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

Via Email: publiccomments@bis.doc.gov

Date July 6, 2015
Reference RIN 0694–AG47
Subject Harmonization of the Destination Control Statements

Ladies and Gentlemen,

ASML US, Inc. ("ASML US") is pleased to respond to the Bureau of Industry and Security ("BIS") request for comments concerning the proposed rule to harmonize the destination control statement ("DCS") required for the export of items subject to the Export Administration Regulations ("EAR") with the DCS in the International Traffic in Arms Regulations ("ITAR").

ASML US, headquartered in Chandler, AZ, is a subsidiary of ASML Netherlands, B.V., the world's leading provider of lithography systems to the semiconductor manufacturing industry. ASML US is the parent of Cymer LLC, headquartered in San Diego, CA, the leader in developing light sources used by chipmakers worldwide to pattern advanced semiconductor chips, and is pioneering development of next generation sources.

ASML US has several concerns and reservations related to changes in the proposed rule. First, ASML US notes that the proposed DCS includes the phrase: "for use by the end-user herein identified." A very large portion of ASML US exports consist of spare components, assemblies and accessories, which are delivered to ASML warehouses and distribution centers overseas for eventual use by many potential customers in a country or region. As a result, it would be impractical – and in some cases impossible – to identify all potential and eventual end-users on a commercial invoice.

Second, commercial and shipping invoices do not require an exporter to identify an end-user; instead, such invoices generally identify intermediate and ultimate consignees and bill-to parties. ASML US would like BIS to clarify if the proposed language is intended to create a new regulatory requirement to identify all potential end-users on all documents for which a DCS is required. ASML US finds this potential new requirement particularly worrisome as it would require that expensive structural changes be made to its enterprise application software systems from which commercial invoices are generated worldwide.

Third, ASML US respectfully requests that BIS identify and/or provide examples of the type of contractual documents to which the proposed rule would apply. ASML US finds this requirement confusing, as contrary to BIS's background statement that it is requiring a DCS on the commercial invoice and contractual documentation "because these two documents are the most likely to travel with the item from its time of export," ASML US has not previously had a need or reason to include a contractual document with an item at the time of export. ASML US, therefore, requests that BIS provide (i) a consistent and clear description of what specific contractual documents require a DCS

and (ii) that the requirements be explicitly limited to documents that actually accompany a shipment to the ultimate destination and ultimate consignee.

Fourth, ASML US questions whether the first line of the proposed DCS would always be correct. The proposed DCS language states: "These items are controlled and authorized by the U.S. Government for export only to the specified country of ultimate destination...." Items may be authorized by the U.S. government for export to many more countries and end-users than identified on a commercial invoice or contract. For example, an NLR (no license required) item – particularly an item controlled for antiterrorism reasons only – is generally authorized for export to most countries without a license or license exception. A strict and plain reading of the first sentence could lead one to mistakenly infer that an item is authorized by the U.S. government for export to only the specified country identified on a commercial invoice. For the vast majority of NLR exports made by ASML US, this is simply not true. ASML US is concerned that this inaccurate phrasing could confuse foreign customers and suppliers who are not experts in the nuances of U.S. reexport regulations.

ASML US welcomes and supports the U.S. government's stated attempt to simplify and improve the export clearance provisions of the EAR and ITAR. However, ASML US sees no pressing need for a change to the current DCS set forth in the EAR and is skeptical that the proposed rule would have the desired effect of reducing the burden on exporters, improving compliance or ensuring the regulations are achieving their intended purpose.

ASML US therefore strongly recommends that BIS make no changes to the current DCS set forth in the EAR. If the continued use of the current DCS is not possible, in the alternative, ASML US recommends that BIS make the inclusion of the proposed DCS limited to only exports of ECCN 9x515 or "600 series" items or of mixed shipments of items subject to the EAR and ITAR. The creation of a second DCS for use in these limited situations would prevent the vast majority of U.S. exporters, who export items that can be shipped NLR or under a license exception, from being unnecessarily burdened for the convenience of those companies that export 9x515 or "600 series" items or mixed EAR/ITAR shipments.

Finally, any final rule requiring changes to the current DCS requirements should include an implementation period sufficient to allow U.S. companies time to make necessary updates to enterprise software systems, manual commercial invoices, contractual documentation and related processes and procedures.

Sincerely,

Steve Lita
Manager, Export Compliance

Cc: Office of Defense Trade Controls Policy