Communications and Power Industries

August 3, 2015

Regulatory Policy Division
Bureau of Industry and Security, Room 2099B
US Department of Commerce
Washington, DC 20230

Subject: RIN 0694-AG32 Revisions to Definitions in the Export Administration Regulations

Dear Sir/Madame:

Communications & Power Industries LLC (CPI) submits the following comments and recommendations to Revisions to Definitions in the Export Administration Regulations.

CPI recommends the following deletions (denoted as a strike-though) and additions (denoted in red text) to the following definitions.

1) "*Technology*" means:
(a) Except as set forth in paragraph (b):
(1) Information necessary for the "development," "production," "use," operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in ECCNs on the CCL that control "technology") of an item. "Technology" may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, ~~engineering designs~~ Engineering Analysis, Design Methodology, Build-to-Print, Manufacturing Know-How, ~~specifications,~~ computer-aided design files, manuals or documentation, electronic media or information gleaned through visual inspection;
Note to Paragraph (a)(1) of this section: The modification of an existing item creates a new item and technology for the modification is technical data for the development of the new item.
(2) [Reserved];
(3) [Reserved];
(4) [Reserved]; or
(5) Information, such as decryption keys, network access codes, or passwords that would allow access to other "technology" in clear text or "software"

(b) "Technology" does not include:
(1) Non-proprietary general system descriptions;
(2) Information on basic function or purpose of an item; or
(3) Telemetry data as defined in note 2 to Category 9, Product Group E (see Supplement No. 1 to Part 774 of the EAR).
(4) Build/Design-to-Specifications

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Rationale:
CPI believes that adding Engineering Analysis, Design Methodology, Build-to-Print, Build/Design-to-Specification, and Manufacturing Know-How further clarifies what is captured under Technology.

Build/Design-to-Specifications (see below for proposed definition) is not positively controlled under the EAR based on: 1) the definitions of Build-to-Print Technology, Development, Production, and Technology; and 2) ECCNs that differentiate Build-to-Print Technology from other types of Technology. As an example of point 2, 9E610 and 9E619 controls Build-to-Print technology under paragraph .a and technology "other than Build-to-Print" under paragraph .b, a more restrictive paragraph based on the STA restrictions. This implies that Build/Design-to-Specifications is not controlled because it is less informative than Build-to-Specifications revealing only requirements. For this reason, CPI, believes Technology should be explicitly excluded Build/Design-to-Specifications.

2) *"Development"*. (General Technology Note)--"Development" is related to all stages prior to serial production, such as: design, design research, ~~design analyses~~ Engineering Analysis, ~~design concepts~~ Design Methodology, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.

   Rationale: CPI believes that adding Engineering Analysis and Design Methodology, terms that are already defined within the ITAR, will further clarify the activities and technical data captured under Development.

3) *"Production"*. (General Technology Note) (All Categories)-- Means all production stages, such as: product engineering, ~~manufacture~~ Manufacturing Know-how, integration, assembly (mounting), inspection, testing, quality assurance.

   Rationale: CPI believes that adding Manufacturing Know-How, a term that is already defined within the ITAR, will further clarify what is captured under Production.

CPI recommends DDTC and BIS harmonize the following definitions.

EAR Definition	ITAR Definition	Recommended Definition
Build-to-Print technology. **(1)** This is "production" "technology" that is sufficient for an inherently	Build-to-Print" means that a foreign consignee can produce or repair a defense article from engineering	Build-to-Print" means information sufficient for a user to produce or repair a commodity from

