

RECORD OF PUBLIC COMMENTS

NOTICE OF INQUIRY: REQUEST FOR PUBLIC COMMENTS ON THE PROSPECT OF REMOVING 7A COMMODITIES FROM DE MINIMIS ELIGIBILITY.

Publication in the Federal Register: November 20, 2008 (73 FR 70322)

Comments due January 20, 2009

| | SOURCE | SIGNER(S) OF COMMENT | DATE | NUMBER OF PAGES |
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| 1. | AeA (formerly American Electronics Association) | Ken Montgomery | 1/16/09 | 2 |
| 2. | Boeing | Norma Rein | 1/20/09 | 2 |
| 3. | Aviation Suppliers Association | Jason Dickstein | 1/21/09 | 9 |
| 4. | Department of Commerce International Trade Administration | Mary Saunders | 1/22/09 | 8 |
| 5. | Honeywell Int'l Inc | Dale Rill | 1/22/09 | 2 |
| 6. | GE Infra, Aviation, US | Kimberly A. DePew on behalf of the TRANSTAC | 1/30/09 | 1 |

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 20, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Diane Rodriguez, Program Analyst, Performance and National Programs Division, Room 7009, Economic Development Administration, Washington, DC 20230, telephone (202) 482-4495, facsimile (202) 482-2838 (or via the Internet at drodriguez@eda.doc.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) administers the Trade Adjustment Assistance for Firms Program, which is authorized by chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (Trade Act). EDA certifies firms as eligible to apply for Trade Adjustment Assistance (TAA), provides technical adjustment assistance to firms and other recipients, and provides assistance to organizations representing trade injured industries. In order to certify a firm as eligible to apply for TAA, EDA must verify: (1) A significant reduction in the number or proportion of the workers in the firm, a reduction in the workers' wage or work hours, or an imminent threat of such reductions; (2) sales or production of the firm have decreased absolutely, as defined in EDA's regulations, or sales or production, or both, of any article accounting for at least twenty-five (25) percent of the firm's sales or production have decreased absolutely; and (3) an increase in imports of articles like or directly competitive with those produced by the petitioning firm, which has contributed importantly to the decline in employment and sales or production of that firm. Additionally, the firm must demonstrate that U.S. customers have reduced or declined purchases from the firm in favor of

buying imported items. EDA uses information collected from Form ED-840P, and its attachments, to determine if a firm is eligible to apply for TAA. The use of the form standardizes and limits the information collected as part of the certification process and eases the burden on applicants and reviewers alike.

II. Method of Collection

The ED-840P form is downloadable from EDA's Web site at <http://www.eda.gov/InvestmentsGrants/Directives.xml> and can be e-mailed or submitted in hard copy to EDA.

III. Data

OMB Control Number: 0610-0091.

Form Number(s): ED-840P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Response: 8 hours.

Estimated Total Annual Burden Hours: 1,600.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 14, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-27558 Filed 11-19-08; 8:45 am]

BILLING CODE 3510-34-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 0810231385-81390-01]

Request for Public Comments on the Prospect of Removing 7A Commodities From De Minimis Eligibility

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comment on the prospect of removing from de minimis eligibility commodities controlled for missile technology (MT) reasons under Category 7—Product Group A on the Commerce Control List except when the 7A commodities are incorporated as standard equipment in Federal Aviation Administration (FAA) (or national equivalent) certified civilian transport aircraft. If such a policy were implemented, foreign made items that incorporate U.S.-origin 7A commodities would be subject to the Export Administration Regulations, except when the 7A commodities are incorporated as standard equipment in FAA (or national equivalent) certified civilian transport aircraft. Specifically, BIS is seeking public input on the impact such a change would have on U.S. manufacturers of category 7A commodities, as well as the impact such a change would have on foreign manufacturers that incorporate U.S.-origin 7A commodities into their foreign-made products.

DATES: Comments must be received no later than January 20, 2009.

ADDRESSES: Written comments may be submitted via <http://www.regulations.gov>, by e-mail directly to BIS at publiccomments@bis.doc.gov or on paper to U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, Room H-2705, Washington DC 20230. Please input "7A/De minimis" in the subject line.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security at 202-482-2440, or fax 202-482-3355, or e-mail at scook@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The term "*de minimis*" generally refers to matters that are of minor significance. The *de minimis* provisions of the Export Administration Regulations (EAR) promote U.S. export

control objectives as set forth in the Export Administration Act of 1979, as amended, (EAA) while limiting U.S. jurisdiction over non-U.S. products containing a *de minimis* percentage, by value, of U.S. content. To prevent the diversion of controlled U.S. items and foreign-made items incorporating a significant amount of U.S. content, a foreign-made item that contains more than the *de minimis* amount of controlled U.S.-origin content by value is subject to the EAR, i.e., a license may be required from BIS for the export abroad to another foreign country or in-country transfer of the foreign-made item. Prior to March 1987, the EAR set no *de minimis* levels for U.S. content in foreign-made items; foreign-made items were subject to the EAR if they contained any amount of U.S.-origin content, no matter how small. A rule published March 23, 1987 (52 FR 9147) revised what were then called the “parts and components” provisions to establish thresholds at which the amount of U.S.-origin commodities in foreign-made items would warrant exercise of U.S. jurisdiction over the foreign-made item when located outside the United States. The rule was established to alleviate a major trade dispute with allies who strenuously objected to U.S. assertion of jurisdiction over all reexports of non-U.S. items that contained even small amounts of U.S. content. A major revision of the EAR in 1996 (61 FR 12714) introduced the term “*de minimis*” and established *de minimis* thresholds for software and technology. The most recent revisions to the *de minimis* rules occurred on October 1, 2008, when BIS published a rule to change the *de minimis* calculation for foreign produced hardware bundled with U.S.-origin software, clarify the definition of ‘incorporate’ as it is applied to the *de minimis* rules, and to make certain other changes.

Commodities controlled by Category 7—Product Group A in the Commerce Control List are certain equipment and components related to navigation and avionics. Reviewing agencies have raised concerns that such commodities, when controlled for MT reasons, have the potential to provide a foreign product with unique military capabilities, even if the value of the commodity is below normal *de minimis* levels. Airline and national aviation safety controls help to minimize the risk of diversion for Category 7—Product Group A commodities installed in civilian aircraft. It is expected the commodities will remain in the aircraft and free from tampering with such

safety controls. However, when the commodities are exported in less costly end items with no national aviation safety authority controls, there may be a higher risk of diversion.

