ALCOA

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President

May 7, 2008

Ann K. Ganzer, Director
Office of Defense Trade Controls Policy
Directorate of Defense Trade Controls
U.S. Department of State
SA-1, 12th Floor
2401 E Street NW
Washington, DC 20522-0112

ATTN: Regulatory Change, ITAR Section 121

RE: Alcoa Inc. – Comments on Proposed 17(c) Rule

Dear Ms. Ganzer:

Alcoa Inc. ("Alcoa") appreciates this opportunity to comment on the Department of State's ("State") clarification of the application of Section 17(c) of the Export Administration Act of 1979 ("EAA") to the International Traffic in Arms Regulations ("ITAR") as set forth in its April 11, 2008 proposed rule.[1] Alcoa supports State's articulated goal of providing greater clarity with respect to the identification of those parts which may have been used in military aircraft, but which are nonetheless not controlled under Category VIII(h) of the U.S. Munitions List ("USML") because these parts are common to civilian aircraft. We offer only a few suggestions to brighten the decision line further and ensure a more consistent application of State's policy for determining when aircraft parts are subject to jurisdiction of the Export Administration Regulations ("EAR") and not the ITAR.

Alcoa Inc.

Alcoa is the world leader in the production and management of primary aluminum, fabricated aluminum products and alumina. Alcoa has 97,000 employees spread over 34 countries and reported 2007 revenue of $30 billion. Alcoa takes corporate compliance very seriously. We have invested significant resources in developing and operating a global corporate governance and compliance program including elements devoted to compliance with applicable export control regulations. Accordingly, we welcome clarifications, such as those offered by State here, that should ease the burden on both State and industry by reducing the number of situations in which resort to

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1 Amendment to the International Traffic in Arms Regulations: The United States Munitions List, 73 Fed. Reg. 19778 (April 11, 2008).

formal commodity jurisdiction requests is necessary to resolve whether an aircraft part is controlled under the EAR or the ITAR.

Through certain of its business units and subsidiaries, Alcoa designs and manufactures aircraft parts and components used in aerospace applications worldwide. While other portions of Alcoa are also interested in the clarification offered by the proposed rule, it is of particular interest to Alcoa Fastening Systems, which sells over 1.1 billion aerospace fasteners annually to civil and military end-users worldwide. While Alcoa is a large company, many of its competitors in the fastener industry are small businesses, and the entire domestic U.S. industry is saddled with the crippling burden of determining the proper classification of aerospace fasteners.

Fasteners are ubiquitous in aircraft and consistently perform essentially a single function: to join two or more materials together. Only rarely would the military or civilian nature of the aircraft make a difference in the design of the fastener. Generally, a fastener first designed for a civilian aircraft could easily be used in a military aircraft and vice versa because the materials being used are generally the same; *i.e.*, titanium alloys, aluminum and composites. One exception is fasteners designed to contribute to the stealth characteristics of certain military aircraft.

Furthermore, as State's proposed clarification apparently recognizes, many of the designs for aerospace fasteners are decades old and are built to consensus standards, which are well established in the industry. The original design intent or first use is often lost to history and no longer discernible. While the Department of Defense ("DoD") was instrumental in initially imposing standards and specifications across the aerospace industry, consistent with its desire to commercialize and expand its industrial base, DoD has left it largely to industry organizations, in the United States and abroad, to maintain and further develop existing specifications and standards which are now broadly applicable to civilian as well as military aircraft.

Alcoa appreciates the need to control under the ITAR those parts, including fasteners, that are truly unique to a military application. It believes the proposed clarification will preserve this critical control while freeing industry from at least some of the current uncertainty burdening both State and industry in determining those fasteners that are EAR controlled.

Specific Comments on the Clarifying Note to Category VIII(h)

The clarification in the proposed rule sets forth a three part test for determining whether a current aircraft part or component will be subject to control under the EAR despite that part's current or former use in a military aircraft. Specifically, any part or component 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 for civil, non-military aircraft; and

(c) is an integral part of civil aircraft

is subject to the EAR.[2]

Alcoa believes this clarification provides the fastener industry with a workable standard that should eliminate much of the current confusion as to which aerospace fasteners being manufactured today from pre-existing designs are controlled under the USML. We offer only the following modest comments that should dispel some lingering ambiguities in the three elements of the test and make the standard easier to apply consistently with State's policy goals.

