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Submitted Via Email

July 6, 2015

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

Attn: RIN 0694-AG51

Re: Advanced Notice of Proposed Rulemaking; Additional Improvements and Harmonization of Export Clearance Provisions (80 Fed. Reg. 29554, May 22, 2015)

Dear Mr. Mooney:

United Technologies Corporation ("UTC")[1] appreciates the opportunity to submit these comments to the Bureau of Industry and Security ("BIS") on the Advanced Notice of Proposed Rulemaking ("ANPR") relating to the export clearance provisions in the Export Administration Regulations ("EAR"). UTC supports the overall harmonization efforts as part of Export Control Reform implementation, and encourages BIS and the Directorate of Defense Trade Controls ("DDTC") to continue efforts to conform the export clearance requirements.

The ANPR specifically sought comments on five changes to Part 758 of the EAR. Three relate to inclusion of additional information on export control documents - Export Control Classification Numbers ("ECCNs"), the country of ultimate destination, and the license number or export authorization symbol; one is a significant change to the Automated Export System ("AES") filings requirements for Canada; and the last is a general request for any additional comments to improve and harmonize the export clearance requirements. UTC provides comments to each of these potential changes.

I. Additional Information on Export Control Documents

Although the ANPR does not specify, it appears that the most logical place for the potential changes to require the identification of ECCNs, country of ultimate destination, and

[1] UTC is a global, diversified corporation based in Hartford, Connecticut, supplying high technology products and services to the aerospace and building systems industries. UTC's companies are industry leaders, among them Pratt & Whitney, Sikorsky, UTC Aerospace Systems, UTC Building & Industrial Systems, and United Technologies Research Center.

license number/authorization symbols (collectively referred to as "data elements") on all export control documents would be in EAR § 758.6. BIS recently published a proposed rule on revisions to the destination control statement ("DCS") and narrowed the scope of documents requiring DCS to two documents – the invoice and contractual documentation.[2] This rule also revised the requirement to identify the ECCN for 9x515 and "600 series" items to those two documents. Therefore, UTC expects that any potential change to require identification of these data elements would be limited to those documents identified in EAR § 758.6(a) and only apply as part of the export clearance process.

UTC supports a change to require the identification of ECCNs on the commercial invoice.[3] UTC companies are doing this for exports of 600-series hardware in accordance with the current requirement in EAR § 758.6(b), and some UTC companies are doing this for exports of other items subject to the EAR. Moreover, for UTC's non-U.S. based companies that receive product from U.S. suppliers, it would be particularly helpful for export compliance reasons to have the ECCN of the product they are receiving. Given that the commercial invoice is the document that will be received by the ultimate consignee, UTC recommends that identification of ECCNs be on the commercial invoice.

However, in the ANPR, BIS used the term "export control document" - a defined term in the EAR. UTC does not support a change that mandates inclusion of these data elements on all export control documents because export control documents include not only shipping documents and all other documents prepared pursuant to export clearance requirements in Part 758 (such as the invoice), but also include International Import Certificates, Delivery Verification Certificates, boycott-related documents, and Customs Form 7512. Requiring identification of the data elements on all export control documents is overly broad, conflicts with the change proposed by BIS in its DCS rule and would obviate the benefit to the exporter conveyed by BIS in that proposed rule.

UTC notes that these potential changes are similar to changes to Section 123.9(b)(1) of the International Traffic in Arms Regulations proposed by DDTC.[4] Under those revisions, DDTC would require the country of ultimate destination and license or exemption to be incorporated on the bill of lading, air waybill, or other shipping document, and the purchase documentation or invoice. UTC submitted comments to DDTC on this proposed revision. The bill of lading and air waybill – both export control documents - do not ordinarily identify the ECCN or license/authorization information. Country of ultimate destination may be identified to the extent that the items are in fact being shipped to the ultimate destination but the field may not necessarily be identified as "country of ultimate destination" on those forms. Inclusion of the data elements would have to be done manually on these types of export control documents, a

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[2] Export Administration Regulations (EAR): Harmonization of the Destination Control Statements. 80 Fed. Reg. 29551 (May 22, 2015).

[3] UTC submitted comments to the DCS proposed rule with respect to the use of the term "contractual documentation" to recommend that BIS specify the precise documents in Part 758.6(a) that it considers to be "contractual documentation."

[4] Amendment to the International Traffic in Arms Regulations: Exports and Temporary Imports Made to or on Behalf of a Department or Agency of the U.S. Government; Procedures for Obtaining State Department Authorization to Export Items Subject to the Export Administration Regulations; Revisions to the Destination Control Statement; and Other Changes. 80 Fed. Reg. 29565 (May 22, 2015).

process that would be time-intensive. More importantly, the information would be relegated to whatever limited space existed on those documents, which would reduce its visibility and minimize any benefit gained from including the information.

The commercial invoice, on the other hand, may already contain the country of ultimate destination, the end-user and the license/exemption information. The commercial invoice is generated by the exporter and can be configured more readily to include these data elements. Further, that invoice would tie back to the shipping documents based on the shipment reference number. Therefore, consistent with our comments to DDTC, UTC recommends that inclusion of the data elements be limited to the commercial invoice.

II. AES Filings for Exports to Canada

BIS also seeks comments on changes to require AES filings for all exports to Canada of items controlled for national security ("NS"), missile technology ("MT"), nuclear nonproliferation ("NP") and chemical and biological weapons ("CB") reasons regardless of the license requirements. It is unclear whether this potential change would also require AES filings for such items even when the value is under $2,500. Regardless, this is a significant change to the AES filings requirements for Canada and UTC does not support this change due to the negative impact to exporters. Based on our volume over the past 12 months, UTC estimates that over 1,000 shipments to Canada would be impacted by this requirement.

