ELFA
EQUIPMENT LEASING AND FINANCE ASSOCIATION

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The Honorable Richard Ashooh
Assistant Secretary for Export Administration
U.S. Department of Commerce
Washington, DC 20230

Comments to BIS-2018-0022
(Submitted electronically via regulations.gov)

Dear Secretary Ashooh:

This letter provides comments from the Equipment Leasing and Finance Association (ELFA) in response to the notice of inquiry issued by the Department of Commerce on October 23, 2018, entitled, "Request for Public Comments Regarding Foreign Disposition of Certain Commodities."

BACKGROUND ON ELFA

ELFA is the trade association representing financial services companies and manufacturers in the $1 trillion U.S. equipment finance sector. Equipment finance not only contributes to businesses' success, but to U.S. economic growth, manufacturing and jobs. Seventy-eight percent of U.S. companies use some form of financing when acquiring equipment, including loans, leases, and lines of credit (excluding credit cards). Each year American businesses, nonprofits, and government agencies invest over $1.508 trillion in capital goods and software (excluding real estate). Some 68%, or $1.034 trillion, is financed through loans, leases, and other financial instruments. America's equipment finance companies are the source of such financing, providing access to capital.

ELFA represents more than 575 member organizations, including many of the nation's largest financial services companies and manufacturers and their associated service providers, as well as regional and community banks and independent, medium, and small finance companies throughout the country. ELFA member companies finance the acquisition of all types of capital equipment and software, including agricultural equipment; IT equipment and software; aircraft; manufacturing and mining machinery; rail cars and rolling stock; vessels and containers; trucks and transportation equipment; construction and off-road equipment; business, retail, and office equipment; and medical technology and equipment. The customers of ELFA members range from Fortune 100 companies to small and medium sized enterprises to governments and nonprofits.

ELFA represents virtually all sectors of the equipment finance market and its members see virtually every type of equipment financing transaction conducted in the United States and every type of funding available to providers of equipment finance. ELFA members who are service providers to the equipment finance industry (such as lawyers, equipment management companies, accountants, trustees, and vendors) have a unique vantage point of seeing scores of financial transactions from initial concept to final payout and from the perspective of both the borrower/issuer and lender/investor/funding source. ELFA truly is at the heart of equipment finance in the United States and our member companies provide lease, debt, and equity funding to companies of all sizes.

IMPORTANCE OF A VIBRANT USED-EQUIPMENT MARKETPLACE FOR LEASING

In the United States, certain asset classes have a higher propensity for leasing than others. The characteristics of these asset classes include equipment that is subject to rapid technological advancement, and equipment that may have a relatively high cost of disposition. Electronic equipment meets both of these tests. Equipment lessors have become very good at their business in recent years, and new assets that are leased and then returned at the end of the initial lease, are frequently leased again as used equipment. This process for remarketing electronics involves testing, but also “cleaning” the data from any piece of equipment prior to it being remarketed. Equipment lessors in tandem with third-party equipment management companies have become very efficient at this process. These efficiencies allow for significantly lower costs of remarketing than the end-user would face were they to try to meet the various legal requirements that apply to the remarketing of used electronics, which vary from state to state, and resell the equipment themselves.

For many types of electronics, once the equipment is prepared for remarketing, the most viable market for second or third generation equipment is overseas, as the U.S. market has a relatively high demand for new electronics compared to used electronics. This market phenomenon has led to the development of robust business models, which take used equipment from the United States and sell that equipment internationally.

This entire system is predicated on the existence of a robust, yet efficient, secondary market.[1] If this secondary market becomes less efficient due to additional regulatory burden, not only will the used equipment sales and leasing markets suffer, but the market for new equipment will suffer as well. A significant part of the reason that lessors are able to offer low monthly payments to lessees is because of the value of the equipment at the end of the lease, the so-called residual value.

[1] Congress recently recognized the importance of the used equipment market when it included used equipment as a class of equipment eligible for 100% expensing.

For purposes of illustration, presume that the Acme company requires a new copier every three years.[2] In the leasing scenario, they contact Copiers Inc., and enter into a three-year lease for a new multi-function copier, which sells for $14,000, with a monthly payment of $300, for a three year cost of $10,800. At the end of the lease, Acme returns the copier to Copiers Inc. Copiers Inc. will then clean the data from the machine, and ensure that it is in good working order, a process which costs Copiers Inc. $200 per copier. Copiers Inc. then either leases the copier to another company or sells it for $3,500, oftentimes as part of a multi-copier sale either domestically or internationally. Copiers Inc. realizes a profit of $500 over the course of the lease if they sell the copier.

If Acme were to buy the copier instead of leasing it, they would pay $14,000 upfront. They would then use the copier for three years, at which point their business requires a technological upgrade. Because Acme is not in the copier business, they would need to pay $300 to have the machine tested and its data cleaned. Additionally, because Acme doesn't sell copiers frequently or in bulk, and has little knowledge of the market, they are only able to sell the copier for $2,500. In this purchase scenario, Acme ends up paying $11,200 in order to use the copier for three years, $500 more than if they had leased it.

NON-USABLE EQUIPMENT IS ALREADY RECYCLED DOMESTICALLY FOR ECONOMIC REASONS

Electronic equipment in the United States is oftentimes sold or leased again as used equipment. This is oftentimes accomplished by the original lessor, but also by third-party groups of trained equipment dealers with access to technical support, parts, and service literature. Eventually, however, most equipment does reach the end of its useful life and needs to be disposed of. The vast majority of electronic waste that reaches the end of its useful life in the United States is recycled or otherwise disposed of in the United States for economic reasons, not legal reasons. A shipping container of non-functioning copiers may have a scrap value of $5,000.[3] It does not make economic sense to ship that container overseas for recycling because the cost of shipping significantly reduces the economics of the transaction.

