July 6, 2015

Sent via email to: publiccomments@bis.doc.gov

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

Subject: RIN 0694-AG51

Re: Export Administration Regulations (EAR) Additional Improvements and Harmonization of Export Clearance Provisions

Dear Sir or Madam:

The Computing Technology Industry Association (CompTIA) is a non-profit trade association serving as the voice of the information technology industry. With approximately 2,000 member companies, 3,000 academic and training partners and nearly 2 million IT certifications issued, CompTIA is dedicated to advancing industry growth through educational programs, market research, networking events, professional certifications and public policy advocacy.

Thank you for the opportunity to provide comments on this advanced notice of proposed rulemaking (ANPR) which requests comments on how the export clearance requirements under the Export Administration Regulations (EAR) can be improved, including how the EAR export clearance provisions can be better harmonized with the export clearance requirements under the International Traffic in Arms Regulations (ITAR).

With regard to the proposed revisions to Part 758 of the EAR CompTIA has the following comments:

> ***"Export control documents in paragraphs (A) through (C) include the commercial invoice and contractual documentation."***

CompTIA is unable to support the requirement of specific export data in contractual documentation as proposed in Part 758. Contractual documentation does not accompany

shipments and would not accomplish the objective of improving and/or harmonizing export clearances.

Should BIS move forward on the proposed revisions as written and include the "contractual documentation" as part of "export control documents", BIS should explain how the contractual documentation will achieve the objective of improving and/or harmonizing export clearances, including examples of contractual documentation that would accomplish this objective. Additionally, BIS must very carefully define the scope and context of contractual documentation, addressing concerns such as multiple "ultimate destinations", multiple product ECCNs, and the battle of forms when the commercial invoice data differs from the "contractual documentation." There could be numerous "contractual" agreement documents created between the parties, ranging from master agreements, statements of work, purchase orders, etc., none of which travel with the item to its ultimate destination and ultimate consignee. One CompTIA member estimates that such a rule would require amendments or other revisions to more than 650,000 master agreements, contracts and purchase orders. Companies consider information in most contractual documentation as highly confidential, and would not have such documentation accompany shipments. Rather than improving export clearance provisions, this requirement will create substantial burdens, the potential for misalignment of ECCNs and ultimate destinations in addition to work for exporters to track down, revise, and/or generate new contractual documentation they believe is needed to demonstrate compliance with this requirement.

A. Require ECCNs on export control documents. The ECCN for all 9x515 and ``600 series'' items is currently required to be identified on the export control documents, along with the destination control statement. BIS is considering requiring that the ECCN be identified for all items on the Commerce Control List. This would not include items that are designated EAR99.

CompTIA has similar questions as described above. We are unclear what contractual documents are intended to be considered export control documents. Contractual documentation would only include the ECCNs in effect at the time of the signing or issuance of the contract documentation. The documentation would not take into account changes in classification, or provide the most current products that could be shipping under the contract. CompTIA further notes that at the time master agreements and/or statements of work are negotiated the items to be supplied or delivered may not be available. For example, in cases in which systems, such as information technology networks consisting of multiple hardware and software products are supplied to a customer, the supplier may not have available a list of specific products or ECCNs at the time a master agreement or statement of work is executed. Even where such information is available at the time a master agreement or statement of work is negotiated, the ECCN may change as items or software are updated and/or rules change. This will potentially require an amendment to an exporter's master agreements, statements of work, etc. each time there is a change, for example, to the CCL based on modifications under the Wassenaar Arrangement or other international agreements.

In addition, significant investments in system updates and systems integration would be necessary to be able to provide ECCNs on commercial invoice documents. Alternatively, to avoid systems investments, new manual procedures would be required to generate separate reports to list ECCNs by item for each invoice, requiring coordination with existing documentation and product flows, and significantly hindering rather than improving export clearance processes. Although the ANPR states that EAR99 items would be excluded, CompTIA would like to know how co-mingled shipments (e.g. those with EAR99 and CCL items) should be handled. We would also like to request that ECCNs subject to AT controls only be excluded.

B. Require identification of country of ultimate destination on export control documents. BIS is considering requiring that the country of ultimate destination be identified on the export control documents.

CompTIA has the same concerns as described above. An exporter may not know the country of ultimate destination at the time of the signing or issuance of contract documentation. One contractual agreement may cover multiple destinations and therefore would be difficult or impossible to associate with individual export transactions. It's also unclear if the requirement would apply only to items exported under license authorization to the ultimate consignee. Many companies use distribution hubs and/or 3rd party distribution centers which would not typically be considered an ultimate consignee for the purposes of the export transaction from the U.S and may have multiple locations identified as ultimate destinations.

C. Potential impact and feasibility of requiring AES filing for exports to Canada for items for National Security (NS), Missile Technology (MT), Nuclear Nonproliferation (NP), and Chemical & Biological Weapons (CB) reasons, regardless of whether the export was authorized under a license, license exception, or designated as no license required.

CompTIA believes that such a filing requirement would be burdensome for industry. For example, the filing requirement would include items classified as ECCN 5x002 items, which do not require a license for export to Canada. CompTIA would suggest that the Department of Commerce identify the list of items for which it wishes to gather export data and, instead of mandating AES filings, require after-the-fact reporting, similar to that already required for items exported pursuant to License Exception ENC.

We look forward to clarification on the comments and concerns listed above. Thank you once again for the opportunity to provide comments on this ANPR.

Sincerely,

Ken Montgomery
Vice President, International Trade Regulation & Compliance