July 6, 2015

Ms. Hillary Hess
Director
Regulatory Policy Division
Room 2099B
Bureau of Industry and Security
U.S. Department of Commerce
14th Street & Pennsylvania Ave., N.W.
Washington, D.C. 20230

Re: Export Administration Regulations (EAR): Harmonization of the Destination Control Statements (*Federal Register* Notice of May 22, 2015; RIN 0694-AG47)

Dear Ms. Hess:

The Semiconductor Industry Association ("SIA") is the premier trade association representing the U.S. semiconductor industry. Founded in 1977 by five microelectronics pioneers, SIA unites over 60 companies that account for nearly 90 percent of American semiconductor production and the semiconductor industry accounts for a sizeable portion of U.S. exports.

SIA is pleased to submit the following public comments in response to the request for public comments issued by the Commerce Department's Bureau of Industry and Security ("BIS") on proposed revisions to the Destination Control Statements in the Export Administration Regulations ("EAR").[1]

I. Destination Control Statement on "Contractual Documentation"

BIS proposes to revise EAR § 758.6(a) to include a requirement that the Destination Control Statement ("DCS") appear on "the commercial invoice and contractual documentation, when such contractual documentation exists."[2] In support of this proposed revision, BIS notes that "these two documents are the most likely to travel with the item from its time of export from the United States" and "the requirement would have the added benefit of reducing the number of documents on which exporters would be responsible for entering the destination statement."[3] Neither of these statements is necessarily correct.

[1] Export Administration Regulations (EAR): Harmonization of the Destination Control Statements, 80 Fed. Reg. 29,551 (May 22, 2015) ("Proposed DCS Revision").

[2] Proposed DCS Revision at 29,554.

[3] Id. at 29,552.

The term "contractual documentation" may cover a wide variety of documents, many of which generally do not travel with the item from its time of export from the United States. For example, master agreements, statements of work and memoranda of understanding generally do not travel with the item from its time of export from the United States. If such documents, and others like them, fall within the understood definition of "contractual documentation," then the proposed requirement certainly would not reduce the number of documents on which exporters would be responsible for entering the destination statement, and would substantially and unnecessarily increase the burden of complying with EAR § 758.6(a).

Currently, EAR § 758.6(a) requires that the DCS appear on the commercial invoice, and on the bill of lading, air waybill "or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end user abroad."[4] This requirement may be overly burdensome, but at least is limited to documents that "accompany{y} the shipment from its point of origin in the United States to the ultimate consignee or end user abroad." There is no justification for broadening the requirement to cover documents that generally do not accompany export shipment from their point of origin in the United States to the ultimate consignee.

In addition, requiring inclusion of the DCS on contractual documentation necessarily would require foreign counterparties to agree that the export items are subject to U.S. government export controls and fall within certain designated Export Control Classification Numbers ("ECCNs"). Foreign parties often may balk at agreeing to the extraterritorial application of U.S. law and may not be willing to formally agree that the exported items are subject to the U.S. government jurisdiction and fall within certain U.S. government-determined ECCNs. Accordingly, this new requirement would create commercial complications and hinder the completion of export contracts.

BIS should retain the requirement that the DCS appear on the commercial invoice and on "other export control document{ation} that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end user abroad," and should not require that the DCS appear on "contractual documentation."

II. Clarification of "Country of Ultimate Destination" For Exports Via Intermediary Countries

Many exporters transact with unaffiliated distributors or other intermediaries located overseas. In such situations, the exporter may have knowledge of the ultimate destination at which ownership of the exported item will transfer to the unaffiliated intermediary, but the exporter generally will not have knowledge of the ultimate destination of the exported item after title passes to the unaffiliated intermediary. BIS should clearly state that in such cases the "ultimate destination" associated with the DCS is the destination at which title passes from the exporter to an unaffiliated importer, and the

[4] EAR § 758.6(a) .

"end user" associated with the DCS is the unaffiliated intermediary. An exporter should not be required to know and represent information that is beyond its control and unknown at the time of export.

III. Destination Control Statement on Documentation Associated with NLR Exports

BIS notes that the new DCS would be required on documentation associated with exports for which no export license is required ("NLR Exports").[5] There is no justification for requiring the inclusion of the new DCS on documentation associated with NLR Exports, as such exports require no authorization from the U.S. government. Such a requirement would be unnecessarily burdensome and should be eliminated.

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SIA appreciates the opportunity to comment on the Proposed Revisions and looks forward to continuing its cooperation with the U.S. Government on export control reform. Please feel free to contact the undersigned or Joe Pasetti, Director of Government Affairs at SIA, if you have questions regarding these comments.

Cynthia Johnson

Mario R. Palacios

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Co-Chair, SIA Export Control Committee

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[5] Proposed DCS Revision at 29,552.