AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

The Voice of the International Trade Community Since 1921

August 6, 2012

Via E-Mail: publiccomments@bis.doc.gov

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

Re: Proposed Export Control Reform "Transition Rule"
Docket No.: 120501427-2427-01
RIN 0694-AF65

Dear Sir or Madam:

On behalf of the American Association of Exporters and Importers (AAEI), we respectfully submit these comments concerning the proposed rule on the implementation of the proposed export control reforms and revisions to license exceptions after retrospective regulatory review (the "Transition Rule") published in the *Federal Register* on June 21, 2012 (77 Fed. Reg. 37,524).

AAEI has been a national voice for the international trade community in the United States since 1921. AAEI represents the entire spectrum of the international trade community across all industry sectors. Our members include manufacturers, importers, exporters, wholesalers, retailers and service providers to the industry, which is comprised of brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of these enterprises are small businesses seeking to export to foreign markets. AAEI promotes fair and open trade policy. We advocate for companies engaged in international trade, supply chain security, export controls, non-tariff barriers, import safety and customs and border protection issues. AAEI is the premier trade organization representing those immediately engaged in and directly impacted by developments pertaining to international trade. We are recognized as the technical experts regarding the day-to-day facilitation of trade.

1. Specific Comments

AAEI appreciates the opportunity to comment on the "Transition Rule". In general, the proposals, particularly with respect to license validity, when jurisdiction shifts from the ITAR to the EAR etc., would benefit industry and are sufficiently clear. We support the proposed rules in those respects but would like to offer the comments below on a few aspects that we believe should be reviewed and revisited.

a. Greater Clarity on Section 38 (f) Process

The Transition Rule makes reference to the fact that the proposed export control reforms could not go into effect until after they have gone through the Congressional

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notification process as required by section 38(f) of the Arms Export Control Act. While we are aware that BIS leadership has gone to great lengths to help the public understand what the proposed export control reforms would entail, there has been an imbalance in the amount of public information provided about: (1) how the Section 38(f) process would proceed; (2) when it would occur; and (3) any related issues BIS is confronting. Knowing whether, how and when such an important milestone in the export control reform process will occur is very relevant to the public's decision about whether to invest its resources in assessing the possible effect of the proposed reforms.

We encourage BIS to provide more detailed information and regular updates about the Section 38(f) process.

b. Republish Revised Proposed Rules in Their Entirety

Certain proposed rules during the Administration's Export Control Reform Initiative process have, understandably, been published in multiple iterations. It would help the exporting community track updates to those proposals and provide more meaningful commentary on their possible effect if BIS would republish a proposed rule in its entirely when BIS publishes additional changes to the respective proposal.

For example, the proposals regarding the availability of license exception STA for 600 series items appear in the *Federal Register* notice covering the Transition Rule as well as three other *Federal Register* notices published over a year period. *See* 76 Fed. Reg. 76,072 (Dec. 6, 2011); 76 Fed. Reg. 68,675 (Nov. 7, 2011); 76 Fed. Reg. 41,958 (July 15, 2011). It would be much easier to evaluate whether license exception STA might benefit exporters of 600 series items if BIS would publish the current state of the entire STA reform proposal with the most recent *Federal Register* notice announcing a new STA 600 series proposal.

We encourage BIS to take this approach with all proposed export control reforms that are issued in various iterations.

c. Extend TSU to Deemed Exports by Entities Other Than Universities

We understand that the purpose of extending License Exception Technology and Software - Unrestricted (TSU) to "deemed export" situations at universities would be to harmonize an ITAR exemption with the EAR, but doing so in the manner proposed disproportionately benefits the academic community over other entities. There is no apparent reason why the proposed exception could not apply to all entities in the United States. Indeed, numerous businesses with scientific staffs must endure a substantial burden in complying with the deemed export rule. While the need for reforms to benefit the academic community is clear, the need is also great for the rest of industry, and there is no indication of why the TSU proposal would not be equally appropriate for the rest of industry. The proposal should, therefore, be extended accordingly.

d. A Special 600 Series Destination Control Statement is Unnecessary

The Transition Rule proposes a separate destination control statement (DCS) for 600 series items that would require the specific 600 series ECCN to be included in the DCS. There is no reason to believe that that the inclusion of the ECCN in the DCS itself is necessary or would fulfill its stated goal, particularly when many exporters include the ECCNs on the commercial invoice or other shipping documents.

The proposal's stated purpose is to "ensure that consignees are aware that they have [600 series] items." To the extent a destination control statement puts foreign recipients of export-controlled items on notice of the EAR's requirements, there is no indication that noting an ECCN in the DCS is going to make them any more aware of or concerned about the applicable export controls.

In addition, the proposal will require exporters to write a separate computer code or rule for their electronic export control systems included in their ERP systems to include a different statement for 600 series items. This will involve unnecessary expense and added complexity without increasing national security.

2. Conclusion

AAEI and its member companies greatly appreciate all the work and effort being made by BIS, DDTC and the U.S. Government to clarify how the proposed export control reforms and related rule changes would be implemented. The Transition Rule, however, would benefit from the changes noted above. AAEI would be pleased to discuss these comments in more detail with BIS leadership and its staff.

Sincerely,

Marianne Rowden
President & CEO

cc: Douglas N. Jacobson, Co-Chair, AAEI Export Compliance & Facilitation Committee
Phillip Poland, Co-Chair, AAEI Export Compliance & Facilitation Committee