Requests for Comments

BIS is seeking public comments on the expected impact on U.S. manufacturers of commodities controlled by Category 7—Product Group A, as well as the expected impact on foreign manufacturers that incorporate U.S.-origin 7A commodities into their foreign-made products, if BIS were to remove from *de minimis* eligibility commodities controlled for MT reasons under Category 7—Product Group A, except when the commodities are incorporated as standard equipment in FAA (or national equivalent) certified civilian transport aircraft. Specific estimates related to number of exports, revenue, jobs, etc. that would be affected would be very useful. Also, the impact such a change would have on decisions to incorporate U.S.-origin items in future foreign products would also be useful. Examples of commercial foreign products that incorporate commodities controlled by Category 7—Product Group A would be helpful as well. Comments that include rational argument in support of the position taken in the comment are likely to be more useful than comments that merely assert a position without such support.

Finally, BIS is interested in concrete information (URL addresses, technical specifications, etc.) about the availability of equivalent commodities from foreign sources.

Dated: November 14, 2008.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E8-27588 Filed 11-19-08; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-894]

Certain Tissue Paper Products From the People's Republic of China: Extension of Time Limit for Preliminary Results of 2007-2008 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 20, 2008.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-1766 or (202) 482-3773, respectively.

Background

On April 25, 2008, the Department of Commerce (“the Department”) published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on certain tissue products from the People's Republic of China (“PRC”), covering the period March 1, 2007, through February 29, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 22337 (April 25, 2008). The preliminary results for this administrative review are currently due no later than December 1, 2008.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of an order for which a review is requested. If it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 365 days.

In this review, the respondents, Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (collectively referred to as “Max Fortune”), requested that the Department revoke the antidumping duty order on certain tissue paper products from the PRC with respect to them pursuant to 19 CFR 351.222(b). The Department requires additional time to review and analyze the revocation request and the factors of production information submitted by Max Fortune in this administrative review and, if necessary, issue an additional supplemental questionnaire. The Department also requires additional time to conduct verification of Max Fortune's questionnaire responses. Thus, it is not practicable to complete this review within the original time limit. Therefore, the Department is fully extending the time limit for completion of the preliminary results by 120 days to 365 days, in accordance with section 751(a)(3)(A) of the Act. The preliminary results are now due no later than March 31, 2009. The final results continue to



January 16, 2009

Sent via email

U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division, Room H-2705
Office of Exporter Services
14th St. and Constitution Ave. NW
Washington, DC 20230

RE: Request for Public Comments on the Prospect of Removing 7A Commodities From De Minimis Eligibility (Federal Register: November 20, 2008 (Volume 73, Number 225))

Dear Sir or Madam:

AeA (formerly the American Electronics Association) welcomes the opportunity to comment on this Notice of Inquiry (NOI). This NOI seeks public comment on the prospect of removing from de minimis eligibility commodities controlled for missile technology (MT) reasons under Category 7--Product Group A on the Commerce Control List except when the 7A commodities are incorporated as standard equipment in Federal Aviation Administration (FAA) (or national equivalent) certified civilian transport aircraft.

If such a policy were implemented, foreign made items that incorporate U.S.-origin 7A commodities would be subject to the Export Administration Regulations, except when the 7A commodities are incorporated as standard equipment in FAA (or national equivalent) certified civilian transport aircraft. BIS is seeking public input on the impact such a change would have on U.S. manufacturers of category 7A commodities, as well as the impact such a change would have on foreign manufacturers that incorporate U.S.-origin 7A commodities into their foreign-made products.

AeA believes that some ECCNs should not be removed from the 7A list, specifically 7A994. AeA recognizes that 7A994 is not controlled for MT reasons, however, we want to emphasize that 7A994 should remain eligible for de minimis treatment. Many 7A994 GPS items are sold at retail outlets and some 7A994 items are used in telecommunication base stations, wireless devices, position location devices for the trucking industry and location base services for many commercial applications such as medical and safety.

AeA would like to point out that removing de minimis is effectively trying to control items that were not previously subject to the EAR. Such items are already in the stream of international commerce, without EAR applicability. Instituting controls at this time will not recapture those already released commodities.

US manufacturers can expect to see a lower adoption rate of commodities if a de minimis exclusion is no longer available. In uncertain economic times, manufacturers cannot afford any further erosion of their sales base, no matter how small it may be. With several NOIs in circulation on the adoption or use of US origin parts, which is also related to de minimis eligibility, BIS should consider the NOI comments together, as they all affect the competitiveness of commodities subject to the EAR.

AeA members appreciate the opportunity to provide input on this NOI and stand ready to work with BIS on this and other high technology regulatory matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ken Montgomery".

Ken Montgomery
Sr. Director, International Trade Regulation

January 20, 2009



U.S. Department of Commerce, Bureau of Industry and Security
Regulatory Policy Division
Room H-2705
Washington, D. C. 20230

Subject: 7A/De Minimis

Dear Sir or Madam:

Thank you for the opportunity to respond to your Request for Public Comments, published in the Federal Register of November 20, 2008, on the prospect of BIS removing navigation and avionics systems, equipment and components falling under Category 7A of the Commerce Control List from *de minimis* eligibility.

One question that we have on this proposal is for purposes of clarification. Specifically, your Notice states that *de minimis* eligibility would remain in place when the 7A commodities "are incorporated as standard equipment in FAA (or national equivalent) certified civilian transport aircraft." Does that mean that the exception would not apply to foreign items that satisfy similar certification conditions when they are re-exported separately for purposes of being incorporated into such aircraft? Or does the exception apply in both cases, provided that the aircraft involved meet the certification conditions?

Additionally, we have a comment with respect to items, such as 7A103, that are controlled for Missile Technology (MT) reasons. It is our firm belief that decisions affecting MT items should always be made on a multilateral basis, in order to ensure that the application of controls is consistent within all MTCR member countries.

