AIAC Aerospace Industries Association of Canada L'Association des industries aérospatiales du Canada

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U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
14th and Pennsylvania Avenue, N.W.
Room 2099B
Washington, D.C. 20230
http://www.regulations.gov or
publiccomments@bis.doc.gov

Attention: Mr. Timothy Mooney

Subject: RIN 0694-AF65 (BIS-2012-0024) Public Comments on Proposed Revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revisions to License Exceptions After Retrospective Review

Dear Mr. Mooney

The Aerospace Industries Association of Canada (AIAC) is a not-for-profit organization advocating on aerospace policy issues that have a direct impact on aerospace companies in Canada. On behalf of its members, AIAC wishes to submit the following comments regarding the proposed rule referenced above.

The proposed rule on implementing Export Control Reform (ECR) is a tremendous effort and welcomed by AIAC. ECR is intended to handle various issues expected to arise from amending the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR) by moving certain ITAR items from the United States Munitions List (USML) that no longer warrant control under the ITAR to the Commerce Control List (CCL). The challenge of implementing an ECR that meets both the national security and economic interests of the United States (US) is an immense undertaking and requires careful consideration of potential impacts for US government and industry as well as for its foreign stakeholders including in Canada.

While the complexity of the ECR is well appreciated, there are some areas of concerns we wish bring to your attention. These include 1) treatment of reexports and in-country transfers of "600 Series" items in Canada; 2) "600 Series" and U.S. Arms Embargoed Countries; 3) EAR License Exceptions and ITAR License Exemptions; and 4) BIS license validity periods.

1) Treatment of reexports and in-country transfers of "600 Series" items in Canada

The BIS proposed rules intend to support the continuous access to "600 series" items and technology previously covered under ITAR agreement by revising the License Exception STA to limit its use for "600 series" items to foreign parties that have received U.S. items under a license issued either by BIS or DDTC. This approach is intended to ensure that such parties only from the 36 countries listed in License Exception STA will have been vetted by a U.S.

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Government licensing process. While this is a logical approach to ensure continued access to approved foreign end users and consignees from the 36 STA countries which include Canada, it does not address the foreign nationals from non-STA countries including dual and third country (DTCN) nationals from U.S. embargoed countries. Although it could be assumed that BIS intends to treat reexport and in-country transfer of "600 series" items in Canada as they currently treat non-"600 series" items in Canada, wherein the most recent citizenship or permanent residency of the foreign national determines nationality for purposes of the EAR, it is not clear whether BIS intends to treat Canadian nationals' access to "600 series" items in the current manner. As such, **AIAC recommends that BIS maintain the current EAR approach of determining foreign nationality wherein the most recent citizenship or permanent residency status held determines nationality for reexport and in-country transfer approvals of "600 series" items and technology in Canada.**

2) "600 Series" and U.S. Arms Embargoed Countries

BIS proposes that "Applications to export such items to countries subject to U.S. arms embargoes as described in §126.1 of the ITAR and subsequently in proposed §740.2(a)(12) of the EAR in the July 15 rule would be subject to the general policy of denial proposed in the November 7 rule. An exception to this would be those items contained in the .y paragraph of each "600 series" ECCN; while they are military items, they are not technically significant that the licenses would be required except for export to terrorist supporting countries or for a military end use in China."

Although we understand the national security concerns surrounding the general policy for denial proposed above, **AIAC recommends this policy should not be applied to dual and third country nationals of U.S. embargoed countries who have already been vetted in accordance with the §126.18 foreign vetting exemption published in the August 15, 2011 final rule issued by DDTC nor to foreign nationals whose most recent citizenship or permanent residency is not from a U.S. embargoed country as is currently the case under the EAR.** This proposal would help address potential issues with foreign countries' human rights legislation.

