. Developmental aircraft

Proposed §121.1 VIII(f) essentially controls all aircraft, civil and military, being developed under a DoD contract, including their parts and components. This could include upgrades and derivatives of previously fielded aircraft if any portion of the development was supported with DoD funding. Therefore, an upgrade could mean that jurisdiction over particular military aircraft and/or parts and components, transferred to the CCL under the Export Control Reform initiative, would move back to the USML. Using a U.S. DoD contract as the only criteria for control leaves exporters in a position of determining what is a developmental aircraft. For example, what if the DoD is only providing minimal funding for testing and/or qualification purposes, or what if it is internally funded or funded by a third party other than the DoD?

- Proposed Solution: Suggested revision of §121.1 VIII(f) in addition to retention of the current note in Category VIII after sub-item (f) with respect to developmental aircraft:

> (f) Developmental aircraft and United States technology demonstrators and "specially designed" parts, components, accessories, and attachments therefore. This includes aircraft designated by the Department of Defense as "X", which are being developed principally with either United States Department of Defense or foreign Ministries of Defense funding to demonstrate and/or validate new technologies or improvements to current technology with specific applicability to defense articles.

4. Parts and Components Specially Designed for Certain Stealth Aircraft

Proposed §121.1 VIII(h)(1) controls parts/components that are "specially designed" for specific aircraft models, in addition to USG "technology demonstrators."[2] Lockheed Martin understands that the proposal seeks to control all parts/components of stealth-type aircraft by identifying the aircraft models rather than the parts/components of concern. For the F-35 Lightning II aircraft, all specially designed parts and components would be controlled under the USML, regardless of the level of technology, whereas similar parts/components for other aircraft, such as the F-16 Fighting Falcon aircraft, would be subject to the CCL. There is a concern that this proposal would impose overly-broad controls on many non-sensitive items developed for the F-35 Lightning II aircraft, adversely affecting this important joint U.S.-allied program. We urge the Administration to seek to narrow this proposal in order to avoid controlling non-sensitive items. We have suggested language below.

- Proposed Solution: Suggested revision:

> (h) Components, parts, accessories, attachments, and associated equipment directly related to commodities controlled by §121.1 VIII (a), as follows: (1) Components, parts, accessories, and attachments "specially designed" to reduce observability of aircraft enumerated in (a)(1) thru (a)(12) of this section (including developmental aircraft and/or United States Government technology demonstrators) using features or methods not in the public domain (§120.11). Items and features that reduce observability of the aircraft only through plan form alignment, unless listed below, are subject to the jurisdiction of the Export Administration Regulations. Observability reduction (aka signature reduction) includes any part of the spectrum (e.g., radio frequency, infrared, electro-optical, visual, ultraviolet, acoustic and magnetic).

5. Classified parts and components

Regarding §121.1 VIII (h)(19), the intent of the control is clear, but controls on sub-items (iii – manufactured using classified production data) and (iv – being developed using classified information) are problematic. Exporters, other than the original equipment manufacturer, will

[2] The concerns with respect to technology demonstrators are the same as the concerns discussed above relative to "developmental aircraft".

likely not know if either of these conditions apply if the end item part or component is unclassified. For example, the original design of an item may be based on a classified requirement, but that does not necessarily make the end item classified.

- Proposed Solution: Revise §121.1 VIII(h)(19) by deleting (iii) and (iv).

6. Build to Print

The proposed Commerce definition for "Build-to-Print technology" (see proposed 772.1) is potentially ambiguous and could limit the release of complete data packages. The definition needs to remove any degree of ambiguity to provide the exporter with a clear understanding of what is permissible and what is not.

- Proposed Solution: "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 & inspection criteria. The following information 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) the production engineering or process improvement aspect of the "technology;" or

  (iii) 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, & inspection criteria).

7. Unmanned Aerial Vehicles (UAVs)

The proposed §121.1 VIII (a)(5) control is an inadequate description of the controls due to the lack of definition of unarmed UAVs that are nonetheless considered "military."

- Proposed Solution: Establish a bright line definition such that commercial UAVs are not subject to the controls of the USML. Parameters such as stealth, weapons capability, payload, range, etc., should be considered.

C. Licensing Issues

Lockheed Martin identifies three principal licensing issues: (1) license processing times, (2) reexport / retransfer authorizations, and (3) potential double licensing.

1. License Processing

As the Administration is aware, license processing times for many license applications are longer at BIS than at DDTC. See Department of Commerce, "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)", 76 Fed. Reg. 41,958 (July 15, 2011). The Commerce Department stated that: "Pursuant to EO 12981, license decisions under the EAR must be made within 39 calendar days, although the average processing time for BIS in 2011 has been 31 calendar days. For licenses processed by the Department of State, the average processing time has been generally around 17 calendar days." While the Commerce Department also stated that "the U.S. Government intends that after items move from the USML to the CCL, processing times for ''600 series'' items generally would not increase as compared to when such items were on the ITAR," it is uncertain at this time whether the U.S. Government will succeed in achieving this objective.

One particular situation where these disparate licensing times may pose an issue relates to temporary exports. Lockheed Martin frequently uses DSP-73 authorizations for the temporary export of USML parts and components, and these license applications are rapidly processed at DDTC. Once certain parts and components are moved to the CCL, license exception TMP would be available. However, the use of TMP would not reduce the licensing burden to Lockheed Martin.

