SEMICONDUCTOR INDUSTRY ASSOCIATION

John Neuffer, President & CEO

April 17, 2020

The Honorable Richard Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security (BIS)
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Re: Request to Exclude Deemed Exports from Plans to Remove License Exception CIV

Dear Assistant Secretary Ashooh:

As you know, the Office of Information and Regulatory Affairs (OIRA) has announced BIS plans to amend the EAR to remove License Exception CIV as an authorization for the export and reexport of specific national security-controlled items to China and perhaps other countries.[1] Our understanding is BIS intends to publish this rule as a final rule, i.e., without the opportunity for public comments. On behalf of the Semiconductor Industry Association (SIA), I am writing to request BIS exclude from the scope of the new rule any changes that would limit deemed exports under License Exception CIV.

We understand the Administration's desire to address the Chinese government's "civil-military fusion" doctrine by giving BIS more direct control through individual license application review of exports and reexports that have historically been available for export under the exception if the end use is civilian. We are also aware the Administration believes BIS will be able to identify and control through application reviews potential diversions of such items to military end uses better than exporters through their due diligence screens of customers.

With this letter, we are not commenting on the merits of amending the EAR to remove License Exception CIV. SIA has potential concerns with this action and intends to submit comments later. Rather, this letter focuses on the potential impacts of such action on deemed exports and calls on BIS to address deemed exports in a separate proposed rule. As you are aware, a proposed rule would give those affected by the change an opportunity to comment prior to that portion of the rule becoming effective.

We make this request because the policy concerns motivating the changes for exports to China and other countries have nothing to do with the policy reasons for controls over deemed exports. That is, because the foreign nationals who would receive technology or software under License Exception CIV in the United States are, by definition, not in China (and generally employees of U.S. companies), BIS's concerns about China's civil-military fusion policies that are motivating the rule change do not exist for deemed exports.

For our members, the relevant ECCNs at issue are 3E002 and 5D001.a and d.4. Based on informal feedback from them and others in the industry who would be affected by the

[1] See https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=0694-AH84.

changes to the deemed export aspect of the exception, we estimate there would be significant numbers -- perhaps more than a thousand – of individual license applications that would need to be prepared, filed, reviewed, and then acted on to prevent disruptions. Even if BIS were to delay the effective date of the rule by 60 days, as we understand may be the case, we are confident it will not be possible for such license applications to be completed in a timely fashion. This will mean U.S. companies would need to sideline what are generally key scientists, engineers, and technicians from having access to technology and software they already have access to and are working with now. Such an impact will not in any way advance the policy objectives of the amendment. But it will impose unnecessary expenses, delays, and regulatory burdens on U.S. semiconductor companies and harm innovation in the United States.

Publishing the elements of the rule that would affect deemed exports as proposed would not, in our view, harm U.S. national security objectives because: (i) the foreign persons at issue already now have access to and are using the technology and software at issue; and (ii) such access and use have no bearing on China's civil-military fusion policies. If, however, BIS is unable to make this change, we ask for at least a six-month delayed effective date in that portion of the rule in order to give the affected companies a chance to prepare what are, as you know, rather time-consuming license applications for each affected individual. In addition, we ask you consider adopting for such applications a fast-track process for the foreign nationals who have already been approved in other deemed export licenses for the release of other types of controlled technologies or software. The U.S. government will have already reviewed, vetted, and cleared such individuals, otherwise it would not have issued them a license. Thus, in our view, another complete round of license application reviews with a full interagency clearance process would seem to be redundant.

An alternative idea we would like BIS to consider is the adoption of a phased implementation of any new deemed export-related changes so foreign nationals who are already named on other licenses may continue to receive the technology and software at issue under CIV until the existing licenses authorizing other deemed exports expire. Such a schedule will impose the minimum possible unnecessary burdens on industry and BIS because it would track the already-existing license application renewal process schedule.

Thank you for your consideration of our requests. We believe removal of deemed exports from the scope of this proposed change will not significantly impact U.S. national security interests and will reduce unnecessary regulatory and other burdens for both U.S. industry as well as for BIS and its interagency colleagues.

Sincerely,

John Neuffer
President & CEO