



SAFRAN USA, Inc.

SAFRAN Group

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May 9, 2008

Via Electronic Mail and Express Mail

Ms. Ann Ganzer
Department of State
Directorate of Defense Trade Controls
Office of Defense Trade Controls Policy
ATTN: Regulatory Change, ITAR Section 121
SA-1, 12th Floor
Washington, DC 20522-0112

RE: DDTC's Proposed Amendment and Note to USML Category VIII

Dear Ms. Ganzer:

Safran USA Inc. ("SUSA"), in the name of and on behalf of the Safran Group Companies, appreciates the opportunity to comment upon the Proposed Rule concerning the potential Amendment to the International Traffic in Arms Regulations: The United States Munitions List, published in the Federal Register April 11, 2008. SUSA, which has business primarily but not exclusively with foreign aircraft and engine companies, believes the proposed rule is a positive step in the dialogue with DDTC concerning the jurisdiction of parts and components used on civil aircraft. If the requested edits described below and in the attached are incorporated into the final Amendment and Note that DDTC publishes, SUSA and others in the aviation industry will be able to determine more quickly and with more certainty the jurisdictional status of aircraft parts and components. DDTC and SUSA will both benefit from this.

We have enclosed a copy of the proposed rule showing SUSA's suggested edits. This enclosure also includes SUSA's comments concerning several of the proposed edits. In addition, we offer the following comments with respect to the changes that we consider to be most critical:

Rationale for SUSA's Proposed Change to VIII(b)

The Department of State's proposed amendment to the International Traffic in Arms Regulations (ITAR), Part 121, adds military hot section components and military digital engine controls for military aircraft engines to Category VIII(b). Previously, these items were controlled under Category VIII(h). This means that these items—military hot section components

and military digital engine controls—would be newly designated as “significant military equipment” or “SME,” as that term is defined in Section 120.7(b)(1).

According to the Supplementary Information accompanying the proposed amendment in the Federal Register Notice, this change to Category VIII(b) was made “in order to simplify the implementation of the criteria of Section 17(c) consistent with the aims of the AECA.” In the proposed amendment, the Department of State implements the three Section 17(c) criteria, in part, by requiring a Section 120.4 Commodity Jurisdiction (CJ) determination based on the three criteria for all SME, except where the SME was “integral to civil aircraft” prior to the effective date of the amendment. Thus, it appears that the primary goal of the change to Category VIII(b) is to ensure that parties do not self-determine jurisdiction for military hot section components and military digital engine controls, but rather seek a formal CJ determination for such components and software.

SUSA does not oppose this goal, and recognizes the U.S. Government’s legitimate interest in determining the jurisdiction of sensitive military commodities. However, the proposed amendment, as drafted, would impose a significant negative impact upon aircraft engine companies in terms of the burden of export licensing requirements imposed by the ITAR, as explained more fully below. It appears that these significant negative consequences were not intended by the Department of State. Therefore, SUSA suggests moving the proposed text in Category VIII(b) to the accompanying Note, in order to achieve the stated objective of controlling the jurisdiction determination of these components/software, without imposing the collateral licensing impact that would negatively impact competitiveness and, potentially, national security.

Without SUSA’s proposed change to the language of amended Category VIII(b), the following new requirements, and apparently unintended consequences, would result from the designation of military hot section components and digital engine controls as SME:

- Requiring non-transfer and use certificates (Form DSP-83) for all applications to export hot section components and digital engine controls, outsourced in the United States by foreign companies.
- Requiring written DDTC approval before foreign defense articles incorporating military hot section components or military digital engine controls may be re-exported or re-transferred to a government of a NATO country or the governments of Australia or Japan.
- Prohibiting the use of exemptions of general applicability for the export of the newly designated SME components. This would impair the ability and flexibility currently enjoyed by U.S. subcontractors to foreign aircraft engine companies to temporarily export unclassified parts and components used in the manufacture, assembly, testing, production, or modification of their products.
- Additional requirements under the Canadian exemption, Section 126.5(b), for which DSP-83s would also be required.