More generally, we believe that BIS should not consider this proposal until it has the opportunity to review comments that may be submitted in response to the Bureau's more recent notice, published in the Federal Register of January 5, 2009, related to the effects of export controls on decisions to use or not use U.S.-origin parts and components in commercial products. *De minimis* eligibility controls have the potential for impacting different industry sectors in different

ways, within and outside of the U.S. In some cases *de minimis* eligibility may benefit one industry sector and disadvantage another industry sector (for instance, as it relates to established thresholds). For that reason, we hope that Commerce will conduct a comprehensive review of the *de minimis* rule in order to determine how it should be modified within the framework of a changed international marketplace, in order to avoid imposing burdensome compliance variations, and to establish a rule that will satisfy both parts manufacturers and the manufacturers of final products.



We are currently collecting data to respond to your January 5, 2009 request for comments, and hope that we will be able to provide relevant details on a topic that is of great importance to our company.

Sincerely,

A handwritten signature in blue ink that reads 'Norma Rein'.

Norma Rein
Senior Manager, Global Licensing Compliance and Policy
703-465-3655

**Amendment to the Export Administration
Regulations: Elimination of the De Minimis Rule
for Category 7A Commodities
73 Fed. Reg. 70322 (November 20, 2008)**
Comments on the Notice of Proposed Rulemaking
Submitted by email to publiccomments@bis.doc.gov

**Submitted by the
Aviation Suppliers Association**

2233 Wisconsin Ave, NW, Suite 503
Washington, DC 20007



**For more information, please contact:
Jason Dickstein
General Counsel
(202) 628-6776**



Aviation Suppliers Association
2233 Wisconsin Ave, NW, Suite 620
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Respond to: Jason Dickstein
Direct Dial: (202) 628-6776
Jason@washingtonaviation.com

Amendment to the Export Administration Regulations: Elimination of the De
Minimis Rule for Category 7A Commodities, 73 Fed. Reg. 70322 (Nov. 20, 2008)
Comments on the Notice of Proposed Rulemaking
Submitted by email to publiccomments@bis.doc.gov

January 20, 2009

U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
ATTN: 7A/De minimis
Room H-2705
Washington, DC 20230

Dear Sir or Madam:

Please accept these comments on the proposed rule, Amendment to the Export Administration Regulations: Elimination of the De Minimis Rule for Category 7A Commodities, which was offered to the public for comment at 73 Fed. Reg. 70322 on November 20, 2008.

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Who is ASA?

Founded in 1993, ASA represents the aviation parts distribution industry, and has become known as an organization that fights for safety in the aviation marketplace. ASA primarily represents civil aircraft parts distributors.

ASA members buy and sell aircraft parts. These aircraft parts transactions take place domestically and internationally. Many distributors sell aircraft parts that are 7A commodities or that incorporate 7A commodities. ASA members have found that foreign buyers are concerned about US export compliance, and that compliance issues influence their purchasing decisions. As a consequence, ASA’s members have a great interest in maintaining the *de minimis* rule as a part of the Export Administration Regulations (EAR).

Comments on the Proposed Rule

General Comments/Overview

The proposed change to eliminate the *de minimis* standard would unnecessarily punish distributors and manufacturers, and cripple trade in avionics commodities, without providing any correlative benefit to the United States.

In the marketplace, the Category 7A commodities (and their components) affected by the proposed elimination of the *de minimis* rule can be easily obtained from non-U.S. manufacturers.

For purposes of the aerospace community, category 7A represents avionics components. The *de minimis* standard allows US suppliers to provide avionics subcomponents to foreign manufacturers. Foreign manufacturers generally will try to keep the level of US content below the *de minimis* threshold because the US export restrictions are perceived to be onerous (without regard to whether they truly are as onerous as they seem). The 25% *de minimis* standard has encouraged foreign manufacturers to rely on US components in their avionics designs.

This affects the market for parts in new components and it also affects the market for parts to be used in repair. Generally, the standard for aviation repair outside the United States is that the parts installed during maintenance must be those found in the original equipment manufacturer's manual, or those otherwise found acceptable by the government.¹ This means that if the European manufacturer of avionics decides to discontinue using US components because of the elimination of the *de minimis* rule, the change to non-US suppliers will also likely prevent the European installers from installing the US components that may have been used in earlier versions of the product. Thus, eliminating the *de minimis* rule affects the aftermarket as well as the original equipment market.

Eliminating the De Minimis Rule Would Result In Fewer US Export Because Foreign Suppliers Are Available

The elimination of the *de minimis* rule would cause initial inconvenience to European manufacturers and distributors, but it would likely NOT have a long term effect on non-US parties due to the fact that most avionics components of the sort that are most critical are available from overseas suppliers. For example, accelerometers of the sort that the United States considers to be missile technology are available from CORRSYS-DATRON (Germany), Siemens (Germany), Murata (Japan) and BAE (UK). Similarly, gyros/angular rate sensors of the sort that the United States considers to be missile technology are available from CORRSYS-DATRON (Germany), Siemens (Germany), and Murata (Japan). Thus, the most critical items are available from foreign sources.

¹ See, e.g., EASA 145.A.42 (requiring the European installer to ensure the eligibility of a product) and EASA 145.A.45 (requiring the European installer to rely on the manufacturer's instructions for continued airworthiness and other documents).

In addition, the US suppliers of non-critical supplies would also be affected. Thus, if a foreign avionics manufacturer obtains their angular rate sensors from Siemens, but obtains some non-critical components from US suppliers, the elimination of the *de minimis* rule would also cause the non-US buyer to seek out non-US sources for the non-critical components, because of the impact of the elimination of the *de minimis* rule (there is certainly no business reason to accept US export controls on your inertial avionics when the inertial components did not come from the United States, but instead you merely relied on US suppliers for other non-critical components!).

Thus, while currently foreign distributors can purchase parts with small amounts of U.S. commodities incorporated and feel confident that they will not be subject to U.S. export jurisdiction for this transaction, the elimination of the *de minimis* rule would result in foreign distributors avoiding parts with **any** amount of U.S.-sourced 7A commodities. This would have a negative affect on U.S. industry, and make it unlikely that any foreign distributors would be willing to buy parts with U.S.-sourced 7A components, in turn making it unlikely that foreign manufacturers would continue to incorporate any U.S.- sourced 7A components in their products.

The Proposed Rule’s “Exception” Is Too Narrow to Protect US Aerospace Interests

The exception in the proposed rule for the aviation community is too narrow to alleviate the disastrous affects of eliminating the *de minimis* rule.

