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November 7, 2007

Mr. Mario Mancuso
Under Secretary for Industry and Security
U.S. Department of Commerce

CISTEC's Requests to BIS on the U.S. Reexport Control

Dear Mr. Mancuso:

Thank you for your acceptance of the CISTEC delegation's meeting with you and the other BIS's senior management officials on November 15, 2007.

Concerning the above-captioned matters, first of all, we would like to express our gratitude to the U.S.'s understanding of Japanese concerns regarding the operation of the reexport control system and the U.S.'s efforts to settle the issues. These U.S.'s understanding and efforts are stated in the "THIRD REPORT TO THE LEADERS ON THE U.S.-JAPAN REGULATORY REFORM AND COMPETITION POLICY INITIATIVE" dated June 8, 2004 and the "SIXTH REPORT" on the same dated June 6, 2007, which were jointly written and published by both the U.S. government and Japanese government.

We would be very grateful if BIS would accept CISTEC's following requests and thereby further enhance the U.S. entire reexport control systems.

1. Our ultimate request

We would like to ask BIS to exempt countries which are members of all of export control treaties/multilateral regimes and also have established appropriate export control laws/systems (e.g. Japan) from U.S. re-export control.

Alternatively, it would be also appreciated if BIS would create a new license exception for reexports from countries which meet the above-mentioned criteria in the EAR (Export Administration Regulations), as requested in "Recommendations for Modernizing Export Controls on Dual Use Items" dated March 6, 2007 of the "Coalition for Security and Competitiveness" formed by the U.S. leading industrial associations, such as NAM, AeA, and so on.



2. Our requests as transitional measures

2.1. US exporters' legal obligation to provide ECCN

As a transitional measure, we would like to ask BIS to stipulate as soon as possible in the EAR the US exporters' legal obligation to provide the importers with the classification information (e.g. ECCN), as requested by "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE U.S. REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 24, 2003 and December 5, 2006.

The reasons are as follows:

- (i) Although "Best Practice for Transit, Transshipment, and Reexport of Dual Use Items subject to the EAR" published by BIS on November 23, 2003 requests exporters to provide the ECCN to the end users and the ultimate consignees, this guideline stipulates that it creates no legal obligation to comply with such best practices.
- (ii) In order for our non-US companies to sufficiently comply with the re-export control regulations by the EAR, it is indispensable for them to receive the EAR classification information (i.e. Whether the items are EAR99 or ECCN item?; In case of a ECCN item, what is the specific ECCN of the item?) as to the items exported from the US exporters. However, there are many cases where US companies are reluctant to provide the non-US importers with the EAR classification information mainly because the EAR does not oblige US exporters to do so.
- (iii) Under the EAR § 748.3, anyone can ask BIS about the classification and receive the BIS's reply. Due to this BIS's assistance, the stipulation of the above-stated US exporters' legal responsibilities would not cause a heavy burden on the US exporters. On the contrary, non-stipulation of the above-stated US exporters' legal responsibilities would substantially force the non-US importers to spend much time in confirming BIS's classification judgment, which would be a heavy burden on non-US importers because non-US importers do not have sufficient information on the items provided by the US exporters. Considering US exporters have much more information on their own items to be exported than the non-US importers, we believe it fair to stipulate the above-stated US exporters' legal responsibilities and thereby to have the US exporters confirm BIS's judgment under the EAR § 748.3 in difficult cases without shifting the task to non-US importers.



2.2. U.S. Industries' Recommendations

The above-mentioned "Recommendations for Modernizing Export Controls on Dual Use Items" dated March 6, 2007 of the "Coalition for Security and Competitiveness" make recommendations on various EAR issues in addition to its above-stated recommendations on a new license exception. We think these recommendations on the EAR are also important and reasonable and thus would like to ask BIS to accept them as much as possible.

3. Background of the CISTEC's requests above

3.1 Our Japanese companies' efforts and burdens for complying with the EAR

Japanese companies spend a long time and large cost in complying with the EAR (e.g. education and training to the employees, including making the internal EAR textbooks or manuals in Japanese language). According to the results of the questionnaire survey to major companies, in general, the cost for coping with the EAR is 10% to 30% of the entire export control cost.