- Additional requirement to obtain prior approval of, or make prior notification to, DDTC, before making proposals to foreign aircraft engine companies for the sale or manufacture abroad of these newly designated components.
- Additional approval and notification requirements for brokering activities, pursuant to Section 129.7(a)(2) and 129.8.

The DDTC proposed “grandfather” clause in the Note will not dilute the negative impact of these unintended consequences because the concern relates to the treatment of future licensing of military hot section and digital engine control components. Instead, the proposed text would effect a material and fundamental change to the classification of items that has been in place for more than a decade, to the detriment of aircraft engine companies and the entire military aircraft supply chain. The change would detrimentally impact the competitiveness of U.S. businesses in the military engine manufacturer supply chain by increasing licensing timelines and imposing additional burdens on foreign customers. Most importantly, as originally written, the proposed shift in classification to USML Category VIII(b) could negatively impact national security by delaying the development and production of military engines and the military aircraft supply chain, which would impact the United States and its allies in on-going operations overseas. Finally, SUSA respectfully submits that the proposal would negatively impact the DDTC, because exporters will submit multiple license applications (separating hot section and non-hot section components), as well as prior approval requests. These serious and collateral consequences are not necessary to achieve the stated purpose of the proposed rule with respect to military hot section components and digital engine controls.

To avoid these consequences, while still accomplishing the Department of State’s goal of requiring CJ determinations for military hot section components and military digital engine controls, SUSA proposes simply moving the reference to such components to the Note where it discusses the requirement of CJs for SME. It is important to note, too, that military hot section components and military digital engine controls have never been controlled as SME, and they have been routinely exported around the globe under non-SME rules. Notwithstanding this, we are not aware of any negative impact on U.S. national security by having them controlled under the ITAR as non-SME items. Hence, there does not appear to be any national security reason for now imposing what would be a substantial burden on aircraft engine manufacturers and components suppliers.

Finally, SUSA was concerned that the proposed amendment to Category VIII(b) could be read as an attempt to designate as USML (and as SME) all digital engine controls—even if designed purely for civil applications. The potential confusion arises from the placement of the phrase “specifically designed military” in the proposed amendment, which is not proximate to the phrase “digital engine controls.” Because of the use of digital engine controls in civil aircraft worldwide, including systems that are appropriately considered dual use and commercial, we are confident DDTC is not proposing to make all such electronic controls ITAR-controlled. Therefore, we have revised the language to make this clear by adding the modifier “military” to both the hot section components and the digital engine controls. If our understanding in this regard is incorrect, please let us know immediately because such a change will have dramatic consequences for the civil aircraft industry.

Rationale for SUSA's Proposed Change Concerning Civil Aircraft Type Certificates

Among the parts and components made and sold by Safran Group companies in the United States are many parts for non-U.S. aircraft companies such as Airbus and Eurocopter. Thus, it is important that the "certification" prong of the Note's three-part test not be limited just to the U.S. civil aviation authority, but also apply to trustworthy foreign government civil aviation authorities. The FAA routinely recognizes and accepts certifications originally issued by recognized foreign aviation authorities. Those validated foreign certificates are deemed by the FAA to meet the same criteria imposed for FAA-issued certificates. They should be afforded equal treatment. This addition will not mean that any part certified by a foreign aviation authority is per se EAR-controlled, only that it satisfied the second prong of the Note's test.

Not recognizing civil aircraft certifications issued by recognized foreign aviation authorities substantially decreases the utility of this proposed rule. Many parts and components exported from the United States by SUSA and its subsidiaries and affiliates covered by its ITAR registration are certified by non-U.S. civil aviation authorities only, albeit by authorities and under certificates that are issued by countries Wassenaar member states and whose civil aviation certificates are recognized by the International Civil Aviation Organization ("ICAO"). Because the FAA routinely recognizes and accepts other aviation authorities' certifications, there is no business reason to go through the very time-consuming and costly process of having all parts and components certified by the FAA, particularly if the particular parts and components will be principally for use in aircraft outside the United States. Moreover, SUSA's proposed change would limit the countries from which a civil aviation certificate would be recognized to those (a) issued by countries participating in the Wassenaar Arrangement, and (b) only if also recognized by the International Civil Aviation Organization.