The proposed rule states that an exception would apply only where “the commodities are incorporated as standard equipment in FAA (or national equivalent) certified civilian transport aircraft”.

The exception would not cover several categories of parts that ought to be covered. It would not cover avionics for non-transport aircraft even if they were already installed, it would not cover avionics not classified as “standard equipment”, and it would not cover avionics shipped separately, in a container rather than installed in an aircraft. The exception creates an appearance of arbitrariness in light of the fact that identical items that are in dissimilar packing configurations would be treated differently.

The proposed aircraft exception would apply only to avionics (category 7A equipment) already installed in transport category aircraft. The exception would not cover avionics shipped separately in a container (instead of being installed in an aircraft. There is a significant business that is current being done in avionics and avionics upgrades and such avionics are generally shipped outside of the

context of an installed article. There is no good policy reason for inhibiting the re-export of such products when they have minimal US content.

The term “Transport Aircraft” is not defined in the commerce regulations nor in the FAA’s regulations. Therefore this is a vague term that cannot be usefully relied upon for interpreting the scope of the exception.

In the FAA’s regulations, an aircraft is a device used for flight – this includes airplanes and rotorcraft.² Although the FAA’s regulations do not define the term “transport aircraft,” the FAA’s regulations do provide two Parts in its regulations that are identified as “Airworthiness Standards: Transport Category Airplanes” (14 C.F.R. Part 25) and “Airworthiness Standards: Transport Category Rotorcraft” (14 C.F.R. Part 29). One may assume that the term “transport aircraft” as used in this proposal was meant to apply to aircraft in those two categories.³

There is no policy basis for distinguishing Part 25 and Part 29 aircraft (which can be thought of, colloquially, as larger aircraft) from Part 23 and Part 27 aircraft (which may be thought of as smaller aircraft). Creating a distinction between transport category aircraft and non-transport category aircraft for purposes of defining an exception to the re-export rules simply does not make sense. Any exception that applies to aircraft ought to apply to all aircraft.

One reason that there should be no distinction between transport category aircraft and non-transport category aircraft is that they may use the same avionics. It is not at all unusual to find the same avionics package installed in both Part 23 (non-transport category) and Part 25 (transport category) airplanes. Under the exception as proposed, the package that was installed in a Part 25 airplane might be excepted from the new standard, but the identical equipment in the Part 23 aircraft would not. This distinction creates a situation that contradicts basic tenets of equal protection.

Under the proposal, the exception for transport aircraft avionics applies only to articles defined as “standard equipment.” Unfortunately, due to the State Department’s recent redefinition⁴ of “standard equipment,” virtually no aircraft avionics fitting into category 7 will meet this exception.

The Note to 22 C.F.R. § 121.1 Category VIII(h) defines “standard equipment” in the context of aircraft parts to be:

² 14 C.F.R. § 1.1.

³ It is important to note that the terms “transport category aircraft” and “transport aircraft” are not defined in the FAA’s regulations, but that the scope of 14 C.F.R. Part 25 is generally interpreted to reflect all airplanes that did not meet the scope of 14 C.F.R. Part 23, which includes better defined terms and scope at 14 C.F.R. § 23.3.

⁴ Amendment to the International Traffic in Arms Regulations: The United States Munitions List Category VIII, 73 Federal Register 47523 (August 14, 2008).

“a part or component manufactured in compliance with an established and published industry specification or an established and published government specification (e.g., AN, MS, NAS, or SAE). Parts and components that are manufactured and tested to established but unpublished civil aviation industry specifications and standards are also “standard equipment,” e.g., pumps, actuators, and generators. A part or component is not standard equipment if there are any performance, manufacturing or testing requirements beyond such specifications and standards.”⁵

This definition was specifically meant to apply to the “standard equipment” language of section 17(c) of the Export Administration Act. One problem with this definition arises in the preamble to the rule, which explains that

“An ‘accessory,’ an ‘attachment,’ and ‘associated equipment’ are not considered standard equipment integral to the civil aircraft.”⁶

Most avionics are produced under Technical Standard Order Authorizations (TSOAs).⁷ Thus, their certification basis falls outside the scope of the certification basis for the aircraft. As such, they may potentially be considered to be articles that do not meet the definition of standard equipment. Furthermore, they are manufactured to meet the standards published by the governments that publish Technical Standard Orders (TSOs), but those designs are not identical to the TSOs because the TSOs merely serve as performance standards and not as production standards or conformity standards.

Finally, TSOA articles may be thought of as analogous to PMA articles in the sense that they are manufactured under production authority separate from the design and production authority associated with an aircraft. PMAs are approvals issued by the FAA to authorize the manufacture of civil aircraft components (they are purely for civil aircraft). The State Department explicitly refused to include PMA articles within the scope of the term “standard equipment”:

Two (2) commenting parties recommended part (b) of the second sentence of the explanatory note add Parts Manufacturer Approval (PMA). As a PMA may be issued for an exclusively USML item, inclusion of PMA is not appropriate here.⁸

⁵ *Id.* at 47526.

⁶ *Id.* at 47524.

⁷ See, e.g., 14 C.F.R. § 21.601 et seq. (US FAA TSOA rules); e.g. Automatic Pilots, FAA TSO-C9c (September 16, 1960) (the US TSO that established performance standards for autopilots).

⁸ Amendment to the International Traffic in Arms Regulations: The United States Munitions List Category VIII, 73 Federal Register 47523, 47524 (August 14, 2008).

Thus, the 'standard equipment' term arguably may not apply to avionics, and therefore avionics manufacturers, dealers, and exporters around the world would be unable to rely on that provision to exempt avionics.

Requiring a foreign distributor to obtain U.S. export approval to sell an avionics product with minimal U.S. content to a third nation (for example, if the distributor was in one EU country and the buyer was in another EU country) would unduly burden the industry without providing any real benefit. The aircraft exception should be expanded to include all civil aircraft avionics. One way that this could be done would be to incorporate any 7A content that is described in a civil aviation design approval issued by the FAA (including type certificate, supplemental type certificate, PMA or TSOA). This should include both the articles themselves and their subcomponents.

