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May 12, 2008

Sent via E-Mail and Express Mail

Ms. Ann Ganzer  
Office of Defense Trade Controls Policy  
Directorate of Defense Trade Controls ("DDTC")  
Attn: Regulatory Change, ITAR Part 121  
U.S. Department of State  
SA-1, 12th Floor  
Washington, DC 20522-0112

Re: DDTC's Proposed Amendment and Note to USML Category VIII(h)

Dear Ms. Ganzer:

Korry Electronics Co. ("Korry")<sup>1/</sup> submits with this letter its suggested edits to the proposed amendment and Note to USML subcategory VIII(h) that DDTC published in the Federal Register on April 11, 2008. Korry appreciates DDTC's good faith effort to clarify the rules for making jurisdictional self-determinations of aircraft parts and components. As a significant part of its export compliance program, Korry has devoted considerable time and effort over the years to researching the design and modification history of parts and components it buys and sells for both civil and military aircraft applications. If the requested edits described below and in the attached are incorporated into the final Note DDTC publishes, Korry and others in the aviation industry will be able to determine more quickly and with more certainty the jurisdictional status of aircraft parts and components. This will be of benefit to both Korry's and the U.S. Government's compliance efforts.

Although our requested edits and the justifications for the edits are contained in the attached red-line document, the more significant edits requested by Korry are summarized below for your convenience and in the order of importance to Korry.

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<sup>1/</sup> Korry Electronics is a wholly owned subsidiary of Esterline Technologies, a worldwide aerospace technology company headquartered in Bellevue, Washington. Korry specializes in operator interfaces for aerospace, defense, and other industries that demand high reliability in challenging environments. More information about Korry can be found at [www.korry.com](http://www.korry.com)

1. DDTC's proposed Note states that "A part or component is not standard equipment if there are any performance, manufacturing or testing requirements beyond such specifications and standards." Korry respectfully requests DDTC to remove this sentence completely. If DDTC does not remove it, the entire effort to clarify USML subcategory VIII(h) will be essentially meaningless because Korry and most other aircraft parts and components companies routinely test and manufacture their products beyond the applicable specifications *for purely civil purposes*. Those purposes include (a) confirming that a part certified for use on one part of an aircraft may be used in a more environmentally harsh portion of the aircraft; (b) satisfying longer warranty obligations; (c) "lifeing" the part to see how long it will last; (d) being able, for marketing reasons, to state to potential customers that the part is reliable because it exceeds specifications; and (e) confirming, particularly for new parts, that there is a margin of safety beyond the minimum specifications.
2. The proposed Note states that the Export Administration Regulations ("EAR") control "any part or component . . . designed *exclusively* for civil, non military aircraft. . . ." The word "exclusively" should be removed because it erroneously suggests that non-SME parts specifically designed for both military and civilian aircraft -- referred to in the EAR as "dual-use items" -- are not subject to the EAR. Korry realizes that this Note is not part of an effort to amend the EAR, but the Note will be read by many people who are not as familiar with the ITAR as suggesting that DDTC takes the position that parts and components that are specifically designed or modified for *both* military and civilian aircraft (e.g., "general purpose parts") are somehow not EAR-controlled. Because the point of the Note is to increase clarity in the area of making jurisdictional determinations, Korry believes that it is important to be clear on this central point of law regarding jurisdictional decision-making.
3. Korry and most other civil aircraft parts and components companies publish their own specifications and standards for their own products. Such specifications are, thus, not "industry" standards and the references to the such specifications and standards in the Note should also include "manufacturer's" specifications and standards. Without this edit, the Note will not be of significant use or benefit to Korry and most other aircraft parts and components companies.
4. The Note states that "simply testing a part or component to meet a military specification or standard does not in and of itself change the jurisdiction of such part or component *unless the item was designed or modified to meet that specification or standard.*" The clause in italics needs to be removed because Korry and other aircraft parts and components companies often design or modify purely civil or dual-use aircraft parts to military

specifications because the military specification is the civil aircraft industry standard as well. Leaving DDTC's proposed clause in would preclude the application of the Note to parts or components designed or modified for civilian or dual-use purposes if the applicable specification happened to be a mil spec. Leaving the proposed clause in would also directly conflict with the Note's inclusion of "MS" as one of the applicable government specifications referenced in DDTC's proposed definition of "standard equipment."

