



UNITED STATES DEPARTMENT OF COMMERCE
Assistant Secretary for Export Administration
Washington, D.C. 20230

December 13, 2013

Brian Toohey
President & CEO
Semiconductor Industry Association
1101 K St NW, Suite 450
Washington, DC 20005

RE: Application of “specially designed” to multipurpose die, standard packages, and integrated circuits comprised thereof

Dear Mr. Toohey:

On May 13, 2013, the Semiconductor Industry Association (SIA) submitted to the Bureau of Industry and Security (BIS) a request for an advisory opinion confirming that paragraph (b) of the new definition of “specially designed” in the Export Administration Regulations (EAR) (15 C.F.R. pts. 730-774 (2013)) “releases” multipurpose die, standard packages, and integrated circuits comprised thereof from the term. *See* 78 FR 22660, 22728 (Apr. 16, 2013) (codified in 15 C.F.R. § 772.1 (2013)). Based on the information provided in the request, and as discussed in more detail below, BIS agrees that multipurpose die, standard packages, and integrated circuits comprised thereof, as defined below, are not “specially designed” because such items (i) were designed with “knowledge” of use in a wide range of applications, or (ii) have the same function, performance capabilities, and the same or ‘equivalent’ form and fit as a multipurpose die, standard package, or integrated circuit comprised thereof used in a wide range of applications in “production.”

Relevant Definitions and Background

For purposes of this Advisory Opinion, the term “multipurpose die” means a specific die that is used in multiple applications, with the range of such applications extending from use in commercial and industrial items (including AT-only and EAR99 items) to use in military items. The term “standard package” means a specific package that is an unmodified, commercial-off-the-shelf package widely available, sold in large volume, and used in multiple applications. The phrase “integrated circuits comprised thereof” means integrated circuits that are composed of such multipurpose dies and standard packages.

The advisory opinion request indicated that such multipurpose dies, standard packages, and integrated circuits comprised thereof are enabling items designed for and used in a wide range of applications, including a wide variety of different types of commodities. The advisory opinion request distinguished between ASICs (application specific integrated circuits) and the integrated circuits comprised of multipurpose die encased in standard packages about which the opinion is sought. The advisory opinion request went on to note that SIA is aware that if integrated circuits comprised of multipurpose die encased in standard packages are subject to additional development activities for a specific application, then a separate analysis of the new “specially designed” definition would need to be conducted with respect to such items. For such ASICs



and integrated circuits comprised of multipurpose die encased in standard packages that are subject to additional development activities, SIA stated that it understands the application of “specially designed” for these types of integrated circuits and that such integrated circuits are not part of this advisory opinion request.

The advisory opinion request included a number of attachments that supported SIA’s analysis that multipurpose die, standard packages, and integrated circuits comprised thereof, as defined above, are or were used in various commodities that would meet the paragraph (b)(3)(ii) criteria of the release provision of “specially designed.” These commodities include, but are not limited to, medical equipment, passenger vehicles, and consumer electronics that would be classified on the Commerce Control List (CCL) under Export Control Classification Numbers (ECCNs) controlled for Anti-Terrorism (AT)-only reasons or designated as EAR99.

Relevant Regulations, Analysis, and BIS Response

In order to be “released” from “specially designed,” a “part,” “component,” “accessory,” “attachment,” or “software” caught under paragraph (a) must meet the criteria of one or more of the paragraph (b) “releases” of the “specially designed” definition. After considering the information contained in the advisory opinion request and its attachments and information presented to BIS in subsequent meetings regarding the advisory opinion request, BIS agrees that multipurpose die, standard packages, and integrated circuits comprised thereof, as defined above, are not “specially designed” because such items (i) were designed with “knowledge” of use in a wide range of applications, including a wide variety of different types of commodities, such as medical equipment, passenger vehicles, and consumer electronics, or (ii) have the same function, performance capabilities, and the same or “equivalent” form and fit as a multipurpose die, standard package, or integrated circuit comprised thereof that is used in a wide range of applications in production.

In making its determination, BIS has considered the paragraph (b) “releases” in (b)(3), (b)(4), and (b)(5) of the definition of “specially designed.”¹ In order for multipurpose die, standard packages, and integrated circuits comprised thereof, as defined above, to be “released” under paragraphs (b)(4) or (b)(5), there must be documentation contemporaneous with the “development” of such multipurpose die, standard packages, and integrated circuits comprised thereof that, in their totality, demonstrates the criteria of paragraphs (b)(4) or (b)(5). To be released under (b)(3), the multipurpose die, standard packages and integrated circuits comprised thereof, must have the same function, performance capabilities, and the same or ‘equivalent’ form and fit as a commodity or software used in or with an item that: (i) is or was in production, and (ii) is either not ‘enumerated’ on the CCL or USML, or is described in an ECCN controlled only for AT reasons.

¹BIS is not suggesting with this sentence that more than one subparagraph of paragraph (b) must apply to an item for it to be released from the definition of “specially designed.”

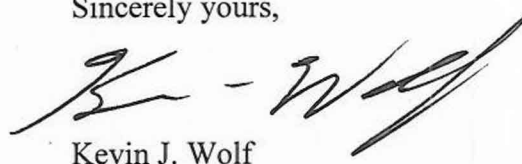
In SIA's request and in subsequent discussions with SIA, SIA specified various documents that would be typically available and pertinent to the analysis of "specially designed." These documents include marketing materials and other kinds of contemporaneous information that indicate the types of applications for which the multipurpose die, standard packages, and integrated circuits comprised thereof are suitable. The documents also include technical information indicating that such multipurpose die, standard packages, and integrated circuits comprised thereof are suitable for use in a variety of different applications, including in AT-only or EAR99 commodities and in a variety of different types of commodities. Marketing materials available to SIA may also indicate such multipurpose die, standard packages, and integrated circuits comprised thereof had been or are being used in AT-only or EAR99 commodities, which would be an indication that such multipurpose die, standard packages, and integrated circuits comprised thereof also meet the (b)(3) "production" 'release' under the new "specially designed" definition.

Based upon a review of the documentation submitted in the advisory opinion request and subsequent discussions, for those multipurpose dies, standard packages, and integrated circuits comprised thereof, as defined above, for which there is available documentation contemporaneous with the development, BIS has determined that, in its totality, the documentation shows that such items were developed with "knowledge" that they would be used in commodities not "enumerated" on the CCL or USML or with no "knowledge" of a particular use in or with any particular commodity or type of commodity. For those multipurpose dies, standard packages, and integrated circuits comprised thereof, as defined above, for which contemporaneous documentation is not available, BIS has determined that the subsequent documentation provided to BIS shows that such items have the same function, performance capabilities, and the same or "equivalent" form and fit, as commodities used in or with items in "production" and either not "enumerated" on the CCL or USML, or on the CCL and controlled only for AT reasons.

Conclusion

This advisory opinion is based on the representations SIA made in its request. It does not apply to articles subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). This advisory opinion is made without prejudice to ASICs or to other integrated circuits that are not comprised of multipurpose die encased in standard packages. Any deviation from the facts presented in SIA's request may change the result under the EAR, including whether a particular multipurpose die, standard package, or integrated circuit comprised thereof is "specially designed." You have informed BIS that SIA will make this Advisory Opinion available on the SIA web site, www.semiconductors.org. If you have any further questions, do not hesitate to contact me at kevin.wolf@bis.doc.gov.

Sincerely yours,



Kevin J. Wolf