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January 28, 2013

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

January 28, 2013

Re: BIS-2012-0045 (RIN 0694-AF64)

Dear Sir or Madam:

On November 29, 2012, the Bureau of Industry and Security (BIS) published a Proposed Rule entitled "Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)", which item appeared at 77 FR 70945.

Avago Technologies appreciates the opportunity to comment on this proposed rule; this comment pertains to what we believe are erroneous and incomplete entries in the proposed ECCN 3E611.b. We would potentially be impacted by this because we are a manufacturer of MMIC amplifiers controlled under ECCN 3A001.b.2.

This Proposed Rule describes the new ECCN 3E611 as follows (right-hand column of page 70947):

New ECCN 3E611
Proposed ECCN 3E611 would impose controls on ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of commodities or software controlled by ECCN 3A611, 3B611 or 3D611 (except technology for 3A611.y, 3B611.y and 3D611.y), which would be controlled for AT1 reasons only.

That is, it is clear that the intended scope of this technology control is other 3x611 ECCNs. However, this is not clear in the proposed 3E611 itself:

3E611 Technology ‘‘Required’’ for Military Electronics, as Follows (See List of Items Controlled)

a. ‘‘Technology’’ (other than that described in 3E611.b or 3E611.y) not otherwise enumerated in this ECCN ‘‘required’’ for the ‘‘development,’’ ‘‘production,’’ operation, installation, maintenance, repair, or overhaul of commodities or software controlled by ECCN 3A611, 3B611 or 3D611.

b. ‘‘Technology’’ ‘‘required’’ for the ‘‘development,’’ ‘‘production,’’ operation, installation, maintenance, repair, or overhaul of

(1) Helix traveling wave tubes (TWTs);

(2) Transmit/receive or transmit modules;

(3) Microwave monolithic integrated circuits (MMIC); or

(4) Discrete radio frequency transistors.

c. through x. [RESERVED]

y. Specific ‘‘technology’’ ‘‘required’’ for the ‘‘production,’’ ‘‘development,’’ operation, installation, maintenance, repair or overhaul of commodities enumerated in ECCNs 3A611.y or 3D611.y.

Notice that whereas subentries (a) and (y) explicitly refer to other 3x611 ECCNs, subentry (b) does not. Accordingly, it is possible that the scope of control of subentry (b) could erroneously be interpreted to apply to the “technology” for any device described in (b)(1) through (b)(4), not limited to “technology” that pertains to devices that are themselves controlled in 3A611.

Avago’s specific concern is that 3E611.b.3 could be interpreted to supersede the current controls on “technology” for MMIC amplifiers, namely 3E001 (as related to 3A001.b.2), 3E982 (as related to 3A982.b), 5E001.d (as enumerated therein) and EAR99 (all other MMIC amplifiers). Although not directly relevant to Avago, the same reasoning applies to 3E611.b.4 and “technology” for transistors, namely 3E001 (as related to 3A001.b.3), 3E982 (as related to 3E982.a) and EAR99 (all other transistors).

Avago believes that entries 3E611.b.3 and 3E611.b.4 are unnecessary/redundant because the “technology” of concern is already controlled in 3E611.a (relative to the MMIC amplifiers and transistors that are controlled in 3A611.c and 3A611.d, respectively).

Similar reasoning presumably applies to 3E611.b.1 (because certain helix travelling wave tubes are controlled in 3A001.b.1.a.4) and to 3E611.b.2 (because transmit/receive or transmit modules are within scope of 3A001.b.4). For these two entries, BIS may wish to limit the scope of the technology control.

Accordingly, Avago proposes that 3E611 should be modified by deleting subentries 3E611.b.3 and 3E611.b.4 (see below), and that consideration should be given to limiting the scope of control of subentries 3E611.b.1 and 3E611.b.2.

3E611 Technology ‘‘Required’’ for Military Electronics, as Follows (See List of Items Controlled)

a. ‘‘Technology’’ (other than that described in 3E611.b or 3E611.y) not otherwise enumerated in this ECCN ‘‘required’’ for the ‘‘development,’’ ‘‘production,’’ operation, installation, maintenance, repair, or overhaul of commodities or software controlled by ECCN 3A611, 3B611 or 3D611.

b. ‘‘Technology’’ ‘‘required’’ for the ‘‘development,’’ ‘‘production,’’ operation, installation, maintenance, repair, or overhaul of

(1) Helix traveling wave tubes (TWTs);

(2) Transmit/receive or transmit modules;

~~(3) Microwave monolithic integrated circuits (MMIC); or~~

~~(4) Discrete radio frequency transistors.~~

c. through x. [RESERVED]

y. Specific ‘‘technology’’ ‘‘required’’ for the ‘‘production,’’ ‘‘development,’’ operation, installation, maintenance, repair or overhaul of commodities enumerated in ECCNs 3A611.y or 3D611.y.

Again, Avago appreciates the opportunity to comment on this Proposed Rule.

Please contact me if you have questions.

Sincerely yours,

Alice Tsai
Avago Technologies