



March 6, 2020

Mr. Richard E. Ashooh
Assistant Secretary for Export Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

RE: Interim Final Rule; Addition of Software Specially Designed to Automate the Analysis of Geospatial Imagery to the Export Control Classification Number 0Y521 Series [Docket No. 191217-0116; RIN 0694-AH89]

Dear Assistant Secretary Ashooh:

The following comments are submitted on behalf of the Motor & Equipment Manufacturers Association (MEMA) on the Department of Commerce Bureau of Industry and Security (BIS) interim final rule (IFR) as cited above. The BIS issued this IFR with an effective date of January 6, 2020 and offered the opportunity for comments on the control.

MEMA represents 1,000 vehicle suppliers that manufacture and remanufacture components and systems providing new original equipment and aftermarket parts for use in passenger cars and heavy trucks. Our members lead the way in developing advanced, transformative technologies that enable safer, smarter and more efficient vehicles.

Vehicle suppliers are the largest sector of manufacturing jobs in the United States, directly employing over 871,000 Americans in all 50 states plus the District of Columbia. Together with indirect and employment-inducing jobs, the total employment impact of the motor vehicle parts manufacturing industry is 4.26 million jobs. Nearly \$435 billion in economic contribution to the U.S. GDP is generated by the motor vehicle parts sector and its supported activity. In total, motor vehicle parts suppliers contribute more than 77 percent of the value in today's vehicles. MEMA members operate in a complex, highly integrated global supply chain.

The 2018 Export Control Reform Act (ECRA) requires the President to set up a licensing policy for critical emerging and foundational technologies. In a 2018 advanced notice of proposed rulemaking, BIS identified 14 key emerging technologies to be potentially considered for future controls, some as soon as this year.¹ Concurrently, general emerging technologies can also be subject to new export controls and additional review by the Committee for Foreign Investment in the United States (CFIUS) in the case of inbound investments. One area facing new export controls is the AI subject under discussion today, "Software Specially Designed to Automate the Analysis of Geospatial Imagery."

MEMA is very concerned that all of these new rules could adversely impact the development of a range of new Automated, Connected, Electric, and Shared Vehicles (ACES) technologies. ACES technologies are already rapidly changing new product development in our sector and the ways that consumers and other road users interact with vehicles. While the United States currently leads the world in most of these technologies, that leadership is not assured going forward. The unintended consequences of regulatory decisions may erode our technological leadership that is critical to America's overall competitiveness and future of motor vehicle parts manufacturers.

In January 2019, MEMA urged BIS "take into consideration the extensive commercial usage of these technologies in the motor vehicle industry. Curtailing the motor vehicle supplier industry

¹ 83 Fed Reg at 58201



from exporting certain technologies will severely limit the industry's competitive advantage in the global marketplace."²

MEMA supports additional export controls on certain key technologies with military applications. Furthermore, we agree with BIS's "go-slow" approach on the EFT issue and appreciate the narrow tailoring of the artificial intelligence (AI) related software export control in this IFR. Gradually releasing additional controls on emerging technologies with similar narrow scope, makes sense as well.

However, this control on AI software and technologies used in geospatial imagery analysis must be written as narrowly as possible to set the proper precedent going forward. This IFR is intended to include software related to aerial applications – *e.g.* drone, satellite and sensor technologies used in military targeting. Therefore, BIS must specifically limit the control to space and aerial applications. This will prevent unintended regulation of ground vehicle machine vision, radar, and LIDAR analysis software that can be used for the detection of vulnerable road users (pedestrians, bicyclists, etc.), collision avoidance, and vehicle navigation (including navigation using image and point cloud database matching).

According to a 2018 MEMA member survey, 63 percent of responses noted that "position, navigation and timing technologies," are directly relevant to their business models.³ As written, this IFR could apply to "terrestrial imagery and LIDAR point clouds, including automotive LIDAR."⁴ Thus, LIDAR, radar, and machine vision imagery software, could be subject to this rule. MEMA urges BIS to clarify this rule to specifically exclude non-military ground-based applications.

MEMA supports the fundamental research exemption and the ability to permit very limited licensing exemptions. These exemptions should be applied to this control. Additionally, we support the exclusion from the control of relevant geospatial software exported prior to the effective date of the IFR. These are positive precedents for future BIS export controls. In addition, BIS should consider the utilization of a license exception to permit updates to now controlled software that was exported prior to January 6, 2020.⁵

MEMA looks forward to working with BIS to address these significant motor vehicle parts concerns. The future competitiveness of the U.S. industry depends on the ability to test, manufacture, and operate these technologies in domestic and global markets.

If you have any questions, please contact Bill Frymoyer, vice president, public policy at bfrymoyer@mema.org or (202) 312-9253.

Sincerely,



Ann Wilson
Senior Vice President, Government Affairs

² MEMA Comments, BIS-2018-0024-0202, January 10, 2019

³ *Ibid*

⁴ "A Look at New Limits on Geospatial Imagery Software Exports," by Kevin Wolf, Steve Emme and Robert Monjoy; Akin Gump Strauss Hauer & Feld LLP, January 2020. <https://www.akingump.com/images/content/1/1/v2/112986/Law360-A-Look-At-New-Limits-On-Geospatial-Imagery-Software-Exp.pdf>

⁵ "U.S. Issues First Unilateral Export Control on Artificial Intelligence Software," by Marwa M. Hassoun, David R. Hanke, Kay C. Georgi, Matthew Tuchband, Sylvia G. Costelloe, and Brian J. Stevens; Arent Fox LLP, January 2020 <https://www.arentfox.com/perspectives/alerts/us-issues-first-unilateral-export-control-artificial-intelligence-software>