From: Ron Allen <ron.allen@SEAMUX.COM>
To: PublicComments@bis.doc.gov
Date: Tue, Feb 8, 2011 7:55 AM
Subject: Notice of Inquiry - CCL

Hydroscience Technologies, Inc. ("HTI") respectfully submits these comments in response to the Department of Commerce, Bureau of Industry and Security requests for comments regarding the:
(1) Advance Notice of Proposed Rulemaking on the "tiering" of items on the CCL ("Advanced Notice"), and
(2) Proposed Rule on Export Control Modernization: Strategic Trade Authorization License Exception (" STA").
HTI believes that towed acoustic hydrophone array systems classified under ECCN 6A001.a, and related technology classified under 6E002, should be not be considered "Tier 1" items and technology because these items (i) are not exclusively available from the United States (as described below), and (ii) do not provide "critical" military or intelligence advantage to the United States. Instead 6A001.a systems and related 6E002 technology should be considered "Tier 2" or "Tier 3."
Because the 6A001 items and related 6E002 technology should not be classified under Tier 1, they should qualify for the proposed STA license exception.

I. Company Information

HTI is an industry leader in the design and manufacture of towed acoustic hydrophone array systems. HTI is a U.S. company and is headquartered in Mineral Wells, Texas. HTI is a small to medium sized enterprise ("SME") with 39 employees located in the United States. HTI's primary customers consist of oil and gas exploration and research companies who use the towed acoustic hydrophone array systems to detect oil and gas deposits beneath the ocean floor.
HTI manufactures several models of towed acoustic hydrophone array systems, some of which are classified under ECCN 6A001.a. For example:

- 6A001.a.2.b.2 systems containing 150m hydrophone towed array sections with 12.5m hydrophone group spacing and hydrophones that are not depth-limited to 35m;
- 6A001.a.2.b.1 systems containing a 75m hydrophone towed array section with 6.25m hydrophone group spacing. The hydrophones could be 35m depth limited or non-depth limited; and
- 6A001.a.2.e.1 bottom bay cable systems containing controlled hydrophones.

The corresponding technology for these systems is 6E002.

II. Tiering of ECCNs 6A001 and 6E002

Per the Advanced Notice, "Tier 1" items are (a) weapons of mass destruction ("WMD"); (b) WMD-capable unmanned delivery system; (c) plants, facilities, or items specially designed for producing, processing, or using WMDs, special nuclear materials, or WMD-capable unmanned delivery systems; or (d) items almost exclusively available from the United States and which provide a critical military or intelligence advantage to the United States.
For 6A001.a systems, and the related 6E002 technology, only (d) is relevant.
The 6A001.a towed acoustic hydrophone array systems are controlled for national security reasons because some towed acoustic hydrophone array systems, when modified, could be used to detect divers and underwater activity of the U.S. military or other parties. 6A001.a. items, and the related 6E002 technology, should not be classified as Tier 1 because they are:
(a) Not almost exclusively available from the United States; and
(b) They do not provide "critical" military or intelligence advantage to the United States, as the term " critical" is defined in the Advanced Notice.

A. Availability of 6A001.a Items & Related 6E002 Technology

The 6A001.a items and related 6E002 technology are not indigenously developed, produced, or enhanced almost exclusively in the United States; and are developed, produced, or enhanced in destinations other than Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, Ukraine, or the United Kingdom.

Per the Advanced Notice "almost exclusively available" means that the item is only available from a very small number of countries that have in place effective controls on the items. "Enhanced" means that (a)

the basic characteristics, such as accuracy, capability, performance, or productivity of the item listed on the CCL are improved to provide greater functionality, and (b) the enhancement is effected in destinations outside the above-listed destinations.

6A001 systems sections are being developed and produced by manufacturers outside the United States and the destinations listed above. Below we provide relevant information for BIS's consideration.

1. Sercel S.A, a French company, manufactures a full line of 3D and 4D underwater seismic acoustic systems that would be classified as 6A001.a systems. (see http://www.sercel.com/Products/marine/streamers/sentinel.php)

2. Hisane Geophysical, a Chinese manufacturer produces a hydrophone towed array system that would be classified under 6A001.a if it were subject to the EAR. (see http://www.hisane.com)

3. Western Geco, a Schlumberger subsidiary, in Stavanger, Norway, uses 6E002 technology to process marine seismic data. (http://www.westerngeco.com/services.aspx)

B. Critical vs. Substantial vs. Significant Military Advantage
Towed acoustic hydrophone array systems classified under 6A001.a and the related 6E002 technology, which could signal the presence of submarine activity, do warrant control for national security reasons, but these items do not rise to the highest level of providing "critical" military or intelligence advantage to the United States.
Per the Advanced Notice, "critical" means providing a capability with respect to which the United States cannot afford to fall to parity and that would pose a grave threat to U.S. national security if not controlled (i.e., a "crown jewel"). Examples of grave threat include: Armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national and communications intelligence systems; the revelation of sensitive intelligence operations; the disclosure of scientific or technological developments vital to national security; or critical assistance to foreign development or acquisition of WMD.
Per the Advanced Notice, "Tier 2" items provide a "substantial" military or intelligence advantage to the United States. The term "substantial" means providing a capability with respect to which the United States must maintain parity and that would pose a serious threat to U.S. national security if not controlled. Examples of a serious threat to the U.S. national security" include: disruption of foreign relations significantly affecting the national security; substantial impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; compromise of scientific or technological developments important to national security; or substantial assistance to foreign development or acquisition of a WMD.

Per the Advanced Notice, "Tier 3" items are more broadly available and provide a "significant" military or intelligence advantage to the United States. The term "significant" means providing a capability that could be reasonably expected to cause damage to U.S. national security if not controlled. Examples of damage to U.S. national security include: disruption of foreign relations affecting the national security; impairment of a program or policy directly related to the national security; revelation of military plans or intelligence operations; compromise of scientific or technological developments relating to national security; or assistance to foreign development or acquisition of a WMD.

The export of 6A001.a items and related 6E002 technology do not appear meet the "Tier 1" definition of providing "critical" military or intelligence advantage. These items and technology are not what one would normally consider to be U.S. "crown jewels."
To the extent that 6A001.a towed acoustic hydrophone array systems could signal the presence of submarine activity, the description provided in Tier 2 or Tier 3 seems more appropriate. The advantage the 6A001.a items provide could be considered "substantial" (Tier 2) or "significant" (Tier 3) as those terms are described in the Advance Notice. Revelation of submarine activity does not reveal "sensitive intelligence operations" (Tier 1) but could be determined to reveal "significant military plans or intelligence

operations" (Tier 2), or on a lesser scale reveal "military plans or intelligence operations" (Tier 3). The revelation of submarine activity does not appear to pose a "grave threat" to the United States but such revelation could be considered to be a "serious threat" (Tier 2) or could "cause damage to U.S. national security" (Tier 3). For these reasons, HTI believes that the 6A001.a items and related 6E002 technology are more appropriate classified as Tier 2 or Tier 3, not Tier 1.

III. STA License Exception

As described above, HTI does not believe that towed acoustic hydrophone array systems classified under 6A001.a and related technology classified under 6E002 should be classified under the proposed Tier 1 category. As such, 6A001.a systems and 6E002 technology should qualify for the strategic trade authorization (STA) exception. HTI does not have any comments regarding the mechanics of the STA license exception.

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