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February 19, 2009

The U.S. Department of Commerce
Bureau of Industry and Security

Attention: Mr. Christopher R. Wall, Assistant Secretary of Export Administration

Dear Mr. Wall,

Subject: Parts and Components Inquiry

We the Center for Information on Security Trade Control (CISTEC), a non-profit organization in Japan, are very pleased to submit herewith our comments in response to your parts and components inquiry made in the Federal Register 74 FR 413 dated January 5, 2009. Over the past years, as you may be aware, CISTEC has been constantly sending a delegation to BIS to exchange views mainly on the issue of extraterritorial application of the U.S. export control regulations. We would therefore take this as the right opportunity to present our views once again, with live data this time, for your due perusal.

To respond to your request, we conducted a quick survey making a questionnaire based on your inquiries. We sent it to our 352 member companies and received answers from 116 respondents, who are all leading companies in Japan operating businesses worldwide. The responses shown here do represent the majority opinions of Japanese industry. The answers, together with the questionnaire, are all translated into English, graphed out and attached to this letter for your reference and analysis.

The individual facts, comments and opinions collected here are direct voices of your "CUSTOMERS," and, therefore, we sincerely hope that you take those into serious consideration when you review your policies.

But before going into the details attached, please read the key points we summed up as below:

1. When actually required in the past to elect either non-U.S. or U.S.-origin items;
 - (1) 17% of the respondents answered that they straightaway elected non-US items disregarding the classification of the U.S.-origin items because they thought it's more efficient and cost effective. (Question 1-a-3)



- (2) 13% of the respondents answered that, in order to avoid any legal risks, they elected non-US items even if they knew that the U.S.-items were non-controlled. (Question 1-a-4)

Please refer to the answers to Questions 1-a-5 and 2(c), which are a collection of lost businesses to America.

2. When required in the future to elect either non-U.S. or U.S.-origin items;

- (1) 90% of the respondents answered that they would elect non-U.S. items in case the U.S.-origin items were controlled and required a license. (Question 1-b-1)
- (2) 50% of the respondents answered that they would straightaway elect non-U.S. items disregarding the classification of the U.S.-origin items because they think it's more efficient and cost effective. (Question 1-b-3)

The above results imply a trend that the stricter the U.S. export control regulations become, the more non-U.S. exporters elect non-U.S. parts and components for their products.

3. The free opinions received as responses to Question 6-f can be summarized as below.

- (1) The U.S. Government should abandon the extraterritorial application of its export control regulations since it's a violation of the international law and moreover imposes dual burden on non-U.S. exporters.
- (2) Or otherwise it should be rearranged and be maintained within the framework of the international export control systems so that its unilateral aspect can be eliminated.
- (3) If, however, the U.S. Government still insists on keeping the extraterritorial application as it is now, it must at least take the following steps immediately.
 - a) The member nations of the multilateral export control regimes should be excluded from the countries subject to the control because those countries, including Japan, are considered implementing national export controls no less strictly than the U.S.
 - b) It must be made mandatory for U.S. exporters to inform relevant ECCNs to their foreign importers.
 - c) Useful guidance must be published and face-to-face consultation service must be provided, both in our language.
 - d) The complicated regulations of the EAR must be simplified and streamlined so that everybody can understand them without difficulties. Moreover, the present multi-agency regulatory system, where different sets of regulations are intertwined, must be reformed into one single set of regulations that should be administered under one single authority.



4. Conclusion

On the basis of the attached comments from Japanese companies, we would like to make the following requests to your BIS, as we did in our official letter dated September 7, 2007 to Mr. Mario Mancuso, the then Under Secretary for Industry and Security, U.S. Department of Commerce.

4.1 Our ultimate requests

First of all, we must respectfully stress that the current extraterritorial way of applying the U.S. export control regulations is seriously influencing your own economy in disproportionate to contributing to national security. We believe BIS should make 'good foreign exporters', who are your customers and never a threat for national security, to easily and properly choose and purchase US-origin items.

Therefore, we would like to request 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, as requested in "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 15, 2008.

Alternatively, it would be also appreciated if BIS would create a new and much broader license exception for reexports from countries which meet the above-mentioned criteria in the EAR (US 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.

4.2. Our requests as a transitional measure

As a transitional measure, we would like to request BIS to stipulate as soon as possible in the EAR the US exporters' legal obligation to provide the importers with the export control classification information (e.g. ECCN), as requested in the above-mentioned "RECOMMENDATIONS BY THE GOVERNMENT OF JAPAN TO THE GOVERNMENT OF THE UNITED STATES REGARDING REGULATORY REFORM AND COMPETITION POLICY" dated October 15, 2008.

In this regard, we must point to the fact that many of the respondents indicate that a good percentage of U.S. companies are even unable to classify their products themselves or reluctant to provide the classification information to the importers mainly due to the lack of the above-mentioned legal obligation, and that it is causing considerable amounts of extra time and money to each company in Japan. This is one of the main reasons of Japanese companies' avoidance of the purchase or adoption of US origin items.



It is our strong desire that our comments presented here be a good help for your policy review.

Sincerely,

Tsutomu Oshida

Tsutomu Oshida
Executive Managing Director, CISTEC

Attachments:

- Exhibit 1: The questionnaire
- Exhibit 2: Survey results for Category No.1 to No.6
- Exhibit 3: Comments in response to questionnaire Category No.1 (a-5)
- Exhibit 4: Comments in response to questionnaire Category No.1 (a-6)
- Exhibit 5: Comments in response to questionnaire Category No.2 (c)
- Exhibit 6: Comments in response to questionnaire Category No.4 (a-2) and (b-2)
- Exhibit 7: Comments in response to questionnaire Category No.5 (b)
- Exhibit 8: Comments in response to questionnaire Category No.6 (f)