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July 6, 2015

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-AG47 - Export Administration Regulations (EAR): Harmonization of the Destination Control Statements

and RIN 1400–AC88 International Traffic in Arms Regulations (ITAR): Revision to the Destination Control Statement

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

Dear Sir or Madam:

The Electronic Design Automation Consortium (EDAC) is the international association of companies developing EDA tools and services that enable engineers to create the world's electronic products. The EDA Industry provides the critical technology and infrastructure to design electronics that enable the Information Age, including communications, computers, space technology, medical and industrial equipment, and consumer electronics. EDAC's Export Committee comprises compliance professionals dedicated to providing guidance concerning regulations affecting our industry.

Thank you for the opportunity to provide comments on these proposed rules which would revise the destination control statement (DCS) in the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR) to harmonize the statement required for the export of items subject to the both sets of regulations.

We applaud the U.S. government's attempt to simplify and improve the export clearance process; however, you are proposing changes that will require <u>every</u> organization that exports products from the U.S. to revise their systems, when the need is appropriate only for ITAR or EAR license-required 9X515 and 600-series shipments. The proposed changes will impose a regulatory burden on <u>all</u> U.S. exporters without any apparent enhancement to compliance; and as we will explain below, increase the uncertainty among foreign recipients.

The proposed revised EAR/ITAR DCS is: *"These items are controlled and authorized by the U.S. Government for export only to the specified country of ultimate destination for use by the end-user herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations*"

EDA companies provide goods and services that in the majority are classified 3D991, 3B991, 3E991 or EAR99. The first sentence in the proposed DCS "*These items are controlled and authorized by the U.S. Government for export only to the specified country of ultimate destination for use by the end-user*" would be factually incorrect for the majority of our shipments, which are controlled solely for AT1 purposes, and for which NLR applies to exports and re-exports to destinations and end-users not specifically subject to sanctions, embargoes or prohibitions.

Secondly, the sentence, *"They may not be resold, transferred, or otherwise disposed of, [] without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations,"* will cause confusion and doubt on behalf of the recipients, who in the majority are not subject-matter experts, will not understand "*or as otherwise authorized*" and will assume they must obtain U.S. licensing for the re-export or re-use of our AT1 or EAR99 products.

Third, today Commercial Invoices and Bills of Lading are not required to show end-users; they identify consignees and bill-to parties. In many situations (e.g., shipments to distributors or spares warehouses) it will be impossible to know the end-users at the time of shipment, which is what the proposed DCS requires. We would like BIS and DDTC to clarify whether the use of the term "end-user" in the proposed language implies the creation of a new regulatory requirement to identify all potential end-users on documents for which a DCS is required.

Fourth, the EAR proposal changes the scope of the documents requiring a DCS under the EAR. Currently, EAR 758.6 includes "*the invoice ... 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.*"

The proposed EAR rule would change the DCS requirement to apply to "*the commercial invoice and contractual documentation, when such contractual documentation exists, whenever items on the Commerce Control List are exported.*" In the proposed rule, BIS comments that "*because these two documents are the most likely to travel with the item from its time of export from the United States to its ultimate destination and ultimate consignee.*"

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The scope of "contractual documents" is undefined and would potentially apply the DCS to many contractual documents that will never accompany the shipment of goods. The term "contractual documents" should be clarified, and in any event should be limited only to documents that accompany the shipment.

Fifth, large and small exporters will incur costs that are dependent on size, but significant in any case. Large exporters will have to retool their ERP systems to collect information they are not presently collecting (e.g., end-user) and insert it into documents they don't currently generate with a DCS. Every contract with every distributor will need to be renegotiated to comply. Even small companies that fill out pre-printed forms with ball point pens will have to dispose of their old forms and have new ones printed with the new DCS.

In summary, except for shipments related to ITAR, 9X515 or 600-series items we see no compelling reason for a change to the current DCS set forth in the EAR. Instead of improving compliance, we feel these changes might generate unintended violations due solely to misinterpretation of these requirements. The change will impose a burden on all exporters without apparent enhancement to security, rather it will create an unnecessary distraction from compliance with the intended purpose of export regulations.

Again, on behalf of EDAC's Export Committee, I thank you for the opportunity to provide comments on these proposed rules.

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