Other agencies involved in import and export regulation and enforcement within the U.S. government also rely on the FAA's recognition of civil aviation certificates of other countries in their regulations. Specifically, the text that SUSA proposes to add to the note concerning recognition of foreign certificates seeks to parallel that used by the Bureau of Industry and Security ("BIS") in Export Control Classification Number ("ECCN") 9A001, when BIS sets forth the criteria that it uses to determine what gas turbine engines are and are not controlled under such ECCN. In addition, U.S. Customs and Border Protection's import regulations provide for preferential duty treatment under General Note 6 of the Harmonized Tariff Schedule of the United States for civil aircraft parts covered by an FAA certificate "or pursuant to the approval of the airworthiness authority in the country of exportation, if such approval is recognized by the FAA." HTSUS General Note 6(b)(i)(B)(1), 2008 (Rev. 1).

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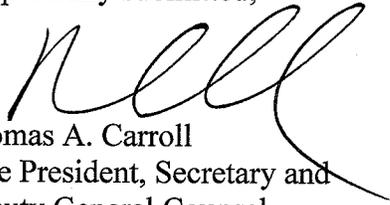
Ms. Ann Ganzer

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We have included in the attached copy of the proposed rule many other suggested edits and additional comments that would be of benefit to DDTC in drafting a final published rule. We appreciate DDTC's effort to give industry a chance to comment on the Amendment and Note before it becomes law. Should you have any questions about our proposed comments or if you would like additional information, please do not hesitate to contact me or SUSA's President and Chief Operating Officer, Joe Bogosian at 703-351-9898 ext. 226 or via email at jbogosian@safranusa.com.

Respectfully submitted,



Thomas A. Carroll
Vice President, Secretary and
Deputy General Counsel
Safran USA, Inc.

**SAFRAN USA's RED-LINE AND COMMENTARY ON DDTC'S
PROPOSED AMENDMENT TO USML CATEGORY VIII
(73 Fed. Reg. 19778, 19780 (Apr. 11, 2008))**

May 9, 2008

Sec. 121.1 General. The United States Munitions List.

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Category VIII--Aircraft and Associated Equipment

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(b) Military aircraft engines, except reciprocating engines, specifically designed or modified for the aircraft in paragraph (a) of this Category, ~~and all specifically designed military hot section components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles) and digital engine controls (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)).~~

* * * * *

(h) ~~Except as noted below,~~ Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (d) of this category, excluding aircraft tires and propellers used with reciprocating engines.

Note: The Export Administration Regulations (EAR) administered by the Department of Commerce control any part, ~~or component (including propellers) or other item designed exclusively for civil, non-military aircraft (see Sec. §121.3 for the definition of military aircraft) and civil, non-military aircraft engines (see USML subcategory VIII(b) and VIII(f) for the definitions of ITAR-controlled military aircraft engines).~~

Comment [81]: To avoid the multiple unintended consequences described in our cover letter, while still accomplishing the Department of State's goal of requiring C] determinations for hot section components and digital engine controls, SUSA proposes moving the reference to such components to the Note where it discusses the requirement of CJs for SME.

Comment [82]: This addition is necessary to avoid an inconsistency between subcategory VIII(h) and the Note. Because, under the Note, a part that was specifically designed for a military aircraft is still EAR-controlled if it meets the three-part test.

Comment [83]: The EAR uses the term "item" instead of "parts" or "components." Thus, the insertion of the word "item" here is to make the description of what the EAR controls consistent with the wording in the EAR. See EAR §§ 734.3 and 772.1. Otherwise, it suggests that the EAR might not control items (other than parts and components) that were specifically designed for dual-use end-items or civil applications.

Comment [84]: The word "exclusively" should be removed because it erroneously suggests that parts specifically designed for both military and civilian aircraft -- referred to in the EAR as "dual-use" items -- are not subject to the EAR. Although it does not amend the ITAR, readers will be led to believe that DDTC holds a contrary position.

Comment [85]: The draft note did not define military aircraft engines as it did military aircraft. This addition confirms that a civil aircraft engine is any aircraft engine not defined in VIII(b) or VIII(h). It tracks the definition of civil aircraft in the previous sentence.

