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Ms. Eileen Albanese, Director
Office of National Security and
Technology Transfer Controls
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Subject: **ST Comments on BIS's Interim Final Rule: *Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Uses; Entity List Modification***

Regulations.gov Docket ID: BIS-2022-0025

REF: 87 Fed. Reg. 62,186 (Oct 13, 2022), RIN 0694-AI94

Dear Ms. Albanese:

STMicroelectronics International N.V. and its affiliates appreciate the opportunity to provide comments on the Interim Final Rule published on October 14, 2022 (87 FR 62186) regarding the *Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modifications* ("Interim Final Rule").

I. Background on STMicroelectronics

Based in Geneva, Switzerland STMicroelectronics International N.V. ("ST") is a global company that develops, manufactures, and distributes semiconductor products used in a variety of applications, including automotive, industrial, personal electronics, and communications and computer equipment. ST's U.S. operations are based in Coppel, Texas. Additional information on ST and its products can be found at: www.st.com/content/st_com/en/about/st_company_information/who-we-are.html.

Like many companies in the semiconductor sector ST utilizes U.S.-origin hardware, software, and technology in the development and production of our semiconductor products at ST's facilities. This requires ST to comply with the export control laws and regulations of multiple countries, including the reexport controls contained in the various foreign direct product rules contained in the Export Administration Regulations ("EAR") administered by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS").

In the current environment, ST and the rest of the semiconductor industry greatly depends on a global supply chain that includes business partners based in China. These business partners in China are responsible for providing not only intermediate products, back-end processing, and research and development activities on products produced by ST that are intended for commercial applications and are benign to U.S. national security. Therefore, ST requests BIS to consider the following comments and requests for clarifications in issuing the Final Rule and in future controls on semiconductor products.

II. Comments on Interim Final Rule and Requests for Clarification

Based on ST's review of BIS's Interim Final Rule, we have the following comments and requests for clarification that should be included in the Final Rule issued by BIS or in additional FAQs issued in the near future.

A. Request for Reconsideration of Controls on Exports/Reexports to China of Low Level Items Subject to U.S. Unilateral Controls

New § 744.23 of the EAR included in the Interim Final Rule creates additional licensing requirements for the export and reexport to China related to the development or production in China of certain items, software, or technology that otherwise would not otherwise require a U.S. export license. This significantly hinders the ability of foreign semiconductor manufactures to produce, in collaboration with their global suppliers, a wide range of parts and components classified in ECCNS EAR99, 3B991 and 3B992 that are critical to support the worldwide semiconductor supply chain.

ST respectfully requests that BIS reconsider these and other potential additional restrictions on exports, reexports, and transfers to or within China of technology with low export control levels (controlled for AT reasons or below).

In this regard, we also request a change in the licensing policy, possible issuance of a general license, and/or a delay in the implementation of this rule to allow the global semiconductor industry to find or create alternative sources of supply.

B. Restrictions on U.S. Persons

The new restrictions in the Interim Final Rule on certain activities by U.S. persons contained in § 744.6(c)(2) of the EAR should be reconsidered and further clarification should be issued if the current restrictions remain in place.

New § 744.6(c)(2) of the EAR imposes restrictions on "U.S. persons" who engage in certain activities related to items that are not subject to the EAR when used in the development or production of integrated circuits to fabrication facilities in China when used in certain end-uses.

While ST realizes that these restrictions are limited in scope only to defined activities related to items that are not subject to the EAR specified in § 744.6(c)(2)(i)(A)–(C) of the EAR, it is important for BIS to take into account that many individuals located abroad fall within the definition of "U.S. person" even if they have never lived in the U.S. or are currently permanently residing outside of the U.S. The Directorate of Defense Trade Controls refers to these persons as "U.S. Persons Abroad" and these individuals should not be singled out due to their citizenship, which can lead to discrimination and other claims under the laws of certain countries.

In fact, there has been a great deal of confusion regarding the specific activities by U.S. persons that are prohibited or not prohibited some non-U.S. companies have actually chosen to reassign employees who are U.S. citizens out of an abundance of caution.

While ST appreciates BIS's attempt to clarify this issue in FAQ IV.A2 issued on October 28, 2022, we request BIS to issued further clarity on this subject, including, but not limited to, to what BIS means by "facilitating the shipment, transmission, or transfer (in-country) to or within the PRC of any item not subject to the EAR and meeting the parameters of ECCN 3B090, 3D001 (for 3B090), or 3E001 (for 3B090), regardless of end use or end user." As BIS is aware, other agencies, such as OFAC take a broad view of the

term “facilitation” and this could theoretically cover such activities such as sales or legal services relating to these items.

C. Calculating performance parameters in accordance with ECCN 3A090

The following performance parameter calculations stated in the subcategories of ECCN 3A090 established in the Interim Final Rule noted below are unclear and further guidance is requested, such as a formula or more details regarding the types of performances that need to be included in the calculations.

Newly established ECCN 3A090 covers the following ICs:

a. ICs that have or are programmable to have an aggregate bidirectional transfer rate over all inputs and outputs of 600 Gbyte/s or more to or from integrated circuits other than volatile memories, and any of the following:

- a.1. One or more digital processor units executing machine instructions having a bit length per operation multiplied by processing performance measured in TOPS, aggregated over all processor units, of 4800 or more;
- a.2. One or more digital ‘primitive computational units,’ excluding those units contributing to the execution of machine instructions relevant to the calculation of TOPS for 3A090.a.1, having a bit length per operation multiplied by processing performance measured in TOPS, aggregated over all computational units, of 4800 or more;
- a.3. One or more analog, multi-value, or multi-level ‘primitive computational units’ having a processing performance measured in TOPS multiplied by 8, aggregated over all computational units, of 4800 or more; or
- a.4. Any combination of digital processor units and ‘primitive computational units’ whose calculations according to 3A090.a.1, 3A090.a.2, and 3A090.a.3 sum to 4800 or more.

D. Clarification of § 744.23(a)(2)(iv)

The primary basis for the prohibitions in § 744.23 is “knowledge” at the time of export, reexport, or transfer that the items are intended for the restricted end-uses. However, there appears to be a contradiction in the second part of subcategory (a)(2)(iv) to 744.23 where it states “*The development or production of integrated circuits at any semiconductor fabrication facility located in the PRC, but you do not know whether such semiconductor fabrication facility fabricates integrated circuits that meet any of the criteria in paragraphs (a)(2)(iii)(A) through (C) of this section; or*”. Subcategory (a)(2) states “*The following activities meet the end-use scope of the prohibition in this section*” and (iv) is part of this section.

So, does this mean, when a company is exporting products to China and cannot confirm whether or not the semiconductor fabrication facility is producing products that meet the specified criteria in (a)(2)(iii)(A) through (C) that a license is required? Further clarification on this issue would be useful for industry.

E. Third Party Incorporation

In recent meetings with BIS, the semiconductor industry raised issues involving third party incorporation of products that are “Not Subject to the EAR” and requested guidance from BIS on how far down into the international transaction U.S. export controls would apply. BIS responded by stating that the word “destined” in § 744.23(a) was meant to be far-reaching and would capture third party incorporations.

If this is the case, does this mean that every component part, whether it be “Subject to the EAR” or not, that is going to a customer for higher assembly incorporation and destined to China could possibly be subject

to a license requirement? If so, we recommend that BIS issue a list of fabrication facilities that are subject to the Interim Final Rule.

III. CONCLUSION

We appreciate BIS's consideration of these comments and request for clarification and ST is available to discuss the practical impact of the Interim Rule on ST and the semiconductor sector.

Respectfully submitted,

STMicroelectronics International N.V.

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