Robert Monjay

From: Bump, Mark W. <mark.bump@timken.com>
Sent: Thursday, August 02, 2012 10:58 AM
To: PublicComments
Cc: Christensen, Larry
Subject: RIN 0694-AF65 (ECR Transition Rule)

August 2, 2012

To: Mr. Timothy Mooney, BIS

Re: ECR Transition Guidance (RIN 0694-AF65)

Dear Mr. Mooney:

The following are comments from The Timken Company (M3899) regarding Department of Commerce Proposed Revisions to the Export Administration Regulations; Implementation of Export Control Reform; Revisions to License Exceptions After Retrospective Regulatory Review, Federal Register Vol. 77, No. 120, June 21, 2012 (the "ECR Transition Plan").

We believe the President's Export Control Initiative is a necessary step to enhance U.S. national security and to help our economy. We appreciate all of the hard work that the President's team has done, to reach this point. There are a few things that we want to confirm, set out below, to ensure that Export Reform does indeed provide the benefits intended.

Our comments regarding the ECR Transition Plan as follows:

1. Want to confirm that Reexport/Retransfers of USML items that have transitioned to the CCL and are outside the U.S., are eligible for use of the EAR de minimis rule by foreign person.

The ECR Transition Plan indicates that once a foreign person receives an item (through Department of State authorization) and has confirmed that the item has transition to the CCL, the foreign person should treat the item as such, and seek retransfer or reexport authorization from the Department of Commerce, as required by the EAR. Assume that the item would transition to a "600 Series" item under proposed ECCN 9A610.x.

We understand such item (once the foreign person has confirmed transition to the CCL) would then be eligible for the EAR de minimis rule, and that if the foreign person incorporates that item into an assembly or end-item, and the U.S. controlled content (per EAR) is less than 25%, then that assembly or end-item would not be subject to the EAR, nor would be subject to the ITAR (except the assembly or end-item could not be sent to a country under U.S. arms embargo, e.g., it could not be sent to China).

We provide bearings {currently defense articles under USML Category VIII(h)} to a customer in a NATO country, who installs the bearings into transmissions, and in turn exports those transmissions to various countries which use the aircraft. Our approved DSP-5 permits our customer to reexport the transmissions with our bearings in it, to certain NATO countries, and to a country outside of NATO (India). Under the ECR Transition Plan, our customer could verify with us (should the bearings become items under ECCN 9A610.x), that the bearings have transitioned to the CCL, and our customer could take advantage of the EAR de minimis rule. Specifically, our customer could incorporate our bearings into transmissions, and so long as the transmissions satisfy the conditions of the EAR de minimis rule (less than 25% U.S. controlled content, no reexport to arms embargo country), our customer could reexport the transmissions to India (for end use by government of India) without a BIS license.

2. Want to confirm that ECR Transition Plan will not result in more onerous export controls on items subject to prior "not ITAR" Commodity Jurisdictions ("y.99").

We understood from the "July 15 rule" that the reason for creation of the "600 series" was to create a "Commerce Munitions List" for items being moved from the USML to the CCL (Federal Register Vol. 76, No. 136, Friday July 15, 2011), and not to place stricter controls on items already classified under ECCNs such as 9A991.d. BIS acknowledges that it wants to avoid the unintended consequence of more onerous controls than current requirements (Federal Register Vol. 77, No. 120, June 21, 2012, page 37525).

As part of the ECR Transition Plan, we do not want the unintended consequence of items currently under ECCN 9A991.d per a Commodity Jurisdiction, to be reclassified as 9A610.y.99, on the ECR Transition Plan effective date. Commodity Jurisdiction Case CJ1244-11 resolved that certain bearings (as described) were not subject to the licensing authority of the Department of State, and further, the Department of Commerce advises that the bearings have an ECCN of 9A991.d. We believe that CJ1244-11 "identified" these bearings as ECCN 9A991.d, as the term is used in the "November 7 Federal Register" (Federal Register Vol. 76, No. 215, November 7, 2011, page 68681), and that these bearings should continue to be 9A991.d, not ECCN 9A610.y.99, after the effective date of the ECR Transition Plan.

3. Request BIS consideration of expanding License Exception STA by permitting foreign recipients of items exported under STA, to use the de minimis rule, for parts and minor components, if “up front” approval given by BIS.

We anticipate that our foreign customers in the STA-36 countries will be somewhat reluctant to recognize the benefit of STA for “600 Series” items, as the de minimis rule will not apply for reexports/retransfers. For example, a foreign company in an STA-36 country may make aircraft which are used by STA-36 countries and other countries. To be able to take advantage of STA, the foreign company may have to maintain an “STA inventory”, then for retransfer/reexport of the aircraft outside of STA-36 countries, will have to have a “non-STA” inventory of the same part.

We suggest that BIS consider expanding the STA License Exception for “600 Series” parts and minor components, to permit foreign persons to use the EAR de minimis rule, if “preapproved” by BIS, for “600 Series” items exported to the foreign person under STA. Perhaps allow U.S. exporters of “600 Series” parts and minor components to STA-36 countries, to apply for permission from BIS, to permit foreign persons in an STA-36 country to use the EAR de minimis rule, to reexport or retransfer the end-item, assembly or larger component, outside the STA-36 country, to specified countries and end-users.

For example, a helicopter used by some NATO countries, may also be used by the Government of India (GOI). It would be beneficial if the foreign person (who incorporates the bearings into a transmission in a NATO country) could receive bearings from the U.S. under STA, and ship the transmissions to both NATO countries and India, provided BIS would give prior permission to the foreign person to ship transmission to GOI per BIS de minimis rule. This would make the supply chain simpler (by avoiding multiple inventories, purchase orders, etc. of STA and non-STA parts) and not pose risk to national security.

We appreciate this opportunity to provide comments, and you are welcome to contact us with any questions,

Sincerely,

Mark Bump

The Timken Company

Mgr - Global Trade & Compliance

Customs Attorney

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