5. The proposed Note's definition of "standard equipment" refers to "unpublished" "industry" specifications. The reference to "industry" in this context needs to be removed to give the sentence meaning. If a part or component is manufactured to an unpublished specification the specification, by definition, cannot be an "industry" specification. If it is unpublished, it is a proprietary specification of a particular company. Korry recommends replacing the word with "manufacturer's."
6. Many U.S. suppliers, including Korry, make and sell parts for non-U.S. aircraft companies such as Airbus. Thus, it is important that the "certification" prong of the Note's three-part test not be limited just to the U.S. civil aviation authority, but also apply to trust-worthy foreign government civil aviation authorities with which the FAA has reciprocal agreements. Otherwise, there will be a need to increase substantially the number of CJ requests submitted with respect to parts exported from the U.S. to foreign manufacturers that are certified by allied foreign authorities. In addition, the principal non-US market for aircraft parts and components is Europe. It would not make policy sense to exclude parts manufactured for European civil aircraft companies from the scope of this Note. The edits described in the attached red-line will not mean that all parts certified by a foreign aviation authority are per se EAR controlled, only that such parts satisfy that one prong of the Note's three-part test. The NATO and non-NATO allies are also already specifically identified in the ITAR as worthy of receiving special treatment under the ITAR. There is no policy reason to treat them differently for purposes of this Note.
7. The term "civil aviation" should be removed from the definition of "standard equipment" pertaining to unpublished specifications to (a) make it consistent with the standard pertaining to published specifications (which is not so limited) and (b) account for the fact that many parts used on civil aircraft are manufactured and tested to generic parts specifications and standards, which are not necessarily "civil aviation" specifications of standards. For example, a switch used on a civil aircraft may be tested to a specification for switches generally and, although used on and certified for use on an aircraft, may not refer to civil aircraft in the applicable specification or standard.

8. For the sake of clarity, the Note's definition of "standard equipment" should specifically state that a part or component covered by a Parts Manufacturer Approval, a Production Certificate or a Technical Standard order is "covered by a civil aircraft type certification" and is, thus, "standard equipment." This is a correct statement of the law and the addition of the Note would make the issue clear for parts and components companies that have PMAs, PCs, and TSOs.
  
9. The definition of the word "integral" in the Note needs to be modified in order to remove the implication of the proposed wording that a part or component is "integral" only if it is actually within – "installed in" – the aircraft. Such an interpretation would lead to the illogical conclusion that a part or component would be EAR-controlled when inside the civil aircraft but potentially ITAR-controlled when outside the aircraft, such as a spare or when part of the supply chain. Such a reading would also be contrary to the structure of the ITAR which, with one exception, does not determine the jurisdictional status of items based upon whether the item is or is not installed in an end-item. Korry's proposed addition to the definition is as follows in italics:

*"Integral is defined as a part or component that is installed in the aircraft or authorized for installation under civil airworthiness regulations of NATO and non-NATO allies (e.g., FAA- or EASA-approved spares and parts in the supply chain)."*

This requested addition to the definition solves the spare parts issue and accounts for the non-U.S. civil aviation authority issue described above.

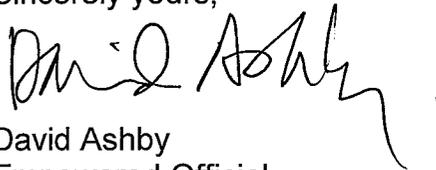
10. The proposed Note states that in determining whether the criteria in the three-part test have been met, exporters should "consider whether the same item is common to both civil and military applications without modification." Korry does not object to this guide, but suggests that DDTC add the clause "of the item's form, fit, or function" to the end of the sentence. Such an addition will state what we understand to be DDTC's long-standing position that an item's jurisdictional status is not affected by a modification that does not affect the item's form, fit, or function. Such an addition will help clarify the scope of what types of modifications may cause an item's jurisdictional status to change, which is a common question that faces aircraft parts and components manufacturers.

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The attached red-line contains many other suggested and less significant changes that may be of benefit to DDTC in drafting a final published rule that will bring more clarity to this area. We appreciate DDTC's effort to give industry a chance to comment on the Note before it becomes law. If you have any follow-on questions or would like additional information about any of our suggestions, please do not hesitate to contact me at 206-281-1495 or [dashby@korry.com](mailto:dashby@korry.com).

Sincerely yours,

A handwritten signature in black ink, appearing to read "David Ashby". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

David Ashby  
Empowered Official  
Vice President of Business Affairs & General Counsel  
Esterline Avionics & Optics Group  
Korry Electronics Co.