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To: PublicComments

Subject:Public Comment 1. R Arvikar. 2015-6-3_DCS

Comments on the Proposed Rule related to Harmonization of the DCS:

The harmonization of the DCS which will result in the use of the same language for both EAR-controlled and ITAR-controlled exports is a step in the right direction and will minimize confusion as to which DCS must be used depending on the jurisdiction.

The intent of the DCS language is to communicate to the receiving party that the commodities are controlled under U.S. regulations and are intended for use only by the end –user and ultimate destination indicated on the documents. However we believe that there should be some way to ensure that this information is communicated to all parties involved and not just to the first party the items will be exported to. Often the export occurs to a Sales agent/reseller in the foreign country who will first receive the shipment who may not be the actual end-user and may be in a country that is not the ultimate destination. While the STA license exception does ensure that such communication does occur to all consignees involved, simply annotating the DCS on accompanying documentation when the items are exported may fail to communicate the intent of the DCS language to all parties in the transaction. A requirement that the all parties (consignees involved in the transaction between the U.S. exporter and the ultimate end user) should somehow be communicated to about the U.S. regulations restricting further export/transfer to anyone or to any country other than the end-user and ultimate destination should be considered in the final export process.

The proposed rule also implies that the DCS and the ECCN identification (for items in the 600 series or 9X515 items) must be shown on the commercial invoice and contractual documentation, when such contractual documentation exists. Generally the export documentation includes the commercial

invoice and the bill of lading(AWB, packing slip etc.) and may not include the “contractual documentation”. Contractual documentation generally includes the quotation provide to the customer (pricing delivery etc.) and the actual PO received from the customer in response to the quote provided. Such documents (quote or the PO from customers) may not be included in the shipment, so BIS should clarify if the DCS and ECCN identification must be required on the contractual documents in case such documents do not accompany the actual shipment. In our experience notification to the customer that the items are export controlled and their classification information is important to be provided when customers first enquire about a product and indicate their intention to go forward with the procurement. Invoices are usually filed by the Finance function that is responsible for payment and they may not take any action on this information (e.g. restriction on further re-sale/transfer to the end-user); however explicitly stating export restriction on the contractual documents would be a more effective way to communicate the importance of compliance with the U.S. export regulation and use of the items.

Thank you for allowing us the opportunity to provide the feedback.

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