APPLIED MATERIALS.

3050 Bowers Avenue
Santa Clara, CA 95054-3299
Phone: (408) 727-5555
FAX: (408) 748-5119

Mailing Address:
Applied Materials, Inc.
P.O. Box 58039
Santa Clara, CA 95052-8039

August 6, 2012

Sent via email

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

Re: Proposed changes to RPL BIS-2012-0024

Federal Register / Vol. 77, No. 120 / Thursday, June 19, 2012 / Proposed Rules

RIN 0694-AF65

Dear Mr. Mooney:

As a leading manufacturer of semiconductor processing equipment, Applied Materials appreciates efforts by the United States government to clarify and simplify the Rules concerning export compliance and license requirements.

In a spirit of cooperation, Applied Materials respectfully recommends that proposed § 740.10 (b) be amended to read as follows:

(1) Scope. The provisions of this paragraph (b) authorize the export and reexport to any destination, except destinations identified in § 740.2(a)(12) or otherwise prohibited under the EAR, of commodities and software that were returned to the United States for servicing and the replacement of defective or unacceptable ~~U.S. origin~~ commodities and software.

Strike through added to show proposed amendment to the proposed rule.

As currently proposed, § 740.10 (b) would only encompass the export or reexport of US origin commodities and software that were brought to the US for servicing and the replacement of defective components thereof. This same limitation does not apply to one-for-one replacement under proposed § 740.10 (a). We believe the same freedom of operation as enabled for one-for-one replacement by section 740.10 (a) likewise apply to should apply to§ 740.10 (b).

As part of the revisions to RPL (§ 740.10), the Commerce department stated that "RPL would also be Revised to remove the requirement that the ability to return serviced commodities and software or replace defective or unacceptable U.S.-origin equipment be limited to the original exporters." Under proposed § 740.10 (a):

parts, components, accessories, or attachments, respectively, contained in commodities that were: lawfully exported from the United States; lawfully reexported; or made in a foreign country incorporating authorized U.S.-origin parts, components, accessories, or attachments

may be replaced on a one-for-one basis. This would include foreign made parts originally authorized for export as a parts, components, accessories, or attachments of a lawfully exported commodity. This same breadth of exclusion should also apply to the servicing and repair of foreign made parts, components, accessories, or attachments which were incorporated into a lawfully exported commodity.

Under section 740.10(a) of the current proposed Rules, a foreign made part, component, accessory or attachment that was part of a lawfully exported commodity, may be replaced one-for-one for the repair of equipment or other end items, including replacement of defective or worn parts or components. Yet, under section (b), that foreign made part cannot be shipped back to the United Sates, or repaired in the United States and then shipped back at a later time. This does not make sense for both commercial and administrative reasons.

Firstly, components, parts, accessories and attachments having identical function and appearance may be sourced from throughout the world. The origin of the components, parts, accessories and attachments may not be apparent to the person or entity undertaking the repair of a lawfully exported commodity in a foreign country, and, in many cases, the same part may have both US and non-US origin. Additionally, it defies logic that one may export a foreign made part, etc. for a one-to-one replacement under section (a), but cannot repair a repair and reexport the part that was replaced under section (b) if that part were of foreign origin. The current composition of § 740.10 (b) would thus be a trap for the unwary, which is the opposite intent of the spirit of the changes to the Rules being undertaken. Additionally, if an entity may export a foreign origin part, etc., as a one-for-one replacement, there is no underlying reason why a repaired version of that foreign origin part, etc., should also likewise be excluded under section (b).

Second, because the proposed rules require under 740.10 (a) that the part, component, accessory or attachment being replaced be returned to the US or destroyed, yet, if that part, etc., were foreign made yet was part of a lawfully exported commodity, 740.10 (a), the exporter must now track sub-sets of individual parts to ensure that the actual physical piece in hand in a foreign country may be returned to the US, which imposes an unnecessary administrative burden where parts are sourced from multiple locations, and will have the same appearance and function. The Rule thus may create an exclusion without scope, because the administrative burden of tracking the origin of individual parts, etc., where the part could have originated in or outside of the US, may override a business desire to have those parts returned to the US for repair.

Applied Materials also request the following with respect to the definition of "held abroad" under 740.10(3)(ii), that the following clarification be added.

> (ii) No "parts," "components," "accessories," or "attachments" may be exported to be held abroad as spares for future use, unless the value of the "parts," "components," "accessories," or "attachments" is less than $500 per *item [*shipment] and no more than *1% (one percent) of the value of the end item for which the item is intended can be stocked under RPL at each use site* [24 shipments per year are made to each approved and user]. *A part, component accessory*

or attachment will not be considered to be "held abroad" when the part is held in a facility under the control of the exporter, or exporter's agent, for a commercially reasonable period of time necessary to verify the identity and condition thereof, and arrange forward shipment thereof to an end user.

Italics and brackets are used to show the proposed amendments to the proposed rule.

The purpose of the first amendment is to tie the value of the spare part being stocked under RPL to a commercially reasonable value based upon the value of the end item for which it is to be used. The proposed $500 limit is useful for some industries, but has very limited usefulness in the semiconductor equipment industry, where spare parts are relatively complex and must typically be shipped clean room ready. As a result, a $500.00 per shipment limitation, capped at 24 shipments per year, is too small to provide reasonable relief where unexpected needs arise to provide spares for semiconductor processing equipment. Rather than state a new arbitrary dollar figure cap, we believe that linking the value of the spares that can be stocked under RPL to the value of the end item with which they will be used is commercially reasonable, and sets a standard by which compliance can be measured for each exporter. Additionally, we propose that the term "shipment" be deleted, and the value being applied, less than $500.00, be applied to the item being stocked.

The purpose of second proposed amendment to this section is to ensure that "held abroad" would not be considered to apply to normal commercial situations where the exporter may need to split out a shipment of authorized part, etc., and thus the individual part., etc., is held over for a short, commercially reasonable, period of time needed to break down the shipment by end user, verify the identity and condition of the part, etc., and forward ship the part to the end user. Without this amendment to the proposed rules, these commercially reasonable and standard practices could be considered "holding abroad" which we believe the proposed rules were not intended to capture under the term "held abroad". Applied Materials also believes that this concept could be captured by a comment concerning the scope of "held abroad" instead of an amendment to the proposed rule.

Applied Materials appreciates the opportunity to comment on the proposed rule, and in particular the efforts undertaken by the Department of Commerce to clarify the current export regulations and create a set of rules which are more easily understood by the public, and also protect the security of the United States.

Respectfully Submitted

Karen Murphy

Karen Murphy

Managing Director, Trade

Applied Materials, Tax & Trade