capable end user to produce or repair a commodity from engineering drawings without any of the following: **(i)** Revealing "development" "technology," such as design methodology, engineering analysis, detailed process or manufacturing know-how; **(ii)** Revealing the production engineering or process improvement aspect of the "technology;" or **(iii)** Requiring assistance from the provider of the technology to produce or repair the commodity. **(2)** Acceptance, test, or inspection criteria pertaining to the commodity at issue is included within the scope of "build-to-print technology" only if it is necessary to verify that the commodity is acceptable.	drawings without any technical assistance from a U.S. exporter. This transaction is based strictly on a "hands-off" approach since the foreign consignee is understood to have the inherent capability to produce the defense article and only lacks the necessary drawings. Supporting documentation such as acceptance criteria, and specifications, may be released on an as-required basis (*i.e.* "must have") such that the foreign consignee would not be able to produce an acceptable defense article without this additional supporting documentation. Documentation which is not absolutely necessary to permit manufacture of an acceptable defense article (*i.e.* "nice to have") is not considered within the boundaries of a "Build-to-Print" data package;	engineering drawings without any of the following: **(i)** Revealing "development" and production information such as design methodology, engineering analysis, or manufacturing know-how; **(ii)** Revealing the process improvement aspect of the development or production or **(iii)** Requiring assistance from the provider of the Build-to-Print to produce or repair the commodity. **(2)** Acceptance, test, or inspection criteria pertaining to the commodity at issue is included within the scope of Build-to-Print only if it is necessary to verify that the commodity is acceptable.
Build/Design-to-Specifications is not defined under the EAR.	*Build/Design-to-Specification.* "Build/Design-to-Specification" means that a foreign consignee can design and produce a defense article from requirement specifications without any technical assistance from the U.S. exporter. This transaction is based strictly on a	*Build/Design-to-Specification.*" means that a user can design and produce a commodity from requirement specifications without any technical assistance from the provider of the Build/Design-to-Specifications. This transaction is based strictly on a "hands-off" approach

	"hands-off" approach since the foreign consignee is understood to have the inherent capability to both design and produce the defense article and only lacks the necessary requirement information	since the user is understood to have the inherent capability to both design and produce the commodity and only lacks the necessary requirement information
Engineering Analysis is not defined in the EAR	Engineering Analysis, such as: Analytical methods and tools used to design or evaluate a defense article's performance against the operational requirements. Analytical methods and tools include the development and/or use of mockups, computer models and simulations, and test facilities. (Final analytical results and the initial conditions and parameters may be provided.)	Engineering Analysis, such as: Analytical methods and tools used to design or evaluate a commodity's performance against the operational requirements. Analytical methods and tools include the development and/or use of mockups, computer models and simulations, and test facilities. (Final analytical results and the initial conditions and parameters is not Engineering Analysis but is technical data.)
Design Methodology is not defined in the EAR	The underlying engineering methods and design philosophy utilized (i.e., the "why" or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (e.g., lessons learned); and the rationale and associated databases (e.g., design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (e.g., performance, mechanical, electrical, electronic, reliability and	The underlying engineering methods and design philosophy utilized (i.e., the "why" or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (e.g., lessons learned); and the rationale and associated databases (e.g., design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (e.g., performance, mechanical, electrical, electronic, reliability and

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	maintainability) of a defense article. (Final analytical results and the initial conditions and parameters may be provided.)	maintainability) of a commodity. (Final analytical results and the initial conditions is not Design Methodology but is technical data.)
Manufacturing Know-how is not defined in the EAR	Manufacturing Know-how information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished commodity. (Information may be provided in a build-to-print package that is necessary in order to produce an acceptable defense article.)	Manufacturing Know-how information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished commodity.

Rationale:
CPI believes the harmonization of Build-to-Print, Build/Design-to-Specifications, Engineering Analysis, Design Methodology, and Manufacturing Know-how is important at this point in time due to their relationship to Technology, Technical Data, Development, and Production.

Furthermore the harmonization of these definitions provides further clarification as to what is included under Technology, Technical Data, Development, and Production.

CPI appreciates this opportunity to comment on the proposed amendments. Feel free to contact me should you have any questions regarding this submission.

Thank You.

Creighton K Chin

Digitally signed by Creighton K Chin
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Regards,
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