1. Definition of "Standard Equipment"

The proposed rule defines "standard equipment" as:

> a part or component manufactured in compliance with an established and published industry specification or an established and published government specification (*e.g.*, AN, MS, NAS, or SAE). Parts and components that are manufactured and tested to established but unpublished civil aviation industry specifications and standards are also 'standard equipment'. . ."[3]

Alcoa offers two comments on this proposed definition. ***First***, the list of representative industry and government specifications is clearly meant to be illustrative and to communicate State's recognition that additional standard specifications are available within the global aerospace industry. Alcoa understands that the purpose of the "standard equipment" element in the test is to ensure that the part or component is manufactured to specifications that have become common in the aerospace industry, and in that regard whether such specifications are of U.S.- or foreign-origin is irrelevant. This point could be made even clearer by express reference to foreign-origin industry standard specifications, such as Normes Européene ("EN") published by ASD-STAN, the leading European body for the development of global aerospace standards.[4]

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2 *Id.* at 19780.

3 *Id.*

4 *See* http://www.asd-stan.org/. ASD-STAN was previously the Association Européenne des Constructeurs de Materiel Aérospatiale (AECMA), recognized under the Fastener Quality Act as a foreign consensus standards organization. *See* 61 Fed. Reg. 50582 (Sept. 26, 1996).

Second, State has helpfully acknowledged in the proposed definition that in some instances the aerospace parts and components industry is manufacturing to "unpublished," but nonetheless established industry-wide specifications. Alcoa agrees that in the fastener industry intellectual property concerns may inhibit the mass publication of certain specifications even though those specifications are "standard" and distributed widely within the aerospace industry. We suggest State add a parenthetical to make clear that a manufacturer's widely distributed, but unpublished specification does not defeat the classification as "standard equipment."

Accordingly, Alcoa respectfully suggests (as shown in Attachment A) that the proposed definition would be enhanced by adding the following underscored language:

> "Standard equipment" is defined as a part or component manufactured in compliance with an established and published industry specification or an established and published government specification (e.g., AN, EN, MS, NAS, or SAE). Parts and components that are manufactured and tested to established but unpublished civil aviation industry specifications and standards (e.g., parts manufacturers' or original equipment manufacturers' specifications and standards) are also "standard equipment" . . .

2. Covered By Civil Aircraft Type Certificates

The second element of the proposed classification test requires, among other things, that the part be covered by a civil aircraft type certificate (including amended type certificates and supplemental type certificates) issued by the Federal Aviation Administration [("FAA")] for a civil non-military aircraft . . .." Alcoa has two comments with respect to this element of the standard for determining EAR coverage of aircraft parts.

First, Alcoa is concerned that "covered by" might not be universally understood to include those parts and components which are not individually certificated. As State is undoubtedly aware, while certain aircraft parts and components, such as engines and propellers, are individually certificated, other parts, including fasteners of the type manufactured by Alcoa, are not. The type certificate nonetheless reflects the FAA's approval of the aircraft's design, and specifically includes the type design.[5] The "type design" in turn consists of all of the drawings and specifications necessary to define the configuration as well as information on dimensions, materials and processes.[6] The manufacture of parts for certificated civil aircraft is generally subject to Technical Standard Orders ("TSOs").[7] To make clear that parts – such as fasteners – included within the

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5 14 C.F.R. § 21.41 (2007).

6 14 C.F.R. § 21.31 (2007).

7 14 C.F.R. §§ 21.601-21.621 (2007).

approved type design are considered "covered by" the civil aircraft type certificate, we recommend that State add the following underscored language (as shown in Attachment A):

> The phrase "covered by a civil aircraft type certificate" includes parts and components that conform to the type design included in a civil aircraft type certificate.