The Economics of Avionics Make it Unlikely that they Would Be Purchased for their Restricted Components

Aircraft avionics utilize complex technologies, and as a result tend to be very expensive. In regards to the exception in the proposed rule, terrorists and other undesirables are unlikely to purchase expensive aircraft avionics to gain access to their component parts, when similar components can be obtained more inexpensively from foreign component producers. In fact, it is no more likely that terrorists would purchase aircraft avionics for their component parts than that they would purchase civilian transport aircraft with the avionics incorporated for the component parts, and civilian transport aircraft are an exception to the proposed rule change. Therefore, it does not make sense that aircraft avionics standing alone are to be subject to greater regulation than a civilian transport aircraft is for its component parts.

The De Minimis Rule Plays a Vital Role In Enticing Foreign Manufacturers To Buy U.S. Parts

The *de minimis* rule was added to the EAR in 1987 to “alleviate a major trade dispute with allies who strenuously objected to U.S. assertion of jurisdiction over all re-exports of non-U.S. items that contained even small amounts of U.S. content”⁹

Our communications with foreign aerospace parties have confirmed that the *de minimis* rule has been effective, because it is considered by foreign

⁹ Request for Public Comments on the Prospect of Removing 7A Commodities From De Minimis Eligibility, Federal Register, 73 Fed. Reg. 70322, 70323 (Nov. 20, 2008).

manufacturers who consider whether to incorporate US content in their designs. Eliminating the rule today would eliminate the benefit, with no correlative benefit to the United States.

Conclusion

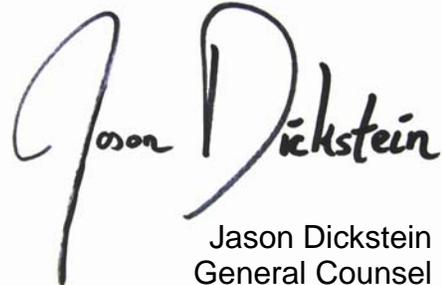
The proposal to eliminate the *de minimis* rule would result in non-U.S. manufacturers eschewing U.S. 7A component suppliers. The *de minimis* rule should remain untouched.

In the alternative, the aviation exception should be expanded to include all civil aircraft parts in Category 7, and components intended for inclusion in civil aircraft parts. One way that this could be done would be to describe the scope of the exception to include any content that is described in a civil aviation design approval issued by the FAA (including type certificate, supplemental type certificate, PMA or TSOA). This should include both the articles themselves and their subcomponents.

Thank you for affording industry this opportunity to comment on the proposed rule to help make it better serve the needs of the U.S. aviation industry. We appreciate the efforts of the Commerce Department in this regard.

Your consideration of these comments is greatly appreciated.

Respectfully Submitted,

A handwritten signature in black ink that reads "Jason Dickstein". The signature is written in a cursive style with a large, prominent "J" and "D".

Jason Dickstein
General Counsel
Aviation Suppliers Association



JAN 22 2009

MEMORANDUM FOR: Matthew S. Borman
Deputy Assistant Secretary for Export Administration

FROM: Mary Saunders 
Deputy Assistant Secretary for Manufacturing and Services

SUBJECT: *De Minimus* Eligibility Related to Civil Aircraft

In a November 20, 2008 *Federal Register* notice, BIS solicited comments on the prospect of removing from *de minimus* eligibility (*i.e.*, exclusion from BIS's jurisdiction based on low U.S. content) certain civil aircraft and aircraft components. My office is not aware of a threat to national security arising from these products' current status. In the absence of a demonstrated threat, I would urge that BIS not change its *de minimus* rules because to do so may damage U.S. interests in international civil aircraft trade. If there is a demonstrated national security threat, I would urge that BIS consider modifying the prospect for a change to mitigate damage to U.S. trade interests. (Please see suggestions below.)

The U.S. aerospace manufacturing industry is critical to the health of our economy, and international trade is vital to the well-being of U.S. aerospace manufacturers. Year after year, the aerospace industry accounts for the highest positive U.S. trade balance of all U.S. manufacturing sectors. In 2007 (the most recent year for which we have complete, annual data), exports accounted for more than 58% of the total value of U.S. aerospace industry output. I am concerned that, if adopted, a change in the *de minimus* rule could retard U.S. aerospace exports to the detriment of our economy at a time when extraordinary resources are being devoted to improving America's economic health.

Under current rules, aircraft and aircraft components assembled outside the United States and exported to a third country may be subject to the Export Administration Regulations (EAR) if they contain more than *de minimus* U.S. content, *i.e.*, if more than 25% of the value of all components are of U.S. origin. (For exports to the five countries designated as state sponsors of terrorism, the *de minimus* value is 10%.) Aircraft and major aircraft components assembled overseas containing less than the *de minimus* value of U.S. content are not subject to the EAR. Unfortunately, it appears that increasing numbers of non-U.S. aerospace manufacturers have sought to "design out" U.S. content to avoid having their products be subject to U.S. export control rules.

If the *de minimus* change is adopted, non-U.S. aerospace manufacturers may perceive an additional impetus to "design out" U.S. suppliers, resulting in further downward pressure on U.S. aerospace exports. U.S. aerospace manufacturers have expressed concern to us over the prospect of diminished competitiveness and loss of export sales. (See attachments for details of the "design out" mechanics, including our estimate of the negative economic effects.)



I appreciate that, under the proposed change, the covered products would not lose their *de minimus* eligibility if they were incorporated as standard equipment in civil “transport aircraft” certified by the Federal Aviation Administration (FAA) or a non-U.S. national equivalent. While the intention behind this provision may be helpful to U.S. trade interests, it not clear why any distinction should be made between different classes of complete aircraft based on type certification (in the sense of airworthiness compliance) or why products that are not type certificated, such as assembled cockpit displays, should not qualify for maintaining a sub-component’s *de minimus* eligibility.

Moreover, use of the term “transport aircraft” introduces ambiguity. Among the classes of type certificates issued by the FAA for aircraft are “transport airplanes” and “transport helicopters” (but not “transport aircraft”). If BIS were to equate the term “transport aircraft” with “transport airplanes” there still may be confusion over precisely what aircraft are being designated because it seems that the FAA has no regulatory definition of “transport airplanes” (in contrast to other classes of type certificates that are defined by regulation, such as “normal”, “utility”, “acrobatic”, and “commuter” type certificates).¹

If BIS is satisfied that the current *de minimus* rules result in a demonstrated vulnerability to U.S. national security, I would ask that BIS consider adopting a modified version of the change described in the *Federal Register* with the aim of minimizing the negative effects on U.S. trade interests. Options for modifications include removing the *de minimus* eligibility for only those specific products in CCL Category 7A for which a risk exists and/or focusing the loss of eligibility on exports of complete aircraft and aircraft sub-assemblies to (what is presumably) only a small number of countries of concern.

