



January 18, 2013

[REDACTED]

Re: Request for [REDACTED] Advisory Opinion Regarding the
note to ECCN 9A001.a

Dear [REDACTED]:

This letter is in response to your December 13, 2012 request to the Bureau of Industry and Security (BIS), U.S. Department of Commerce, [REDACTED] regarding its interpretation of the note to Export Control Classification Number ("ECCN") 9A001.a. See 15 C.F.R. §§ 748.3 and Supp. No. 1 to Part 774. In essence, [REDACTED] argues that BIS's opinion (i) creates an illogical and anomalous regulatory outcome in that the aero gas turbine engines of the same model and the same configuration could simultaneously be controlled under two different ECCNs (9A001.a and 9A991.d) and (ii) is not consistent with the U.S. policy behind the note to 9A001.a.

Upon further review, including consultations with the Defense Department regarding the policy considerations underlying the note, BIS agrees with [REDACTED]. This determination means that an aero gas turbine engine that incorporates – i.e., is produced or developed from – technologies controlled by ECCNs 9E003.a, 9E003.h, or 9E003.i is not controlled by ECCN 9A001.a if the engine is the *same* model and in the *same* configuration as an engine that has met the requirements of the note to ECCN 9A001.a. Such engines are controlled under ECCN 9A991.c or .d, depending upon the nature of the aircraft in which they are used. Such engines will remain classified under ECCN 9A991 even if installed in other aircraft that are not referred to in the note to 9A001.a, unless the engine's configuration is changed. An engine's configuration changes when a modification to it would require that a new certification be obtained.

I. The Note to 9A001.a

ECCN 9A001.a controls aero gas turbine engines that incorporate – i.e., are produced or developed from – technologies controlled by 9E003.a, 9E003.h, or 9E003.i unless it is (a) certified by the civil aviation authority in a country listed in Supplement No. 1 to Part 743 and (b) intended to power non-military manned aircraft for which a civil type certificate or an equivalent document recognized by the International Civil Aviation Organization (ICAO) has



been issued for the aircraft with the specific engine type by a Participating State listed in Supplement No. 1 to Part 743.

This control is in the EAR as a result of the United States implementation of the same control from the Wassenaar Arrangement's List of Dual Use Goods and Technologies and this conclusion is consistent with the general Wassenaar list and Commerce Control List structure in which identical items do not have different classifications based only on differences in end use. If separate controls over an item's export are warranted based on different end uses, then those controls are in any applicable end use regulatory provisions, not in the item's classification status. Finally, upon further review, the policy objectives of the note are satisfied once an otherwise 9A001.a controlled engine has been installed into the referenced certified civil aircraft. At that point, the U.S. Government has been satisfied that such engines have taken on the character of standard civil aircraft components and should, thus, have the same classification status of standard civil aircraft components, i.e., those described in ECCN 9A991.

II. Reminder Regarding the China Military End Use Rule

Among the EAR's multiple end-use and end-user based controls are those in EAR section 744.21, which, *inter alia*, prohibit the unlicensed export of 9A991.c aero gas turbine aircraft engines to the People's Republic of China (PRC) for a military end use in the PRC. *See* Supp. No. 2 to Part 744. This end-use prohibition remains in effect even if engines of the same model and configuration are installed into certified civil aircraft in other countries and otherwise meet the conditions of the note to ECCN 9A001.a.

If you would like further advice and guidance regarding the scope of this or any other of the EAR's controls, do not hesitate to contact Dennis Krepp at 202-482-1309.

Sincerely,



Kevin J. Wolf
Assistant Secretary of Commerce
for Export Administration