3.2 Avoidance of the purchase or adoption of US origin items due to the EAR reexport control

We non-US companies are sometimes substantially forced to avoid the purchase or adoption of US origin items and replace them with non-US origin items, even at the stage of the design (i.e. "design out"), for the purpose of reducing the time and human cost to be caused by coping with the EAR and avoiding the risk of the violation of the EAR.

(Note):

Although CISTEC tried to precisely estimate the value amount of the above-mentioned avoidance and replacement of US origin items by Japanese industries, it was practically very difficult to do so.

Therefore, instead of showing the value amount, we would like to show the actual examples of Japanese industries in the attachment.

3.3 Loss of the business chances due to the EAR reexport control

Furthermore, there are some cases where we non-US companies are substantially forced to give up the reexport businesses which are involved with the items subject to the EAR in order to reduce the time and human cost and avoid the risk of the violation of the EAR.

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3.4 CISTEC and JMC's efforts for enhancing the Japanese industries' awareness of the EAR

- (i) CISTEC and JMC (Japan Machinery Center for Trade and Investment) publish the following useful EAR guidebooks.
- "Beginner's Guide for the US Reexport Control" (published by CISTEC)
 - "Q&A/Case Study on the US Export and Reexport Control" (published by CISTEC)
 - "Explanation of EAR Violation Cases" (published by CISTEC)
 - "Guidance for Experienced Export Control Personnel on the US Reexport Control" (published by JMC)
- (ii) CISTEC also holds various seminars and training courses on the EAR for Japanese companies, the lecturers of which are EAR experts of Japanese companies and a U.S. lawyer.

Thank you for your understanding and assistance.

Sincerely yours,

Tsutomu Oshida

Tsutomu Oshida
Executive Managing Director
Center for Information
on Security Trade Control (CISTEC)

Attachment

Japanese industries' actual examples of avoidance or replacement of U.S. origin items due to the U.S. reexport control

[Example 1]:

- The entire non-U.S. origin items exported from Japan:
 - Plasma cleaning equipment (\$125,000 - \$165,000 per each)
- U.S. origin item which was avoided and replaced with non-U.S. origin items for the incorporation into the above-mentioned non-U.S. origin plasma cleaning equipment :
 - U.S. origin pressure transducer (ECCN: 2B230) (\$1,700 per each)
 - This was replaced with Liechtenstein origin one.
- Reasons of the avoidance/replacement:
 - The pressure transducers themselves sometimes need to be exported to the customers from Japan for the maintenance of the plasma cleaning equipment. However, as for the U.S. origin pressure transducer (ECCN: 2B230), although APR (EAR740.16(j)) is applicable in case of the reexport from Japan to designated countries, the reasons for control are NP Column 1 and AT Column1 and also the license exceptions LVS, GBS or CIV are not applicable (N/A) at all under the Commerce Control List of the EAR. Therefore, there are various possible cases where none of license exceptions are applicable and thus the reexport would require license.

[Example 2]:

- The entire non-U.S. origin items exported from Japan:
 - Routers (\$42,000 per each)
- U.S. origin item which was eliminated from the above-mentioned non-U.S. origin routers:
 - U.S. origin encryption software (ECCN: 4D003) (\$25 per each)
- Reasons of the elimination/avoidance:
 - Although it was indispensable to precisely confirm the license exception status of the above-mentioned U.S. origin encryption software (ECCN: 4D003) for complying with the EAR, it was practically difficult to do so.

[Example 3]:

- The entire non-U.S. origin items exported from Japan:
 - Solar batteries for artificial satellites
- U.S. origin item which was avoided and replaced with non-U.S. origin items for the incorporation into the above-mentioned non-U.S. origin solar batteries
 - U.S. origin cover glass
 - This was replaced with U.K. origin one.
- Reasons of the avoidance/replacement:
 - For reducing the burdens of the confirmation of ECCN of the U.S. origin cover glass and also decreasing the time and human cost for coping with the EAR.