

**Comments from SEMI Concerning the Proposed Rule Regarding
Modification of License Exception Additional Permissive Reexports (APR)**

Docket ID: BIS-2020-0010

June 2020

SEMI is pleased to provide comments to the Department of Commerce's Bureau of Industry and Security (BIS) on the proposed rule modifying License Exception Additional Permissive Reexports (APR). As requested, SEMI seeks to provide "information as to the volume of transactions affected by this proposed change, how the proposed change would affect the amount of time necessary to complete such transactions in the future, and how the proposed change would otherwise affect current business."¹

Background

Established in 1970, SEMI is the leading industry association working to advance the technology and business of the global electronics manufacturing supply chain. SEMI has more than 2,100 members worldwide, over 400 in the United States, and represents the full range of U.S. semiconductor companies, including manufacturers, equipment makers, materials producers, and subcomponent suppliers. While SEMI's membership includes many large companies, more than 85 percent of SEMI members are considered small businesses. Our member companies are the foundation of the \$2 trillion electronics industry. This vital supply chain supports 350,000 high-skill and high-wage jobs across the United States. These companies underpin the U.S. economy and empower U.S. technological leadership.

Discussion

SEMI has consistently recommended the pursuit of multilateral export controls that apply concurrently to exports from other trading partners over unilateral U.S. controls that disproportionately impact U.S. exports and create disincentives to the purchase of U.S.-origin items. A multilateral approach is essential when foreign availability exists for any controls to effectively contribute to national security interests. If the controlled items reach parties of concern via non-U.S. suppliers, U.S. national security interests are not served, and U.S. jobs are lost as U.S. exports are merely replaced by non-U.S.-origin items.

A SEMI member uses License Exception APR for reexports of semiconductor materials that are shipped to China in smaller containers from outside the United States. It is estimated between

¹ 85 Fed. Reg. at 23,497.

50-70 reexport licenses per year will be required if the proposed change is adopted. SEMI members are concerned that additional license requirements will amplify existing uncertainty among customers that U.S.-origin items will be available in a timely and predictable manner. Particularly for many materials, there are alternative suppliers in China and elsewhere whose items are not subject to the Export Administration Regulations (EAR).² With additional license requirements and foreign availability of these items, customers outside the U.S. may seek to reduce reliance on U.S.-origin items in favor of items that are not subject to the EAR.

On March 31, SEMI reported the 2019 global market for semiconductor materials was \$52.14 billion.³ Only \$5.62 billion – less than 11 percent – of those materials were consumed in U.S. fabs. \$8.69 billion was consumed in China and the remaining \$37.83 billion was consumed in other nations. While a fraction of these materials are U.S. reexports directly affected by the proposed changes to License Exception APR, the uncertainty that additional license requirements creates can distort purchases of a wide array of related items. In conjunction with other policy changes BIS has implemented, changes to License Exception APR may erode the competitiveness of U.S.-origin items and contribute to customer efforts to avoid or “design out” U.S.-origin products and technology.

The “design-out” of U.S.-origin items from global supply chains is detrimental to U.S. national security, technological leadership and innovation, and economic growth and jobs. Over 86 percent of semiconductor equipment⁴ and 89 percent of semiconductor materials are shipped to facilities outside the United States. Eroding the competitiveness of U.S. exports of these items will have a significant and harmful effect on U.S. exporters, depriving them of essential foreign revenue to maintain research expenditures and compete at the leading edge of technology. Unilateral and extraterritorial export controls in the face of foreign availability harm companies exporting from the U.S., cede U.S. export market share to competitors and reduce foreign direct investment – with little long-term, positive impact on U.S. national security.

The “Background” to the proposed regulation notes that, “Wassenaar participating states in Country Group A:1 may have export authorization policies that do not align with the national security or foreign policy interests of the U.S. government.”⁵ SEMI respectfully suggests that BIS and other agencies seek to harmonize export authorization policies among allies and like-

² In China, Nata produces and sells key IC fabrication materials including high purity hydrides of arsenic and phosphorous, and electrical gas mixtures such as phosphine & arsine mixtures, disilane mixture, and equilibrium gases; Gentech offers high purity arsine specifically sold for use in the MOCVD process; and Anji Microelectronics Company supplies CMP slurries and cleaning chemicals.

In South Korea, Wonik Materials and SK Materials supply deposition precursors and specialty gases, and Soulbrain supplies CMP slurries and liquid chemicals used for etching and cleaning.

³ <https://www.semi.org/en/news-resources/press/global-semiconductor-materials-market>

⁴ <https://www.semi.org/en/news-resources/press/2019-global-semiconductor-equipment>

⁵ 85 Fed. Reg. at 23,497.

mindful partners to support common national security and foreign policy interests. This would obviate the need to amend License Exception APR and contribute significantly to the development of multilateral controls that are more effective in achieving U.S. interests. Alternatively, SEMI respectfully requests BIS issue a revised proposed rule that limits changes to License Exception APR to export control classification numbers (ECCNs) about which there are specific concerns, and limit changes to License Exception APR to reexports of those ECCNs of specific concern from allies whose authorization policies have been inadequate. The rule should exclude use of License Exception APR to reexport the particular ECCN from the particular country as to which there is a concern, rather than abolishing the use of License Exception APR even in contexts where the U.S. Government has no concerns about its allies' licensing policies. In other words, the current proposal is overly broad. While BIS states that it "has evidence of differences in licensing review standards for national-security controlled items destined to Country Group D:1,"⁶, BIS does not assert that such differences affect all Country Group A:1 countries nor all ECCNs currently covered by License Exception APR. BIS should adopt a more targeted approach that is based upon the evidence that it has obtained.

Closing

SEMI appreciates the opportunity to offer comments on this proposed rule. We stand ready to assist BIS and all government agencies and officials to provide information and perspectives regarding the complexities of the globally integrated and interdependent semiconductor supply chain, and the potential effect of regulatory changes on this vitally important industry.

⁶ Ibid.