



February 12, 2014

[REDACTED]

Re: Request for Advisory Opinion regarding whether [REDACTED] infrared cameras are excluded from control under ECCN 6A003.b.4.b by virtue of Note 3

Dear Mr. [REDACTED]:

This is in response to your February 11, 2014 request for an advisory opinion under 15 C.F.R. § 748.3(c) on behalf of your client [REDACTED] regarding whether [REDACTED] infrared cameras are excluded from control under ECCN 6A003.b.4.b by virtue of Note 3 to Export Control Classification Number (ECCN) 6A003.b when installed in certain civilian, passenger automobiles that weigh more than 3 tonnes. *See* 15 C.F.R. pt. 774, Supp. No. 1.

Relevant Facts

You have provided BIS with the following information regarding the matter:

1. The [REDACTED] infrared cameras are within the scope of ECCN 6A003.b.4.b because they are imaging cameras that incorporate focal plane arrays controlled by ECCN 6A002.a.3.f.
2. The cameras (i) were originally designed for use in [REDACTED] civilian, passenger automobiles weighing less than 3 tonnes and were originally installed in [REDACTED] civilian, passenger automobiles weighing less than 3 tonnes, (ii) are operable only when installed in such vehicles or at an authorized maintenance test facility specially designed for such vehicles, and (iii) incorporate an active mechanism that forces the camera not to function if removed from such vehicles.
3. Such cameras will be installed in civilian, passenger car models [REDACTED] manufactures that weigh more than 3 tonnes. These cars weigh more than 3 tonnes for reasons unrelated to any modifications pertaining to military concerns. Specifically, the demand in the United States and Europe for larger and, thus, heavier cars is increasing. In addition, the weights of civilian, passenger vehicles are increasing as a result of changes to United States and European safety



regulations that require more elements in the car to protect passengers in crashes. Finally, hybrid cars, which are becoming more common, weigh more than their non-hybrid counterparts because of the additional batteries and accumulators.

4. All cars at issue in this request will be sold at retail outlets worldwide for civilian, passenger use.

Applicable Regulations

Note 3, paragraph c, to ECCN 6A003.b states, in pertinent part, that the ECCN does not control an imaging camera otherwise within its scope if the camera (1) was “specially designed for installation into a civilian passenger land vehicle of less than 3 tonnes (gross vehicle weight),” (2) is “operable only when installed in the civilian passenger land vehicle for which it was intended, or a specially designed, authorized maintenance test facility;” and (3) “incorporates an active mechanism that forces the camera not to function when it was removed from the vehicle for which it was intended.”

An item is “specially designed,” for purposes of the EAR, if it “[a]s a result of ‘development’ has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph” (paragraph (a)(1)) or “is a part, component, accessory, attachment, or software for use in or with a commodity or defense article ‘enumerated’ or otherwise described on the CCL [Commerce Control List] or USML” (paragraph (a)(2)). 78 Fed. Reg. 22660, 22728 (April 16, 2013) (codified in 15 C.F.R. § 772.1 (2014)). The definition goes on to state that if an item would be “controlled” by virtue of the definition, then one may review the various provisions of paragraph (b) to determine whether it would nonetheless not be considered “specially designed” by virtue of the various “release” provisions in that paragraph. *Id.*

Analysis

The threshold question for responding to your advisory opinion request is whether the [REDACTED] cameras were “specially designed” for installation into a civilian passenger land vehicle of less than 3 tonnes (gross vehicle weight) because, based on the facts provided, the cameras clearly meet the other requirements of Note 3.¹ Specifically, (1) do they, as a result of “development,” have properties peculiarly responsible for achieving or exceeding the relevant performance levels, characteristics, or functions, which, in this case, are having been designed for installation into a civilian passenger land vehicle of *less* than 3 tonnes (gross vehicle weight); or (2) are they “for use in or with” civilian passenger land vehicles of less than 3 tonnes (gross vehicle weight)? If so, then the cameras are excluded from control under ECCN 6A003.b.4.b by virtue of Note 3.

¹ That is, the cameras (i) are operable only when installed in the civilian passenger land vehicle for which they were intended, or in a specially designed, authorized maintenance test facility, and (ii) incorporate an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended.

Unlike most uses of "specially designed" in the CCL, the use of the term in this case is as part of a decontrol note. The definition is, however, applicable to both control and decontrol provisions in the CCL. The only difference between the two uses is that if an item is decontrolled by virtue of being "specially designed" under either paragraph (a)(1) or (a)(2), then there is no need to review the release provisions of paragraph (b). There would be no need to do so because the item would not be controlled by the ECCN at issue.

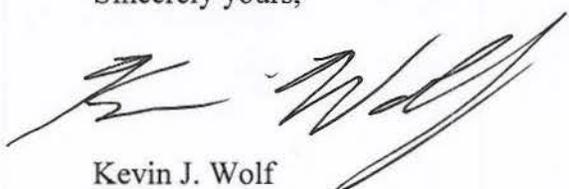
The essence of your request is whether such cameras remain "specially designed" and, thus, excluded from the scope of the ECCN by virtue of Note 3 if they are also installed in a civilian, passenger car weighing *more* than 3 tonnes, all other facts being equal. Neither the definition nor any other provision of the Export Administration Regulations (EAR) states that an item can have different ECCNs if used, without modification, in different items. If an item is decontrolled by virtue of being within the scope of "specially designed" decontrol note, it does not become controlled under the relevant ECCN if it is later merely *used* in another item, assuming all other requirements of the note continue to be satisfied. In other words, the structure of the definition is such that an item cannot both be "specially designed" if used in one type of item and not "specially designed" if used in another type of item.

Conclusion

Based on the facts provided in your request and the foregoing analysis, the [REDACTED] cameras are "specially designed" for civilian passenger land vehicles of less than 3 tonnes (gross vehicle weight) because they were originally developed for such vehicles and are, in fact, for use in or with such vehicles. Subsequent installation of such cameras in to heavier civilian, passenger vehicles does not change this conclusion. Because, based on the facts provided in your request, the cameras meet the other requirements of Note 3 regardless of the weight of the car into which they are installed, Note 3, paragraph c, to ECCN 6A003.b is applicable to [REDACTED] even if they are installed in civilian, passenger vehicles weighing more than 3 tonnes.

This opinion is based on the facts provided in the February 11, 2014 request for advisory opinion. If these facts are not correct or complete, or if they change, then this advisory opinion is not applicable. If you have any further questions regarding this matter, please contact Dennis Krepp at (202) 482-1309.

Sincerely yours,


Kevin J. Wolf