UTC companies make AES filings directly and through authorized agents. Depending on the contractual arrangement with the agent, AES filings can cost a company upwards of $15 - $35 per filing. When filing directly, some UTC companies have automated software solutions in place that tie to AESDirect, but we also do manual filings in many cases. Regardless of whether the submissions are automated or manual, UTC would need to contact the forwarder to generate and receive the departure information which may take several minutes if by telephone or perhaps several hours if the exchange is by email. To the extent an automated software solution exists and the platform can be reconfigured, UTC estimates that each additional AES filing that is needed due to this requirement would take approximately two minutes to complete once all departure details are received from the freight forwarder, but wait time for a response in AESDirect could be up to 10 minutes depending on how many filers are in AESDirect across the country and at Census. Our experience is that wait times increase at the end of the week, month, quarter and year and around a holiday. To the extent that such filings must be manually entered, completion of each additional AES filing needed as a result of this requirement is expected to take approximately 20 minutes once all departure details are received from the freight forwarder, because each filing needs to be separately reviewed for accuracy to ensure the data elements are correct upon filing.

Under the Foreign Trade Regulations ("FTR"), filers are required to ensure that the Electronic Export Information ("EEI") is accurate as known at the time of filing and to transmit any changes to the EEI as soon as they are known. *See* 15 C.F.R. § 30.9(a). Once an AES filing is made prior to export,[5] carriers must have a process to notify the filer of changes to the

[5] AES Option 4 post-departure filing is only available to approved exporters. Only one UTC company is eligible to make post-departure filings. New approvals for Option 4 exporters have been suspended for years so many exporters are required to make AES files *pre*-departure.

transportation data and the filer must then update the EEI so it remains accurate. *See* 15 C.F.R. § 30.3(c)(3)(iv). This includes any changes to the date of export and the port of export. For UTC, many of our exports to Canada occur over a land border. This means that date of export and port of export frequently change due to traffic patterns and carriers make these determinations in real time for efficiency, because their objective is to move the cargo from point A to point B as quickly and cheaply as possible. An increase in AES filings for Canada translates to an increase in required time and resources for (a) the carriers who need to monitor the dates and ports of exports for all these shipments so filers can be notified of changes and (b) the filers who have obligations to ensure the AES records remain accurate. This cannot be automated and will need to be done manually.

UTC understands that BIS would like visibility into these shipments to Canada and has compliance-related objectives to ensure that exports to all destinations comply with the EAR. However, UTC submits that the significant detriment to industry that would be impacted by increased costs, time and resource requirements to make these AES filings, plus the likely compliance challenges to ensure that all these AES filings for Canada remain accurate as required by the FTR, far outweigh the benefit to BIS of obtaining this information through AES.

To meet BIS' stated desire for transparency into such shipments, UTC proposes an amendment to EAR § 743 to include a semi-annual reporting requirement for all exports to Canada of items controlled for NS, MT, NP and CB reasons regardless of the license requirements. BIS should define the information required to be provided and the format of the report to ensure uniform reporting. Semi-annual reporting by exporters would provide BIS the information it seeks on exports to Canada but with a lesser burden on exporters.

III. <u>Other Improvements</u>

UTC recommends removal of EAR § 758.1 and 758.3(c) and (d). These sections simply restate requirements that are set forth in the FTR, which is implemented by the Census Bureau. As such, these requirements are duplicative and only serve to create overlapping jurisdiction by two bureaus – both of which are within the Commerce Department – with no net benefit. Currently, a violation of the AES requirements relating to items subject to the EAR is violation of both the EAR and the FTR. In order to receive the mitigating benefit of disclosure, exporters must file a disclosure with both agencies for what is essentially the same issue. However, Census and BIS have different disclosure requirements (*e.g.,* timeframe to file a final voluntary disclosure to Census is 60 days versus 180 days; Census does not grant mitigation unless you correct all the AES entries at issue even if you file a voluntary disclosure, etc.) and different compliance objectives. UTC also notes that BIS has a long-standing policy not to proceed with enforcement actions solely for AES violations and, in our experience, the Office of Export Enforcement has deferred to Census on disclosures of AES violations.

Therefore, removing the AES requirements from the EAR would mean that an AES violation would only be a violation of the FTR. It would establish one agency – Census – as the single interface for voluntary disclosures and have a single set of disclosure requirements and mitigating factors. It would remove duplicative requirements in the EAR, which simply restate the same requirements from the FTR but the FTR are more comprehensive because they relate to all AES filings and not just filings for EAR items. Importantly, removing the AES requirements

from the EAR would *not* change (a) any of the requirements to file EEI, (b) BIS' ability to access or use AES data, or (c) the Office of Export Enforcement's ability to enforce AES violations, which is set forth in FTR § 30.73.

While UTC believes it would be optimal for BIS and Census to align on a single definition for routed export transactions because this has historically been different and has caused confusion within the exporting community, UTC is aware that the objective with respect to the responsibilities of the parties in routed transactions differs as between BIS and Census. The changes we recommend herein have no impact on and do not alter the different positions on routed transactions.

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For additional information, please contact the undersigned at (202) 336-7458 or christine.lee@utc.com.

Sincerely,

Christine Lee
Director, Compliance
International Trade Counsel