John Neuffer, President & CEO

August 22, 2019

Nazak Nikakhtar
Assistant Secretary for Industry and Analysis,
performing the non-exclusive duties of the
Under Secretary for Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

RE: Request for Opportunity to Comment on Apparent Plans to Amend the EAR

Dear Ms. Nikakhtar:

The Semiconductor Industry Association (SIA)[1] is writing to request the opportunity to comment on potential plans by BIS to eliminate or amend EAR License Exceptions CIV and APR, as announced by the Office of Management and Budget (OMB) on its website.[2] OMB also published a notice regarding BIS's plans to amend EAR section 744.21 so that it (a) prohibits the unlicensed export of otherwise uncontrolled AT-only items if there is knowledge they are for a military end user in China (presumably even if the end use is civil) and (b) has a broader definition of "military end use."[3] The same OMB notice states that BIS plans to amend licensing policies for RS-controlled items to China, Russia, and Venezuela. Finally, the OMB notice states that BIS plans to add Electronic Export Information filing requirements in the Automated Export System for exports to China, Russia, and Venezuela.

The public notices do not provide much more detail regarding the content or the timing of these changes. As a result, we are unable to provide detailed comments on these potential changes. **Rather, we ask that any such changes be described to the public in a proposed rule with a chance for industry to comment rather than in a final or interim final rule.** Regardless of the national security justifications for any such changes, they are the types of changes that are certain to have material impacts on the compliance programs, licensing obligations, and supply chain operations of most of our members. The potentially affected EAR provisions have been largely unchanged for decades. As a result, compliance program and global production and distribution structures have built up around them. A sudden change to the requirements would thus likely impose significant costs and burdens for the companies that would need to alter immediately such programs and structures. In addition, the risk of inadvertent violations is high for many of the companies that have complex systems and widely distributed employees who would need to be trained on the changes. The disruptions would almost certainly benefit their

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[1] SIA is the trade association representing the semiconductor industry in the United States. SIA member companies are engaged in the research, design, and manufacture of semiconductors. The U.S. is the global leader in the semiconductor industry, and continued U.S. leadership in semiconductor technology is essential to America's continued global economic and technology leadership. More information about SIA and the semiconductor industry is available at www.semiconductors.org.
[2] https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=0694-AH65
[3] https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=0694-AH53

foreign competitors that would not need to work through similar changes to their compliance and distribution systems at the same time. SIA recognizes the growing trends for some countries to encourage domestic civilian-military fusion within their economies and the serious national security risks associated with that trend and challenges this poses to U.S. export control regimes. SIA is committed to working with BIS where legitimate national security concerns can be addressed in a way that also balances the needs of the semiconductor industry to maintain global competitiveness.

As with most proposed export control rules, the opportunity for industry to comment will give BIS valuable information about the practical aspects of the change and how better to accomplish the national security objectives in the least regulatory burdensome way possible. Public comments will enable BIS officials to understand better the unintended collateral consequences unrelated to the policy merits of the rule. A standard proposed rule and public comment process will also give industry a chance to begin modifying their internal compliance programs and global distribution/production systems so that they can be ready to comply with the changes once they become effective.

In addition, an opportunity to provide comments might allow BIS to achieve national security goals without removing license exception completely as some of our members may have suggestions regarding other ways to accomplish the objectives that may be of use or benefit to BIS. For example, some of our members may make suggestions and comments such as the following:

1. BIS could create a bulk licensing setup similar to its Encryption Licensing Arrangements that would authorize exports of now CIV-eligible items to end users and intermediate warehouse locations in Country Group D:1.

2. BIS could implement a periodic post-export reporting requirement.

3. BIS could create bulk licenses that would authorize otherwise CIV-eligible items, such as 3A001.a.7 semiconductors, to a class of end users (such as telecommunication equipment manufacturers) located in D:1 countries that have not been deemed to create a national security risk.

4. BIS could tailor the amendment to License Exception CIV so that it would allow for exports to subsidiaries or affiliates of U.S. companies for internal use or development activities.

5. A "safe harbor" or exclusion clause could be added to authorize temporary/transiting shipments to distribution sites or warehouses located in D:1 countries removed from eligibility for CIV license exceptions if the final end users are located outside D:1 countries.

6. BIS could grandfather in current customers of exporters where there is no national security risk or military support.

7. A bulk licensing setup similar to ELA (Encryption Licensing Arrangement) authorizing exports of CIV-qualified items to D:1 end users including their appropriate "ship from" and warehouse locations with a periodic post export reporting requirement.

8. BIS could retain the use of license exception CIV when exporting 3A001 items to fully owned subsidiaries of companies headquartered in the United States as well as within Supplement 3 countries for internal use and internal development or production of new products.

Finally, based on what appears will be the size and significance of the changes identified on the OMB website, we are concerned that BIS does not have sufficient resources to process what are likely to be thousands of additional applications seeking authorizations for exports, reexports, deemed exports and transfers that rely on CIV or other license exceptions. Absent additional resources that BIS would require to hire additional licensing officers, we are concerned there will significant delays in license processing generally, which will result in unnecessary economic harm and regulatory burden for U.S. companies without benefiting the national security objectives of the EAR.

We would like to follow-up on this letter by scheduling a meeting to discuss the BIS plans at issue in the near future and to provide the opportunity for you to hear from our members directly. In the meantime, please do not hesitate to contact my staff (David Isaacs at 202-446-1709; disaacs@semiconductors.org or Erik Pederson at 202-446-1713; epederson@semiconductors.org) with any additional thoughts.

Sincerely,