March 18, 2013

U.S. Department of State
Bureau of Political-Military Affairs
Department of Defense Trade Controls
2401 E Street, N.W.
12th Floor, SA-1
Washington, D.C. 20522

ATTN: Ms. Candace M. J. Goforth, Director, Office of Defense Trade Controls Policy,
Department of State

RE: Regulatory Change, USML Category IV

Dear Ms. Goforth:

The Aerospace Industries Association (AIA) and our member companies appreciate the opportunity to comment on the Department of State’s proposed amendments to the International Traffic in Arms Regulations (ITAR). Revising Category IV (launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs, and mines) of the U.S. Munitions List (USML) to describe more precisely which items and related defense articles warrant control on the USML will create a “positive” list that will result in a more predictable, efficient, and transparent export control system. AIA has long been a champion of export control reform, and we are encouraged the Administration shares this priority. To further progress on sensible export controls, AIA would like to highlight the below issues for further consideration.

Space Tourism:

Space tourism is an emerging industry. Current regulations fail to adequately address this growing and changing industry. USML Category IV, and for that matter the Missile Technology Control Regime (MTCR), create a disincentive for investment in the commercial space industry. Point-to-point commercial space travel will be a reality in the not too distant future and it should be encouraged to develop. Additionally, the U.S. government should look to create regulatory/investment incentives as they are relying on the commercial space industry to deliver supplies to the ISS. A strong space industrial base is a national security priority and will ensure the U.S. remains a world leader in space.

Recommendation: The Administration should continue to adopt language and policies that will encourage further investment in and development of the commercial space industry. Among possible policy changes to encourage investment/development is removal of the MTCR
"presumption of denial" for the export of manned spacecraft vehicles with integrated propulsion systems.

**Missile Detection:**
There is an increasing commercial interest in missile detection, monitoring, and countermeasure systems on civil aircraft.

**Recommendation:** DDTC should establish a policy that addresses the commercial interest in above capabilities. Possible options include transferring the items currently captured by Paragraph (c) to the “600-Series”, establishing a flexible licensing structure for instances where such systems are installed on civil aircraft platforms, or adding a note to Paragraph (c) that articulates a different control structure under a defined set of circumstances.

**Missile Technology Controls:**
Does the use of a Missile Technology (MT) component in conjunction with non-MT components make the whole item MT?

** Classified Information:**
In some cases, the identification of certain parameters of a controlled item (such as range) may be relevant to its level of control, but classified. Typically, if a range is classified, companies identify that the vehicle is "> than XXX nm" to ensure appropriate control. However, by identifying the more specific USML category – e.g., on licenses and shipping documents which reflect the USML category – it is possible that an exporter would be revealing that a shipment may contain sensitive items.

**Recommendation:** In order to ensure appropriate protections of this type of information, we recommend that the Department of State clarify that identifying an item as IV(a) – rather than IV(a)(2) – is sufficient for export purposes, if range/missile characteristics are classified.

**Launchers:**
Regarding IV(b), most fixed launch sites are predominantly steel and concrete structures with no inherent sensitive technologies. As a general matter, the ground support equipment are the sensitive items that warrant control on the USML. For example, as written, the proposed controls could potentially include: bridge cranes, mobile service towers, umbilical towers, flame buckets, water suppression systems, fire control systems, etc.

**Recommendation:** The final rule may want to consider whether the structure of launch facilities are inherently military and sufficiently sensitive to be controlled on the USML.

**Payload Fairings:**
IV(h)(7) controls parts and components, accessories and attachments, and associated equipment, including nose tips, nose fairings, or aerospikes.

**Recommendation:** We recommend that this section also identify composite and metallic payload fairings, unless the intent is to control these items under 9A604.x.

**Pneumatic Control Systems:**
Similarly, IV(h)(28) controls hydraulic, mechanical, electro-optical, or electromechanical flight control systems.
Recommendation: We recommend that this category also include pneumatic control systems.

Transportation and Handling Equipment:
There are other items that are not enumerated in the proposed Department of State and Department of Commerce rules. For example, transportation and handling equipment for rockets, SLVs, and missiles—e.g., slings, Lifting mechanisms/equipment, trailers, storage containers, and dollies or bogies—are not referenced in the controls. Other types of flight hardware, such as active wind sensing, pressurization systems, air liquefaction systems, and telemetry systems are not identified.

Recommendation: AIA recommends that the Departments of State and Commerce identify these items on the appropriate control lists.

Specific Category IV Language:
Based on the proposed rule, AIA is seeking clarification of the following:

Note 1 and Note 2 to Paragraph B: Manned Aircraft
Regarding manned aircraft designed to carry and launch Space Launch Vehicles (SLV). Note 1 in paragraph (b) of Category IV states that “Launcher mechanisms for use on aircraft are controlled in Category VIII(h).” Note 2 states “Launcher mechanisms which have been integrated onto a vessel, ground vehicle, or aircraft are controlled in USML Categories VI, VII, and VIII, respectively.” These Notes would also seem to support the notion that the actual aircraft that utilize such launcher mechanisms should also be controlled in Category VIII (Aircraft) – rather than in Category IV(b) as “Launchers for rockets, SLVs and missiles.”

Recommendation: The final rule on USML Category IV should provide additional clarity with respect to the export control jurisdiction and classification of manned aircraft which are designed to carry and launch SLVs.

Section (d):
"Catch All" Category for Rockets, SLVs, and Missiles: Section (d)(7) reads, “(7) Rocket, SLV, and missile engines and motors, not otherwise enumerated in paragraphs (d)(1) through (d)(6) of this category, USML Category XIX, or CCL ECCN 9A619.” Using the phrase “not otherwise enumerated” and citing the CCL in the proposed regulations negates the goal of creating a “positive list.”

Recommendation: The final rule should make clear whether there are commercial sounding or research rockets (below a range of 300 km) that are not controlled on the USML.

Section (h):
Paragraphs (h)(6), (9), (11), (20), (21), (22) and (25): The words “usable in” could be interpreted quite broadly and could make items “MT controlled” by the mere fact they could be used in such systems.

Recommend: DDTC should revise this language to read “MT for xxx “specially designed” for systems enumerated in paragraphs (a)(1) and (a)(2)…” in order to prevent capture of items not intended to be controlled for MT reasons.
Note to paragraph (h)(17) reads, in part, “For controls on spacecraft, see USML Category XV or CCL ECCN 9A515. Using ‘or’ implies practitioners can review either. Suggest replacing ‘or’ with ‘then’; since the requirement is to first review the USML then the CCL.

The word ‘related’ is missing from Section (i). Section (i) should read, in part: “…paragraphs (a) through (h) of this category and classified technical data directly related to items controlled in CCL ECCN 0x604…”

In order to clarify the scope of control of (h)(23), the following change is recommended: (h) Systems, subsystems, parts, components, accessories, attachments, or associated equipment, specially designed for articles enumerated in paragraph (a) as follows. If Note 2 to paragraph (a) is intended to provide the definition of payload for all of Category IV, the following control text as proposed as an alternative: (h) Systems, subsystems, parts, components, accessories, attachments, or associated equipment, as follows: (23) Payload fairings (see Note 2 to paragraph (a)).

AIA has long been a champion for sensible export control reform and we commend the Administration for their tireless efforts to achieve meaningful reform. Please know that AIA is a willing and committed partner to reform efforts going forward.

Best regards,

Remy Nathan
Vice President, International Affairs
Aerospace Industries Association