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August 3, 2015

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VIA ELECTRONIC MAIL

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

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

Dear Ms. Hess:

On behalf of our client, Kaman Corporation ("Kaman"), we provide the following comments on the amendment proposed by the Bureau of Industry and Security of the U.S. Department of Commerce ("BIS") to the Export Administration Regulations ("EAR"; 15 C.F.R. part 730 *et seq.*) to, among other changes, add Section 734.18, Activities that are not exports, reexports, or transfers. *See* 80 Fed. Reg. 31505, at 31517 (June 3, 2015). Proposed Section 734.18 provides in part, under paragraph (a), that "The following activities are not exports, reexports, or transfers: … (4) Sending, taking or storing technical data or software that is … secured using end-to-end encryption … and [n]ot stored in a country listed in Country Group

D:5…" Presumably, this proposed provision is intended to update the EAR to take into account current technical data storage and transfer technologies and practices, including the potential for utilization by persons in the United States of non-U.S. based cloud computing and/or remote offshore servers to electronically store technical data and/or transfer communications, such as emails, that may contain technical data.

Similarly, U.S.-based electronic storage and/or transfer devices potentially could be utilized by persons outside the United States in connection with cloud computing and/or the storage of non-U.S. technical data and/or the electronic transfer of communications containing non-U.S. technical data, such as through email. Accordingly, we believe that, assuming Section 734.18 ultimately is adopted as part of the EAR, it also should clarify that the electronic storage and/or transfer of non-U.S. origin technical data by non-U.S. persons using electronic storage and/or transfer devices located in the United States, and the subsequent transfer and/or retrieval of that technical data by non-U.S. persons, does not result in an import or an export and also are "[a]ctivities that are not exports, reexports, or transfers" under the EAR.

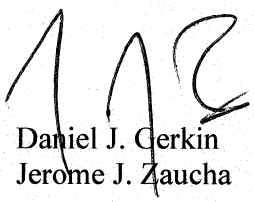
Unlike the storage or transfer of U.S.-origin technical data outside the United States by U.S. persons, which under proposed Section 734.18 must include end-to-end encryption to not constitute an export, we believe that such encryption should not be required in the case of non-U.S. origin technical data stored and/or transferred in the United States by non-U.S. persons. Simply, the same U.S. export control policy considerations do not apply. But for the use of data storage/transfer services in the United States, such technical data could not become subject to the EAR and, because the use of the U.S. data services would not in any way affect the composition of the technical data and the services presumably would have no role in dictating or controlling

the retrieval and/or transfer of the technical data, there is no policy basis for imposing EAR controls on such technical data. Likewise, access to the technical data by U.S.-based IT personnel in the course of maintaining the function and integrity of the storage/transfer devices, and/or the periodic transfer of technical data from the devices to any U.S. persons, should not affect the applicability of EAR controls, except that such controls presumably would apply to any "copy" of the technical data received by a U.S. person (but not to the data as placed by the non-U.S. person and residing on the storage device).

Alternatively, BIS could adopt a provision relating to the storage and/or transfer in the United States of technical data by non-U.S. persons that parallels paragraph (4)(ii) of proposed Section 734.18 , in effect providing that technical data transferred into the United States by a non-U.S. person and retrieved/transferred out of the United States, secured using end-to-end encryption, would not be considered imported into or exported from the United States. As noted above, however, access by U.S.-based IT personnel for the purpose of maintaining the function and integrity of the storage/transfer devices and/or the periodic transfer of technical data from the devices to any U.S. persons, should not affect the applicability of EAR controls, except that such controls presumably would apply to any "copy" of the technical data received by a U.S. person in unencrypted form (but not to the data as placed by the non-U.S. person and residing on the storage device).

Kaman appreciates this opportunity to provide comments on BIS's proposed amendments to the EAR.

Respectfully submitted,



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