Please let me know if I can help provide further information. I would be pleased to have my staff discuss technical issues in more detail if this would be helpful.

Attachments

- A. “Design out” of U.S. navigation equipment in complete aircraft and aircraft subassemblies produced by non-U.S. manufacturers
- B. Non-U.S. manufacturers of civil aircraft which potentially could be affected by a change in BIS’s *de minimus* rule
- C. 2007 U.S. Selected Domestic Exports

cc: Henry P. Misco, Director, Office of Transportation and Machinery

¹ While it appears that the term “transport airplanes” is not defined in the Federal Aviation Regulations, the FAA provides administrative guidance on the meaning of that term. The FAA states that transport airplanes are either (a) jets with 10 or more seats or a Maximum Takeoff Weight (MTOW) greater than 12,500 lb., or (b) propeller-driven airplanes with greater than 19 seats or a MTOW greater than 19,000 lb.

“DESIGN OUT” OF U.S. NAVIGATION EQUIPMENT IN COMPLETE AIRCRAFT AND
AIRCRAFT SUBASSEMBLIES PRODUCED BY NON-U.S. MANUFACTURERS

Non-U.S. aerospace manufacturers, especially small and medium size companies, frequently do not fully understand the details of U.S. export control measures, including the Export Administration Regulations (EAR). This may be because they lack the resources to analyze what may be perceived to be a complex set of regulations², especially in a language (English) which may not be the manufacturer’s native language. Rather than having to deal with the intricacies of the EAR, some non-U.S. manufacturers seek to avoid being subject to it by ensuring that their products contain less than the *de minimus* threshold of U.S. content.

Under current rules, non-U.S. manufacturers may incorporate in their complete civil aircraft or major aircraft sub-assemblies U.S. air navigation equipment of the type at issue in the BIS *Federal Register* notice (including accelerometers, altimeters, compasses, and gyroscopes) and remain outside EAR coverage if the total value of U.S. content is less than 25% of the value of all the components of which the aircraft is comprised.³

If this navigation equipment were to become ineligible for *de minimus* status, a non-U.S. manufacturer’s entire aircraft would be subject to the EAR regardless of how small a proportion this equipment represents of the total value of the aircraft’s content. Manufacturers seeking to avoid coverage by the EAR would be induced to “design out” U.S. products that may currently be acceptable to them.

As a hypothetical example, assume the ABC Aircraft Co. in country X produces aircraft that have 15% U.S. content. Because the ABC Aircraft Co. does not export to countries designated as a state sponsor of terrorism, its aircraft are not subject to the EAR. Assume the company decides to incorporate in its aircraft an upgraded inertial navigation system of U.S. origin, the increased value of which causes total U.S. content to rise to 20%. Under current rules, the aircraft would remain outside the jurisdiction of the EAR. If the rules were to be changed, however, the same aircraft modified with the upgraded U.S. inertial navigation system would become subject to the EAR – but would not be subject to the EAR if modified by an upgraded inertial navigation system supplied by a non-U.S. competitor.

In some cases, the inclination by non-U.S. manufacturers of complete aircraft to “design out” U.S. content appears to rest on an incomplete understanding of the EAR. Complete civil aircraft are classified on the Commerce Control List (CCL) under Export Control Classification Number (ECCN) 9A991. No license is required for products classified under this ECCN except in either of two very limited circumstances: exports to countries for which the “reason for control” is (a) anti-terrorism, *i.e.*, Cuba, Iran, North Korea, Sudan and Syria or (b) United Nations sanctions, *i.e.*, Iraq, North Korea and Rwanda.

² As printed in the Code of Federal Regulations, the EAR alone is over 450 pages.

³ If the manufacturer exports to a country designated by the United States as a state sponsor of terrorism, the threshold is 10%. Five countries are now so designated: Cuba, Iran, North Korea, Sudan and Syria.

Unfortunately, for many non-U.S. manufacturers of complete aircraft, it seems that perception is reality with regard to U.S. export control rules. Because they *perceive* the EAR and other U.S. export control regulations to be unreasonably burdensome, non-U.S. manufacturers appear to select non-U.S. suppliers to avoid being subject to the rules. The magnitude of this phenomenon has not been quantified. ITA has received anecdotal information about such behavior, as well as reports from U.S. missions overseas. BIS's recent solicitation of public comments on the effects of export controls on decisions to use or not use U.S.-origin parts and components may increase our understanding of the issue.⁴

In contrast to the situation for complete aircraft, it appears that the proposed change would result in substantive differences in the licensing requirements for aircraft subassemblies. Non-U.S. manufacturers produce subassemblies that bundle together multiple systems used in air navigation. Subassemblies with certain U.S. content that are now excluded from the EAR's jurisdiction pursuant to the current *de minimus* rule would become covered if the rule is changed, requiring the non-U.S. manufacturer to seek a license from BIS.⁵

Because the *Federal Register* notice soliciting *de minimus* comments refers to the possibility of products incorporated into certain "transport aircraft" being excluded from the change, BIS's intent is not clear to ITA. Assuming BIS's intent is to equate "transport aircraft" to something along the lines of the FAA term "transport airplanes", it would seem that U.S. air navigation equipment installed in business jets, fixed wing general aviation (GA) aircraft, and civil helicopters produced outside the United States would not qualify for the exemption. There are at least 40 manufacturers such aircraft in 18 countries outside the United States whose complete aircraft potentially would be affected by a change in the *de minimus* rule. (See Attachment B.)

It appears that non-U.S. aerospace manufacturers frequently have little difficulty in finding sources of supply from competitors to U.S. producers of equipment and components used in air navigation systems. Major non-U.S. manufacturers that either now produce or appear capable of manufacturing components of inertial navigation systems (such as accelerometers and gyros) or the entire inertial navigation systems themselves include BAE Systems (United Kingdom), CORRSYS-DATRON (Germany), Murata Manufacturing Co. (Japan), and Thales Group (France).