Also, a non-SME component or part (as defined in ~~§§~~Sec. 121.8(b) and (d) of this subchapter) that is not controlled under another category of the USML, that:

- (a) Is standard equipment;
- (b) is covered by a civil aircraft type certificate (including amended type certificates and supplemental type certificates) issued by the Federal Aviation Administration or an equivalent document issued by the civil aviation authority in a country that is a Wassenaar Arrangement Participating State and the document is recognized by the International Civil Aviation Organization (ICAO) for a civil, non-military aircraft (this expressly excludes military aircraft certified as restricted and any type certification of Military Commercial Derivative Aircraft (as described in FAA Order 8110.101)); and
- (c) is an integral part of such civil aircraft,

is subject to the ~~control~~ jurisdiction of the EAR.

In the case of any part or component designated as SME in this or any other USML category, and in the case of hot section parts and components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles, specifically designed or modified for military applications, and in the case of digital engine controls (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC) specifically designed or modified for military applications, a determination that such item may be excluded from USML coverage based on the three criteria above always requires a commodity jurisdiction determination by the Department of State under Sec. §120.4 of this subchapter. The only exception to this requirement is where such a part or component designated as SME in this category was integral to civil aircraft prior to [effective date of the final rule]. For such a part or component, U.S. exporters are not required to seek a commodity jurisdiction determination from State, unless doubt exists as to whether the item meets the three criteria above (See Sec. §§120.3 and Sec. 120.4 of this subchapter).

Comment [86]: The FAA routinely recognizes and accepts certifications originally issued by recognized foreign aviation authorities, including those of Wassenaar Arrangement Participating States. Those validated foreign certificates are deemed by the FAA to meet the same criteria imposed for FAA-issued certifications. Thus, they should be afforded equal treatment. This addition will not mean that any part certified by a foreign aviation authority is per se EAR-controlled, only that it satisfied this prong of the Nore's test.

Comment [87]: Because MCDA is not a defined term in export control, aviation, or any other law or regulation, readers generally do not know what this term means. The term is, however, described in this FAA order, which defines it as civil aircraft procured by the military.

Comment [88]: The standard ITAR "specifically designed" phrase needs to be included to preclude misunderstanding that DDTC takes the position that the ITAR controls all hot section parts and components.

Comment [89]: The standard ITAR "specifically designed" phrase needs to be included to preclude misunderstanding that DDTC takes the position that the ITAR controls all FADEC and DEEC.

Also, U.S. exporters are not required to seek a commodity jurisdiction determination from State regarding any non-SME component or part (as defined in ~~Sec. §§~~121.8(b) and (d) of this subchapter) that is not controlled under another category of the USML, unless doubt exists as to whether the item meets the three criteria above (See ~~Sec. §§~~120.3 and ~~Sec.~~ 120.4 of this subchapter).

These commodity jurisdiction determinations will ensure compliance with this section and the criteria of Section 17(c) of the Export Administration Act of 1979. In determining whether the three criteria above have been met, consider whether the same item is common to both civil and military applications without modification of the item's form, fit, or function. Some examples of parts or components that are not common to both civil and military applications are tail hooks, radomes, and low observable rotor blades.

“Standard equipment” is defined as a part or component manufactured in compliance with an established and published industry or manufacturer's specification or standard or an established and published government specification or standard (e.g., AN, MS, NAS, TSO or SAE).

Comment [810]: This addition states explicitly DDTC's long-standing position that an item's jurisdictional status is not affected by a modification that does not affect the item's form, fit, or function. These terms are defined in sec. 120.4, so their addition will not create any ambiguity. The addition also helps clarify the scope of what types of modifications may cause an item's jurisdictional status to change.

Comment [811]: This insert is necessary because many civil aircraft and civil aircraft parts manufacturers publish their own specifications for their own products. They are, thus, not “industry” standards.

Comment [812]: Many parts on civil aircraft are manufactured to “standards,” which are slightly different than “specifications,” although the terms are often used interchangeably in the aircraft industry.