3) EAR License Exceptions and ITAR License Exemptions

Notably, the BIS proposed rules for ECR implementation states that EAR procedures should not be more restrictive than comparable ITAR procedures. Another general principle underling the incorporation of the "600 series" into the EAR is that because items subject to the EAR are less militarily significant than those subject to the ITAR, EAR exceptions should not be more restrictive than comparable ITAR exemptions. AIAC agrees with this approach and wishes to provide comments on differences between license exceptions under the EAR and exemptions under the ITAR that may raise issues for those attempting to comply with both bodies of regulation or transition from ITAR compliance to EAR compliance. As well, we would like to comment on areas where deviations in the scope of control under the EAR versus the ITAR may be appropriate especially with respect to reexports and in-country transfers.

Another deviation in EAR exceptions is that with ITAR §123.9 exemption. BIS proposed that all "600 series" content items that contain more than 25% "600 series" content be subject to BIS export licensing with a 0% de minimus for foreign made articles containing any "600 series" content destined to U.S. arms embargoed countries. Although we agree with the principles of the 25% de minimus "600 series" content rule, it results in more onerous BIS licensing requirements for the same items under the ITAR. ITAR 123.9 does not require DDTC export authorizations so long as the foreign party has export licenses for the ITAR items incorporated into the defense article, the related contract value does not exceed $50M, and is destined to a government of NATO, Australia or Japan. For the many foreign defense articles that do not meet the ITAR 123.9 threshold for DDTC licensing, the same foreign articles may require BIS licensing if the "600 series" content surpasses 25%. This would reduce the incentive for foreign manufacturers to incorporate "600 series" items into their foreign defense articles whereas the ITAR 123.9 provisions encourage foreign manufacturers to use as much U.S. content as they'd like without additional licensing burden so long as the conditions of ITAR §123.9 are met.

The goal of the Export Control Reform Initiative (ECRI) is to enhance US national security by ensuring the transition rules, and hence any concomitant changes to the ITAR and EAR, meet three criteria: i) improve interoperability of U.S. military forces with allied countries, ii) strengthen the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services, and iii) allow US export control officials to focus resources on transactions of more concern. In support of reaching these goals, **AIAC recommends that, to encourage foreign manufacturers to not design out and avoid U.S. origin content and services, BIS include similar ITAR 123.9 provisions for "600 series" content incorporated in foreign made defense articles destined to NATO+ or the 36 STA countries without a de minimus threshold.**

4) BIS license validity periods

AIAC is encouraged with the BIS proposal to extend BIS license validity periods from two years to four years to match DDTC's export license validity periods. However, it appears that BIS has not proposed licensing vehicles or validity periods that match those of ITAR agreements which are valid for 10 years. This would result in doubling industry and government's licensing burden without commensurate gain in national security or economic benefits. Foreign manufacturers will view such redundant licensing requirements as another deterrent to doing business with US suppliers.

Although BIS proposed to consider longer than 4 year validities "on a case-by-case basis when extenuating circumstances warrant such an extension" this treatment should not be the exception but rather the rule whereby license approvals for "600 series" technology transfers for a certain category or threshold of activity (programs) should by default be the same 10 year validity period as under ITAR agreements, versus granted on a case-by-case basis. As such, **AIAC recommends proposed revisions to EAR §750.7 'Issuance of Licenses' should be modified to grant a validity period matching previously approved ITAR agreements for the same scope and content of defense services.**

Furthermore, to reduce the burden and redundancy in the license/agreement transition process, **AIAC recommended BIS establish a specific mechanism to transition to BIS those ITAR agreements and amendments approved prior to the final rule publishing date especially those that do not qualify for reexport or in-country transfers under License Exception STA as proposed. For example, an identification code in SNAP-R** could be created for applicants to identify in their SNAP-R applications that the "600 series" technology or technical assistance being applied for is strictly to transfer the ITAR agreement previously approved by DDTC to a BIS license, and so when BIS sees the ID code, along with supporting documentation that includes a copy of the approved ITAR agreement, BIS can automatically approve the BIS license request without undergoing the usual vetting. This specific code would help BIS and applicants identify a license submittal for a previously approved ITAR agreement versus a new BIS license submittal for "600 series" technology that has not been previously approved by DDTC.

On behalf of its members, AIAC wishes to thank you for the opportunity to comment on this important proposed rule. Please feel free to contact us if you have any questions about these comments.

Sincerely,

Jim Quick
President & CEO