Calculating the precise negative effect on U.S. trade that would result from a *de minimus* change is difficult. In part, this is because the categorization of aircraft components for purposes of trade data, using the Harmonized System (HS), does not match the categorization of navigation and avionic parts in Category 7A of the CCL. For example, there is no discrete HS code for "accelerometers", for which there is a code in the CCL. Products categorized under HS code

⁴ January 5, 2009 *Federal Register*, p. 263-264

⁵ This would seem to be the case, for example, in inertial navigation systems classified under ECCN 7A103, paragraph a: "inertial or other equipment using accelerometers or gyros controlled by 7A001, 7A002, 7A101 or 7A102 and systems incorporating such equipment." We understand that non-U.S. manufacturers of products subject to the EAR and classified under ECCN 7A103 are required to receive a license for exports to all countries except Canada.

9014206000 include “electrical instruments and appliances for aeronautical or space navigation, (other than compasses), nesoi [Not Elsewhere Specified Or Included]”, with no distinction made between the two different applications (aeronautics and space). To the extent the reported data under this HS code includes products used in space navigation, it overstates the value of products used in aeronautical applications.

Given these difficulties, ITA roughly estimates that U.S. exports in 2007 of the air navigation products at issue in CCL Category 7A was on the order of \$1 billion. See Attachment C. This data has several limitations. For example, it does not allow for the segregation of products exported for use in the assembly of new aircraft, in contrast to those exported for use in the repair and maintenance of aircraft already on the market.⁶

It is possible that a change in the *de minimus* rule on certain CCL Category 7A products could have adverse effects on U.S exports of other civil aircraft components. This could be the case if a non-U.S. aircraft manufacturer were to believe that the change in Category 7A could signal other changes being made to the EAR. If so, that manufacturer may seek to “design out” all U.S. content to avoid the possibility of being subject to the EAR in the future.

⁶ Private owners outside the United States of GA aircraft produced abroad presumably also would be affected by a change in the *de minimus* rule. ITA believes that the typical owner would not be aware of any change in BIS’s rules. If this is correct, those owners’ decisions to purchase U.S. aircraft navigation equipment would not be influenced, even though use of the U.S. equipment technically would subject their aircraft to the EAR if the *de minimus* change were to be made.

NON-U.S. MANUFACTURERS OF CIVIL AIRCRAFT WHICH POTENTIALLY COULD BE
AFFECTED BY A CHANGE IN BIS'S *DE MINIMUS* RULE

Helicopters

AgustaWestland International Ltd. (United Kingdom)
AgustaWestland Italy (Italy)
Denel Aviation (South Africa)
Eurocopter SAS (France)
Fuji Heavy Industries (Japan)
Hindustan Aeronautics Ltd. (India)
Kamov (Russia)
MIL (Russia)
Mitsubishi Heavy Industries (Japan)
NH Industries (France)
PZL-Swidnik (Poland)

Business and general aviation fixed wing aircraft

Alpha Aviation (New Zealand)
Apex Aircraft (France)
AQUILA Aviation by Excellence AG (Germany)
Beriev Aircraft Co. (Russia)
Britten-Norman Aircraft (United Kingdom)
Construcciones Ligeras y Aeronáuticas, S.L. (COLYAER) (Spain)
Costruzioni Aeronautiche TECNAM (Italy)
Czech Aircraft Works (CZAW) (Czech Republic)
Dassault Aviation (France)
Diamond Aircraft (Canada)
EADS PZL Warszawa-Okęcie (Poland)
EADS Socata (France)
Embraer (Brazil)
Found Aircraft Canada Inc. (Canada)
Gippsland Aeronautics (Australia)
Grob Aerospace (Germany)
Jordan Aerospace Industries (Jordan)
Komsomolsk-On-Amur Aircraft Production Assn. (Russia)
Motorávia, Engenharia Aeronáutica, S.A. (Portugal)
Norman Aviation International, Inc. (Canada)
OMA SUD (Italy)
Pacific Aerospace Ltd. (New Zealand)
Piaggio Aero Industries (Italy)
Pilatus Aircraft Ltd. (Switzerland)

PZL-Mielec (Poland)
Reims Aviation (France)
Sukhoi Design Bureau (Russia)
Vulcanair Spa. (Italy)
Warrior (Aero-Marine) Ltd (United Kingdom)

Notes

1. This list is not intended to be all inclusive.
2. This list does not include non-U.S. companies that manufacture exclusively gliders, experimental aircraft, and kit airplanes even though some of these aircraft may incorporate products (such as altimeters) covered by the possible change to the *de minimus* rule.
3. As of late 2008, Alpha Aviation and Grob Aerospace had ceased operations due to financial difficulties. It is not clear whether these companies will resume operations.

2007 U.S. Selected Domestic Exports

| HS # | Description | Value (\$ x 10 ³) | Quantity (units) |
|--------------|--|----------------------------------|---------------------|
| 8526910010 | Radio navigational aid apparatus for use in civil aircraft | 212,645 | 20,888 |
| 9014106040 | Gyroscopic compasses, other than electrical for use in civil aircraft | 1,181 | 473 |
| 9014107040 | Gyroscopic compasses, electrical for use in civil aircraft | 7,911 | 2,021 |
| 9014109040 | Direction finding compasses for use in civil aircraft, NESOI | 2,369 | 2,224 |
| 9014202000 | Optical instruments and appliances for aeronautical or space navigation (other than compasses) | 89,283 | 19,091 |
| 9014204000 | Automatic pilots for aeronautical or space navigation | 52,513 | 9,488 |
| 9014206000 | Electrical instruments and appliances for aeronautical or space navigation (other than compasses), nesoi | 526,365 | 82,801 |
| 9014208040 | Instruments and appliances for use in civil aircraft | 240,434 | 66,518 |
| 9014208080 | Instruments and appliances for aeronautical or space navigation (other than compasses), nesoi | 160,845 | 831,712 |
| TOTAL | | 1,293,546 | 1,035,216 |

Notes

1. "Domestic exports" excludes foreign exports. The latter are commodities of foreign origin that have entered the United States but are "re-exported" in substantially the same condition as when imported.
2. "HS #" refers to the Harmonized System, a method of classifying goods for the purpose of quantifying trade movements that has been adopted by most members of the World Trade Organization.
3. Dollars values are reported as "free alongside ship" (FAS). The FAS value represents the transaction price of the merchandise including inland freight, insurance, and other charges incurred in placing the merchandise alongside the carrier at the U.S. port of exportation. The value excludes any loading, transportation, or insurance costs beyond the port of exportation.

