AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

The Voice of the International Trade Community Since 1921

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

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

Office of Defense Trade Controls Policy
U.S. Department of State
2401 E Street NW, SA-1
Room H1200
Washington, DC 20522

Re: Comments on BIS Proposed Rule on Revisions to the EAR; Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control under the United States Munitions List (USML); and DDTC Proposed Rule on Amendment to the ITAR: Revision of USML Category XI
BIS Docket No.: 120330233-2160-01
BIS RIN: 0694-AF64
DDTC RIN: 1400—AD25

Dear Sir or Madame:

On behalf of the American Association of Exporters and Importers (AAEI), we respectfully submit these comments to the Bureau of Industry and Security (BIS) and the State Department's Directorate of Defense Trade Controls (DDTC) concerning the proposed rule on Revisions to the EAR on Control of Military Electronic Equipment (Category XI) and Related Items which the President determines no longer warrants control under the United States Munitions List (USML) published in the *Federal Register* on November 28, 2012 (77 Fed. Reg. 70945 and 70958, respectively).

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. Overview

AAEI appreciates the opportunity to comment on the Revisions to the EAR on Control of Military Electronic Equipment and Related Items under the President's Export Control Reform Initiative. AAEI strongly supports the President's export control

reform effort. AAEI has participated in consultations with Administration and Congressional staffs regarding recommendations for export control reform of the current statutory and regulatory regime.

We appreciate the enormity of undertaking the task of modernizing the U.S. export control system which has developed over 50 years and reforming it in three years.

We strongly support the BIS' and DDTC's efforts to revise the EAR with respect to military electronic equipment and are pleased to offer the following comments on the proposed changes.

2. Comments on BIS and DDTC Proposed Rules

a. General Comments

Overall, the proposed changes satisfy the general goal of Export Control Reform (ECR) by creating more positive lists. For example, the new USML Category XI will be more closely aligned with the EAR in that item descriptions generally become more technical and more specific rather than including broad, catch-all categories. While this is useful to resolve uncertainties companies will need to ensure that the appropriate technical expertise is involved in the classification and jurisdiction process.

b. De Minimis Rules

Many electronic parts and components have very low values and are several tiers removed from the end item. Industry has noted that the current USML controls impose a heavy burden on manufacturers and exporters of low-value parts for incorporation into much larger end-items. U.S. manufacturers and exporters are currently struggling with an onerous administrative burden for low-value parts, which makes dealing in smaller items cost prohibitive in some instances. The proposed rule will subject many of these items to the EAR's *de minimis* rules, which we expect will significantly reduce the administrative burden on U.S. companies dealing in low-value parts and components. We believe this change will have a positive impact on U.S. manufacturers and may encourage U.S. companies to continue to deal in such product lines and will encourage non-U.S. companies to purchase items that they would not agree to do so due to the restrictive nature of the International Traffic in Arms Regulations' (ITAR) "see through" rule and the growing preference outside of the U.S. for "ITAR free" products.

c. License Exceptions

AAEI and its members appreciate that moving certain items from USML Category XI items to the CCL will broaden the eligibility of many electronics parts and components for license exceptions, most notably Strategic Trade Authorization (STA). This change will provide a significant benefit to U.S. exporters and to the electronics industry. However, it will be very important for exporters and their customers to understand the expanded opportunities available due to these license exceptions, as well as the procedures for claiming these exceptions. At this time, it is not evident that industry is sufficiently comfortable with license exception STA to use

it to its full benefit. Therefore, outreach by BIS and other organizations in the U.S. and abroad will be particularly important with respect to the use of license exception STA for items formerly captured by USML Category XI and other USML categories.

d. Streamlining and Simplification of ECCN 3A611

The proposed changes to the EAR leads an ECCN 3A611 that is longer and more complex than many current CCL entries. We recognize that creating a more positive list entails lengthening the list to include sufficient detail on each item. However, the complexity of the new ECCNs will likely pose challenges to companies and their employees. To the extent that the proposed list can be simplified, we would encourage that, which also includes shortening the list of items covered in 3A611.y.

Proposed paragraph ECCN 3A611.a would control electronic "equipment," "end items," and "systems" "specially designed" for military use that are not enumerated in either a USML category or another "600 series" ECCN. Similarly, proposed USML Category XI(a)(7) would control "Developmental electronic devices, systems, or equipment funded by the Department of Defense." We continue to encourage the agencies to phase out these "catch-all" categories in favor of more positive, defined categories.

ECR aims to align the jurisdictional status of technology and software with the items to which they relate. However, proposed note 1 to ECCN 3A611.x provides that this entry "includes parts, components, accessories, and attachments 'specifically designed' for military use that are neither enumerated in any USML category nor controlled in another '600 series' ECCN." We believe that the .x concept in all of the new 600 series entries is confusing and will frustrate users attempting to determine the correct classification of their parts.