Under a DSP-73, defense articles can be temporarily exported for a period of four years, while under license exception TMP, the time limit is only one year. Temporary exports made by Lockheed Martin frequently exceed one year. The company estimates that nearly half of the items it has temporarily exported pursuant to a DSP-73 not only exceed a one-year time limit but are extended beyond the initial four-year term of the DSP-73; for example, where Lockheed Martin has licensed a foreign party to build components for its aircraft, the company will provide that foreign party with tooling for use, the production, and testing of the components, which will stay with the foreign party until the production line is terminated (up to ten years). Under the CCL, temporary exports of over one year will require the company to obtain a license from BIS. Given the existing disparities in license processing times, there is a concern that these BIS licenses will take longer to obtain than DSP-73s do currently.

- Proposed Solution: Due to the importance of licensing times to the smooth operation of our programs, Lockheed Martin recommends that the Administration ensure that expedited processing is implemented before jurisdiction over USML parts and components transfers to the CCL. This would involve dedication of the appropriate resources at both BIS and the other agencies which review BIS licenses, establishment of agreed protocols to ensure prompt processing, and validating that these mechanisms work in practice for sample applications.

2. Reexport / retransfer Authorizations

The proposed movement of parts and components to the 600-series could lead to a significant increase in the number of licenses for reexport authorization. For example, reexport of 600 series parts and components that are in support of a foreign maintenance facility for USML controlled items will require Individual Validated Licenses, whether or not the parts and components are STA-eligible, if there is an end user outside of the STA-36. Currently under the ITAR, it is possible to obtain an agreement with broad retransfer authorization. This has allowed US and foreign parties to establish regional maintenance facilities for global sustainment activities, thus reducing aircraft downtime. Platform end users are often from countries that cut

across the country groups in Supplement No. 1 to Part 740. The result is that customers outside the STA-36 who previously benefited from a broad single authority under the ITAR may be required to wait for delivery of hardware while individual validated licenses are processed to authorize specific re-exports.

- Proposed Solution: Commerce establishes a policy to issue broad IVLs in support of ITAR Part 124 agreements.

3. Double Licensing

As the Administration has recently acknowledged, it is possible that while only a single ITAR license is currently required for a transaction involving the export of an end-item and related parts and components, both an ITAR and an EAR license may be required when the proposed rules go into effect. For example, the marketing, direct commercial sale, and maintenance of C-130 aircraft (and related systems) to any destination in the world will continue to require Department of State authorization; its parts and components would also require separate authorization(s) from the Department of Commerce, for all countries not eligible for STA-36. The list of current C-130 customer countries outside of STA-36 is extensive and includes several major non-NATO allies and coalition partners. Thus, the proposed rules may result in double licensing for items (e.g., systems under the ITAR and parts under the EAR) that currently may be exported pursuant to a single ITAR license.

- Proposed Solution: Lockheed Martin understands that the Administration will publish a proposed "transition regulation" in early 2012 that will give companies guidance on the transition of their licensing operations for items that move from the USML to the CCL, including authorizations that will simplify the export of parts and components subject to the CCL that are being exported at the same time as an end item still on the USML. We support the Administration's intention to propose a mechanism to avoid imposing a double licensing requirement. For instance, the Administration could authorize ITAR licenses (e.g., DSP-5, DSP-73, etc.) to be used to also authorize the export of CCL items that are parts and components of ITAR defense articles (i.e., end-items and systems), in lieu of obtaining additional licensing from the Department of Commerce. This would reduce the burden on the USG and industry associated with redundant licensing requirements when exporting USML end-items and/or systems, along with associated components and parts.

D. Other Recommended Changes

1. De Minimis

In principle, the inclusion of a de minimis level for non-critical military items transferred to the CCL is a positive step, especially in light of the fact that the current level under the ITAR is 0 percent. However, the 10 percent across-the-board de minimis level for the 9/600 series ECCNs is a concern in that it would add significant complexity for Lockheed Martin's foreign partners.

- Proposed Solution: Lockheed Martin recommends that de minimis for items controlled in the CCL 9/600 series be at the 25 percent level, consistent with the standard de minimis

provisions within the EAR, and a 0 percent level should apply only to countries subject to AT licensing, in addition to those identified in the ITAR as §126.1 countries of concern.

2. Section 17(c)

The current note in Category VIII has been omitted from this proposed rule. This omission may be construed by exporters that something has changed with respect to the interpretation of Section 17(c) of the Export Administration Act.

- Proposed Solution: Recommend that the current Category VIII note be included in the new rule.

3. 9B610 – production inspection and test equipment

The proposed ECCN 9B610 regarding test, inspection, and production equipment could be perceived as adding new export controls to both the EAR and ITAR. There are minimal USML controls with respect to these types of equipment. Currently, technical data, including software, is controlled under the ITAR with respect to test, inspection, and production, but generally not the actual equipment. This concern could be addressed with a modification to the 9B610 control statement, by limiting it to the embedded technical data (e.g., software) and eliminating the reference to the USML, thus maintaining the status quo.

- Proposed Solution: Revise the header 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" and "production" of the enumerated end item."

CONCLUSION

Thank you for the opportunity to provide comments on the proposed rules. Lockheed Martin remains a strong supporter of comprehensive and balanced export control reform and we look forward to reviewing additional proposed rules that will have a substantial, positive impact on our ability to support U.S. national security programs and international defense trade priorities.

Sincerely,

Gerald Musarra
Vice President
Government and Regulatory Affairs