Comments from United Technologies Corporation to November 29, 2012 Proposed Rule concerning Revisions to the EAR to make the CCL Clearer

General

The clarification and background on the placement of the phrase "(see List of Items Controlled)" is greatly appreciated, as is the addition of the phrase "as follows (see List of Items Controlled where necessary."

"Parts" and "components"

The definition of "parts" and "components" is a welcome clarification to the regulations. The present CCL has entries where "parts" or "components" are used, but BIS intends to include both "parts" and "components." As noted in the supplementary information, BIS does not intend to change the scope of what the affected ECCNs control.

The proposed rules use of the phrases *"parts" or "components"* and "*parts" and "components*" interchangeably. There are cases where this may cause some readers to read the control as being narrower than intended, specifically in ECCNs 9E003.a.7, 9E003.a.8, and 9E003.c.

As an example, 9E003.a controls "technology" "required" for the "development" or "production" of any of the following gas turbine engine "parts," "components" or systems.

Most of the entries that follow 9E003.a use 'or' to link "parts" and "components." However, 9E003.a.7 lists:

> a.7. Gas turbine engine "parts" <u>and</u> "components" using "diffusion bonding" "technology" controlled by 2E003.b;

ECCN 9E003.a invokes "required" "technology", which is limited to "technology" peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions. In the case of the proposed wording for 9E003.a.7, the controlled characteristic is specific "diffusion bonding" "technology" for gas turbine engine "parts" and "components." This could be interpreted to mean that the "technology" is "required" only if it applies to both "parts" *and* "components", which is narrower than the "technology" for either item. This assumption would seem to be reinforced by the appearance that BIS apparently specifically chose to use the conjunction 'and' instead of the conjunction 'or' in entries 9E003.a.1, a.3, a.4, and a.5, and therefore should be interpreted differently.

Entries that don't use "required" (e.g., 9A003, 9E003.h, 9E003.i, etc.) would not have specific issue. However, some entries such as the proposed 9E003.j[1] would be clearer using *"parts" or "components*" instead of *"parts" and "components."*

We recommend using the phrase *"parts" or "components"* in ECCNs 9E003.a.7, a.8, and 9E003.c to avoid confusion. Additionally, we recommend that BIS review entries where the phrase *"parts" and "components"* was used to see if the phrase *"parts" or "components"* would be clearer, or more consistent with maintaining the scope of the entry.

<u>Control of "aircraft" parts in proposed 9A991.d</u>.

The propose rule would change ECCN 9A991.d from

> d. Aircraft parts and components, n.e.s.

to

> d. "Parts" and "components" specially designed for "aircraft" subject to the controls of ECCN 9A991.a or .b., n.e.s.

This wording may inadvertently classify some aircraft "parts" and "components" as EAR99 while the aircraft is in development.

Under the proposed wording, the "parts" and "components" to be controlled are only those for "aircraft" that meet the requirements of ECCN 9A991.a or .b. ECCN 9A991.a controls specific military aircraft, and ECCN 9A991.b controls "civil aircraft," which is defined in Part § 772 as follows:

> "Civil aircraft". (Cat 1, 3, 4, 7 and 9)—Those "aircraft" listed by designation in published airworthiness certification lists by the civil aviation authorities to fly commercial civil internal and external routes or for legitimate civil, private or business use. (see also "aircraft")

Prior to receiving a civil airworthiness certificate, development aircraft do not meet the Part § 772 definition of "civil aircraft." It would follow that "parts" and "components" specially designed for pre-certification non-military aircraft are not described in ECCN 9A991.d, and barring any other control, would be classified EAR99. Once the aircraft is certified, these parts would move to 9A991.d. This is clearly not the intent of the control. The present control does not have this issue, as it does not have the phrase ". '(see List of Items Controlled)' at the end of the heading and is therefore not limited to only those items that follow.

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[1] 9E003.j. "Technology" not otherwise controlled in 9E003.a.1 through a.8, a.10, and .h and used in the "development", "production", or overhaul of hot section "parts" and "components" of civil derivatives of military engines controlled on the U.S. Munitions List

We suggest that the original wording be retained, as the concluding 'n.e.s' would preclude overlapping control with proposed ECCNs 9A610 or 9A619.

Clarification of MT Control

The Reason for Control for ECCNs 9B001, 9B002, 9B003, and 9B004 includes the following statement:

> MT applies only to equipment for engines that meet the characteristics described in 9A001

The entry is confusing because it can be read to apply MT controls broader than intended. As written, the equipment described in the referenced ECCNs is controlled for MT reasons if it is applicable to any engine whose characteristics are described in 9A001. An aero gas turbine engine that does not meet the characteristics listed in 9A101 still has characteristics described in 9A001. This is not a theoretical issue; UTC has seen this Reason for Control incorrectly applied by suppliers to equipment for 9A001 engines in general.

The characteristics of concern would be for those engines that meet 9A101. Instead of referencing 9A101 obliquely through 9A001, we suggest the following wording for the Reason for Control for ECCNs 9B001, 9B002, 9B003, and 9B004:

MT applies only to equipment for engines that meet the characteristics described in 9A101.

2E001/2E002 of 2B999 items

ECCNs 2E001 and 2E002 respectively control "technology" for the "development" and "production" of items controlled by 2B, excepting items controlled by ECCNs 2B991, 993, 996, 997, and 998. This list of exclusions omits ECCN 2B999, which controls specific processing equipment, including isostatic presses not otherwise controlled (i.e., 2B004, 2B104 or 2B204), laser welding machines, MIG welders, etc.

Based on this wording, 2E001 and 2E002 control "technology" for all isostatic presses, regardless of capability. Even commercial MIG welders and industrial sewage pumps (e.g., ECCNs 2B999.d and 2B999.j) are controlled. Per the license requirements, this would fall under the AT-only control.

Given that 2E001 and 2E002 are generally associated with high levels of control (NS1 and NP1 for many items), there may be confusion when the "production" "technology" for a MIG welder is classified as 2E001, yet has only an AT-control. Additionally, as 2E001 and 2E002 invoke the General Technology Note, the ubiquitous "technology" "required" for a simple shop MIG welder or an industrial pump would also be controlled for many other EAR99 items as 2E001 and 2E002, albeit at AT-only.

Given the opportunity for confusion (e.g., technical data classified as 2E001 yet No License Required to many destinations), balanced against the marginal gain in control (EAR99 versus an AT-only control), that the exclusion note in ECCNs 2E001 and 2E002 be expanded to also exclude 2B999 items.

Other

In the proposed ECCN 9E003, Related Controls, the numbering ‘2)’ is missing before the second instance of “Technology.”