One way that this could be addressed is to insert the phrase "by themselves" in the list of related controls, as follows:

> List of Items Controlled
> Unit: End items in number; parts,
> component, accessories and attachments in
> $ value
> Related Controls: (1) Electronic items that are
> BY THEMSELVES enumerated in USML Category XI or other
> USML categories, and technical data
> (including software) directly related
> thereto, are subject to the ITAR. (2)
> Electronic items ''specially designed'' for
> military use that are not BY THEMSELVES controlled in any
> USML category but are within the scope of
> another ''600 series'' ECCN are controlled
> by that ''600 series'' ECCN. Thus, . . .

e. Jurisdictional Interpretations

According to AAEI industry representatives whose products serve both civilian and military applications, the proposed changes should help preclude overly broad interpretations of "specifically designed" resulting in across-the-board findings of ITAR jurisdiction.

One example is in the radio frequency (RF) arena, where components predominately have civilian uses with a secondary military application (e.g., first responder radios). Even though the design may be unique to the military, the technology is readily available around the world. Thus, the approach BIS has outlined appropriately addresses when an article should be controlled:

> The review was focused on identifying the types of articles that are now controlled by USML Category XI that are either (i) inherently military and otherwise warrant control on the USML or (ii) if it is of a type common to nonmilitary electronic equipment applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and that are almost exclusively available from the United States.

Companies will seldom encounter a situation where "almost exclusively available from the U.S." will apply. Thus, the new CCL category helps focus jurisdictional determinations.

The "inherent" capabilities of passive electronic components are also a key issue. Passive electronic components are usually readily available on the commercial market, typically made in China, and predominately do not provide a military advantage to overseas countries. Nonetheless, many are currently found to be subject to ITAR jurisdiction and the new ECCN should help address this issue.

3. Comment on DDTC Proposed Rule

We have the following comments on specific provisions in the proposed version of USML Category XI:

Category XI(c)(2) — The proposed rule would provide that "printed circuit boards or patterned multichip modules for which the layout is ''specially designed'' for defense articles in this subchapter" remain on the USML.

While we are aware that there has been a great deal of interest on printed circuit boards (PCBs), we believe that keeping PCBs that have been specially designed for defense articles on the USML is inconsistent with the basic tenets of ECR and is likely to capture a wide range of items that neither DDTC nor BIS intended to capture. A PCB in many respects is no different that many of the parts and components that have been proposed to be moved to the CCL. A PCB in itself does not have any inherent military capability, even if it was designed for a military application. In addition, it is possible that a PCB originally designed for a military application could become a predominantly commercial off the shelf item in the future. Therefore, it appears reasonable to treat PCBs in the same way as the electronic parts and components that contain them and move all PCBs to the CCL where they will remain subject to the export controls administered by BIS.

Category XI(c)(13) — The proposed rule would cover the following tuners:

> *Tuners having an instantaneous bandwidth of 30 MHz or greater and a tuning speed of 300 microseconds or less to within 10 KHz of desired frequency.*

This proposed entry contains a number of problems. First, with respect to the structure of the entry, language that combines multiple export control criteria with the conjunctive "and" customarily emphasizes this with the phrase "having all of the following." Thus, we urge DDTC to revise this control proposed rule to include "having all of the following." A similar review should be conducted with respect to other similar entries.

Second, this proposed entry introduces the following new undefined terms: "tuners," "instantaneous bandwidth," and "tuning speed." We urge DDTC to provide definitions of each of these terms and, to the extent possible, reuse terms and definitions that exist in the Export Administration Regulations. Clarifying this language will reduce the number of Commodity Jurisdiction determinations submitted by industry.

The third point relates to the phrase: "an instantaneous bandwidth of 30 MHz or greater" While the term "tuners" is not defined, an informed reader can speculate that "tuners" intended to be covered in Category XI(c)(13) are those components of "Technical surveillance counter-measure" equipment described in Category XI(b)(4). If so, we request a harmonization of the instantaneous bandwidth parameters and a statement indicating that these tuners are "specially designed" components of equipment described in Category XI(b)(4). If not, we request DDTC to provide more information on the type of tuner component intended to be controlled in USML Category XI(c)(13).

Fourth, the proposed rule requires a tuning speed of 300 microseconds or less to within 10 KHz of desired frequency. We request DDTC change this parameter to a percentage model similar to that found in the "frequency switching time" definition contained in Part 772 of the EAR to make actual frequency measurements possible and reasonable, thus removing ambiguity or leaving room for interpretation.

Finally, the proposed entry does not provide an operating frequency range nor a tuning time based on frequency step size. The absence of these criteria broadens the scope of items controlled in Category XI(c)(13). We request DDTC to add these parameters to clarify the type of tuner component intended to be controlled in Category XI(c)(13).

3. Conclusion

AAEI and its member companies greatly appreciate all the work and effort being made by the U.S. Government to achieve this goal. AAEI would be pleased to discuss these comments in more detail with BIS and DDTC leadership and staff.

Respectfully submitted,

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President & CEO

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