From: "Rill, Dale" <dale.rill@honeywell.com>
To: <publiccomment@bis.doc.gov>
Date: Thu, Jan 22, 2009 8:22 AM
Subject: "7A/De minimis"

Honeywell International Inc. (Honeywell) provides the following response and comments to the Federal Register notice dated November 20, 2008, "Request for Public Comments on the Prospect of Removing 7A Commodities From De Minimis Eligibility."

The proposed change would remove from de minimis eligibility commodities controlled for missile technology (MT) under category 7 except when the 7A commodities are incorporated as standard equipment in FAA (or national equivalent) certified civilian transport aircraft. If these changes were adopted, non-U.S. systems that incorporate U.S.-origin 7A commodities would be subject to Export Administration Regulations - regardless of the dollar value of the U.S. category 7 items - except where the 7A commodities are incorporated as standard equipment in FAA (or national equivalent) certified civilian transport aircraft.

Honeywell respectfully objects to this proposed rule for the following principal reasons:

First, it is unclear how the proposed change would alleviate diversion concerns in light of foreign availability. For example, Honeywell manufactures U.S. Category 7A001 and 7A101 accelerometers that are regularly used in commercial applications, such as high speed train ride control, ocean drilling rig stabilization, and commercial ship navigation. These accelerometers are currently sold to foreign customers, who integrate the CCL items into foreign origin systems that are subsequently re-exported without U.S. re-export authorization under the "de minimis" rule. If the "de minimis" exception were removed, Honeywell's customers could purchase comparable accelerometers from companies in Japan and Switzerland. These foreign-sourced accelerometers could be substituted for Honeywell's accelerometers and would not be subject to U.S. export authorizations, and would be equally subject to diversion. Honeywell, thus, respectfully recommends that additional controls in this area be addressed at the Wassenaar Arrangement and Missile Technology Control Regime level to ensure a level playing field and address the diversion concerns in a comprehensive manner.

Second, the unilateral removal of the de minimis exception would have a negative impact on U.S. domestic sales and the U.S. industrial base during these difficult economic times. Honeywell has already seen foreign competitors tout "ITAR-free" products in their marketing

brochures, and publication of this proposed rule will only feed the movement for foreign sourced products free from U.S. export controls. In the case of the 7A accelerometers noted above, for example, suppliers from Switzerland and Japan are pushing to take away market share from Honeywell. Likewise, foreign competitors for 7A002 gyroscopes manufactured by Honeywell and used in commercial underwater survey systems and other sea based systems are pushing to take away market share. Limiting the change in regulation to U.S. suppliers only and not to suppliers in other Wassenaar Arrangement and Missile Technology Control Regime member countries will increase the degree of apprehension over selecting U.S. sources for these products because of the uncertainty over the future ability to sell and re-export the foreign origin system containing U.S. CCL controlled products. Designing such equipment into systems and aircraft involves a significant investment, and the prospect of interrupted supply is a serious business risk. The prospect of this change could provide non-U.S. sources of these products (gyros, accelerometers and inertial equipment) an unfair advantage over U.S. based providers. Unilateral controls, such as those proposed in the proposed rule, could also incentivize non-U.S. based companies to make investments in the development and production of these devices because of the advantage they would hold in this area over U.S. providers.

Third, inertial systems controlled under ECCN category 7A from non-U.S. suppliers are being actively marketed and sold into both military and civil aircraft markets. Although U.S. suppliers have had the most success in this area for high end inertial navigation systems, there are viable non-U.S. suppliers now being awarded major contracts for these systems in foreign origin aircraft. Although the stated prospect makes exception for civil certified end use, most aircraft manufacturers do create derivative aircraft for use in applications not normally identified as commercial use. These include maritime monitoring, government transport, and certification authority inspection vehicles. The restriction on the sale of such aircraft prior to obtaining U.S. re-export authorization for the CCL integrated product would promote the selection of foreign available products to avoid the need for U.S. re-export authorizations. The prospect of incorporating a different foreign supplier of inertial systems into these derivative aircraft makes the initial selection of a U.S. source less attractive.

For the reasons stated, Honeywell respectfully requests that controls in this area be addressed at the Wassenaar Arrangement and Missile Technology Control Regime level to ensure a level playing field, to avoid disadvantaging U.S.-based companies, and to address the risks of diversion in a comprehensive manner.

Dale Rill

Director, International Trade

Export Control & Compliance

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From: "Depew, Kim (GE Infra, Aviation, US)" <kim.depew@ge.com>
To: <publiccomments@bis.doc.gov>
Date: Tue, Jan 27, 2009 9:12 PM
Subject: 7A/De minimis

The U.S. Department of Commerce issued a "Request for Public Comments on the Prospect of Removing 7A Commodities from De Minimis Eligibility" on November 20, 2008 in the Federal Register. The Transportation and Related Equipment Technical Advisory Committee (TRANSTAC) has a concern in the Category 7 controlled equipment in the Commodity Control List and the effective impact of changes on the export controls of these products. The proposed change is seen as having a negative impact on some equipment under these controls.

The items in Category 7 affected by the change identified in the inquiry includes accelerometers, gyros and inertial equipment including inertial reference systems (IRS) and attitude heading reference systems (AHRS). De minimis would cause those non-US located manufacturers of systems and non-civil certified aircraft or other transportation vehicles to seek U.S. Department of Commerce re-export approval when those systems are exported from the country in which they are produced. This is not a requirement of similar equipment from non-U.S. suppliers which directly compete with U.S. companies that would be affected.

Additionally, this being an additional measure of export control only on U.S. origin product, it could create further reluctance of non-U.S. companies and potential customers of those products to select U.S. content for those systems and therefore negatively impact the U.S. competitive position in the world market.

While the need to prevent diversion of this equipment to locations where it would potentially be used in ways that may harm U.S. security, these same concerns should exist in other MTCR and Wassenaar member countries. It is therefore the recommendation of the TRANSTAC that rather than effect an additional burden on U.S. companies, that additional protections be sought that would equally apply to the other world suppliers of these commodities and thereby also provide a broader and more effective control.

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