Second, although Section 17(c) of the EAA only references FAA certified aircraft and equipment, Alcoa respectfully suggests that the test State is providing in this clarification should not today be limited by this 1979 reference. Since then, the United States has negotiated a number of Bilateral Aviation Safety Agreements ("BASA") and Bilateral Airworthiness Agreements ("BAA") demonstrating an established policy of granting reciprocity to or otherwise accepting or validating foreign governments' airworthiness determinations.[8] The United States currently has such agreements with thirty countries,[9] and is in the process of concluding an agreement with the European Union.[10] As State's preamble to the proposed rule makes clear, the reference to the FAA type certification is simply one factor in determining whether an aircraft is civil, but not alone determinative because civil certifications may be issued for some military aircraft.[11] Given the United States' established current policy for reciprocal acceptance of other countries' civil aircraft type certificates and design approvals, Alcoa submits they can also perform the same threshold function as the FAA issued type certificates; *i.e.*, foreign government issued civil aircraft type certificates are indicative, but not determinative, that the part is standard in a civil aircraft.

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8 *See, e.g.*, 1996 Agreement Between the Government of the French Republic and the Government of the United States of America for the Promotion of Aviation Safety, Article III. C. ("The Implementation Procedures shall include at a minimum: . . . Provisions for reciprocal acceptance of civil aviation authority actions such as test witnessing, inspections, qualifications, approvals and certifications").

9 In addition to France, the United States currently holds such agreements with the following countries: Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Czech Rep., Denmark, Finland, Germany, Indonesia, Israel, Italy, Japan, Korea, Malaysia, Netherlands, New Zealand, Norway, Poland, Romania, Russia, Singapore, South Africa, Spain, Sweden, Switzerland, and the UK. A similar agreement is in place between the American Institute in Taiwan and The Taipei Economic and Cultural Representative Office. These agreements are available on the FAA website at http://www.faa.gov/aircraft/air_cert/international/bilateral_agreements/baa_basa_listing/.

10 Information with respect to the negotiations with the European Union and interim reciprocity/validation procedures are available at http://www.faa.gov/aircraft/air_cert/ international/easa/.

11 73 Fed. Reg. at 19778.

Accordingly, as indicated in Attachment A, Alcoa suggests that State revise the second element of the standard as follows:

> (b) is covered by a civil aircraft type certificate (including amended type certificates and supplemental type certificates), issued by the Federal Aviation Administration or the civil aviation authority of a foreign government recognized by the FAA for a civil, non-military aircraft (this expressly excludes military aircraft certified as restricted and any type certification of Military Commercial Derivative Aircraft) . . .

3. Definition of "Integral Part"

Finally, the clarifying Note set forth in the proposed rule defines "integral" as "a part or component that *is installed* in the aircraft." (Emphasis added). Alcoa understands that the purpose of this requirement is to ensure that the part or component is truly part of the aircraft, not some mere ancillary accessory. It is hard to imagine any part more integral to civil aircraft than the fasteners required to manufacture them. Nonetheless, as a manufacturer of lower-tiered parts which are sold and exported separately from the civil aircraft or aircraft component in which they are to be installed, Alcoa is concerned that the italicized phrase could be misinterpreted to mean a part would be EAR-controlled only when actually installed on the aircraft, but ITAR-controlled prior to installation or when it is outside of the aircraft (*i.e.*, not installed).

Alcoa believes this ambiguity can be eliminated by modifying the definition of "integral" to emphasize ultimate installation in the civil aircraft and not whether is has already been installed. Accordingly, Alcoa respectfully suggests, as shown in Attachment A, that the language of the rule be clarified as follows:

> Integral is defined as a part or component that conforms to the design approved by the type certificate for ~~is installed~~ installation in the aircraft. In determining whether a part or component may be considered as standard equipment and integral to a civil aircraft (e.g., latches, fasteners, grommets, and switches) it is important to carefully review all of the criteria noted above.

Conclusion

Alcoa appreciates State's significant efforts in seeking to provide useful guidance to industry in the proper classification of aircraft parts that are common to civil and military aircraft. We believe these comments and suggested revisions will make the proposed clarifying Note even better and lead to more predictable and consistent application by industry and the government. We appreciate State's consideration of these suggestions and would be pleased to discuss them further with you or

your staff. Should you have any questions or require further information, please do not hesitate to contact the undersigned.

Respectfully submitted,

Olivier M. Jarrault
Vice President, Alcoa Inc.
President, Alcoa Fastening Systems