Comment [813]: TSOs, Technical Standard Orders, are common FAA-published specifications that provide minimum performance standard for specified materials, parts and appliances used on civil aircraft. Because they are so common, they should be referenced here for the sake of clarity.

Parts and components that are manufactured and tested to established but unpublished (e.g. proprietary) civil aviation industry manufacturer's specifications and/or standards are also "standard equipment," e.g., pumps, actuators, and generators. A part or component is not standard equipment if there are any performance, or manufacturing or testing requirements beyond such specifications and standards.

Comment [814]: The addition of the word "proprietary" is merely to give the reader a common example of an unpublished specification.

Comment [815]: "Civil aviation" should be removed from this sentence to (a) make it consistent with the standard pertaining to published specifications (which is not so limited) and (b) account for the fact that many parts used on civil aircraft are manufactured and tested to generic parts specifications and standards, which are not necessarily "civil aviation" specifications of standards. For example, a bolt used on a civil aircraft may be tested to a specification for bolts generally and, although used on an aircraft, may not refer to civil aircraft in the standard.

Comment [816]: The word "industry" needs to be removed here for the sentence to make sense. If the specification is "unpublished", it cannot be an "industry" specification. Thus, we have substituted the words "manufacturer's."

Comment [817]: "Testing" needs to be removed because civil aircraft parts are routinely tested beyond the applicable specification for purely civil purposes, such as (a) confirming that a part certified for use on one part of an aircraft may be used in a more environmentally harsh portion of the aircraft, (b) satisfying longer warranty obligations, (c) "lifing" the part to see how long it will last, (d) being able, for marketing reasons, to state to potential customers that the part is reliable because it exceeds specifications; and (e) confirming, particularly for new parts, that there is a margin of safety beyond the minimum specifications. The inclusion of "testing" would take all of these and other purely civilian situations out from consideration of the definition of "standard equipment."

Simply testing a part or component to meet a military specification or standard does not in and of itself change the jurisdiction of such part or component unless the item was designed or modified to meet that specification or standard.

Integral is defined as a part or component that is installed in the aircraft or authorized for installation on the aircraft according to civil aviation authority certification for the aircraft type (e.g., FAA or EASA-approved spares).

~~In~~ When determining whether a part or component may be considered as “standard equipment” and “integral” to a civil aircraft (e.g., latches, fasteners, APU’s, seats, flaps, grommets, and switches) it is important to review carefully ~~review all of the~~ criteria noted above. For example, a part approved solely on a non-interference/provisions basis under a type certificate issued by the Federal Aviation Administration would not qualify. Similarly, unique application parts or components not integral to the aircraft would also not qualify. * * * * *

Comment [818]: This clause needs to be removed because it is inconsistent with the definition of “Standard equipment” in this Note which, by definition, includes those parts designed or modified to meet a military specification or standard (i.e., “Standard equipment” is defined as a part or component manufactured in compliance with . . . an established and published government specification (e.g., . . . MS.?). In addition, civil aircraft parts are often designed or modified to meet military specifications for purely civilian purposes and without any military applications in mind. Military specs are commonly used as civil aircraft industry standards for all the reasons described in the previous note. Leaving the proposed clause in would preclude the application of the note to parts designed or modified for civilian or dual-use purposes if the applicable specification happened to be a mil spec.

Comment [819]: This edit is necessary in order to remove the implication of the proposed wording that a part or component is “integral” only if it is actually within – “installed in” – the aircraft. Such an interpretation would lead to the illogical conclusion that a part or component could be EAR-controlled when inside the civil aircraft but potentially ITAR-controlled when outside the aircraft, such as a spare. Such a reading would also be contrary to the structure of the ITAR which, with one exception, does not determine the jurisdictional status of items based upon whether the item is or is not installed in an end-item. The proposed phrase resolves this spares issue by limiting the definition of “integral” to those parts *authorized for* installation in civil aircraft. The edit does not limit this note only to FAA-certified parts.

Comment [820]: The addition of these examples is important to remove the implication that the amendment applies only to very small civil aircraft parts and components. It applies to all parts and components that fall within the scope of the three-part test, regardless of size.