LABEL OF WASTE IS NEGATIVE EVEN IF EXEMPTIONS EXIST

The existence of the international electronics resale market is critical to keeping costs of both used and new equipment low. Based on recent trends ELFA is extremely concerned that the labeling of used electronics as electronic waste, and any associated export-ban, would be harmful to the international electronics resale market, even if exemptions exist for functioning equipment. ELFA is concerned that were the U.S. government to label all used electronics as waste, many other countries would prohibit or significantly hamper the importation of used electronics. This is for the simple fact that no country wants to be viewed as the dumping grounds for the waste of the United States.

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[2] For ease of presentation, tax implications of ownership have not been included in this example. If these implications were accounted for, the results would be the same.

[3] By contrast, a container of average functioning copiers markets for $40,000 with costs for duties, freight, and storage being incurred.

ELFA believes that many countries will not consider any exemptions provided for functioning equipment, and the damage will be done by the initial classification.

Because of these factors, we believe that the international resale markets for used electronic equipment will be significantly harmed. This could lead to entire classes of used and functioning electronics to no longer have a viable market. This inevitably will lead to increased disposal of what had been heretofore usable equipment with several years of useful life remaining being disposed of in the United States. It will also eliminate entire categories of exports, reducing overall U.S. exports and increasing our trade deficits with several key trading partners.

NEW RECORD KEEPING REQUIREMENTS WILL HARM MARKETS FOR BOTH USED AND NEW EQUIPMENT

It is important to note that the expected impact of substantiating "conditions" of acceptable assets for export, re-configurations of filing systems and additional recordkeeping requirements as contemplated by the BIS proposal will undoubtedly lead to higher costs in the form of administrative burdens and delays in asset sales. In a technology market which already provides marginal financial returns in the secondary market, lessors will ultimately be forced to pass these costs on to end-users of not only used equipment, but also new equipment. This is so because, if remarketing costs increase, lease rates will increase as well and the value of used equipment will, in effect, decrease solely due to economically inefficient transaction costs.

Today, leasing provides end-users an affordable option for asset acquisition by allowing low lease payments in exchange for use of equipment. Additionally, leasing allows lessors to retain ownership of equipment thus permitting end-users the option to return equipment at end of lease. This is critical to end-users, especially in electronic industries which are subject to constant technological advancements. End-users can return their current functionally viable equipment, for upgraded asset options. Thus, leasing alleviates the costs associated with asset disposition. Lessors can offer low lease payments due to expectations of asset value realizations that will be obtained from interested buyers in a viable secondary market.

In order to obtain secondary market value, many lessors must rely on third party organizations to manage the off-lease return process. These third-party organizations provide many benefits to lessors, some of which include asset expertise, inspection services, data-wiping competencies, logistic assistance, storage, disposal, recycling and remarketing capabilities. These services, while needed, come with significant costs. Thus, it's critical that the asset return process is managed efficiently to limit these costs. Anticipated reporting and compliance requirements are expected to delay sale of readily available assets. In asset classes that see a rapid depreciation in value, delays in the ability to remarket equipment become extremely detrimental to sale price.

As higher compliance costs and lower sale values are recognized by third-party remarketing services, these costs will be borne by lessors, who will ultimately pass these costs on to end-users in the form of higher lease rates. Consequently, end-users will absorb costs for assets they no longer want or use.

ENVIRONMENTAL IMPACT

The leasing of equipment is a model of the reuse component of the environmental philosophy of reduce, reuse, and then recycle. When used equipment is leased to another entity, it reduces the need for additional raw materials and energy consumed in the production of new equipment. Any market force which adds to the cost of remarketing used equipment, whether it be for re-leasing or selling the used equipment, will invariably lead to equipment that would otherwise be used again being recycled or, when recycling is not an option, ending up in a landfill. If the proposal to ban the export of electronic waste is adopted, ELFA believes that some countries may react by banning the import of used electronic goods, even if they are subject to an exemption from the U.S. export ban. Especially in some asset classes, the market for second and third generation equipment is overseas. If these bans were to take effect, the elimination of the markets, with no U.S. market existing to take its place, will lead to an increase in the recycling or landfilling of usable and desirable electronic goods, a negative environmental outcome.

PROPOSAL IS NOT IN LINE WITH OTHER U.S. GOVERNMENT EFFORTS

The United States International Trade Commission in 2012 found that the United States is the world's largest producer, consumer, and exporter of remanufactured goods. This study found that during the period 2009-11, U.S. production of remanufactured goods grew by 15 percent to at least $43 billion, supporting 180,000 full-time jobs.[4] Remanufacturing can add a critical fourth step to the reduce, reuse, recycle process, by providing for remanufacturing and a second life before recycling or disposal.

Accordingly, the United States, Mexico, Canada Agreement (USMCA) recognized the importance of these markets and contains enhanced transparency provisions for import and export licensing procedures that will provide greater certainty and predictability, and new rules to address non-tariff barriers related to trade in remanufactured goods. This proposal runs the risk of running counter to these efforts.

IMPROVEMENTS MADE TO DOD PROCUREMENT PROCESSES POST-2012 COMMITTEE ON ARMED SERVICES REPORT

While ELFA is not an expert in Defense Department supply chain management, we believe that the proposal is based upon findings from 2012 and ignores improvements made to this process in 2014 by the Department of Defense as a result of earlier Congressional action.[5] Additionally, the only example in the 2012 report by the Senate Committee on Armed Services that involves electronics recycling, catalogs several serious process control failures that should have been caught by multiple domestic suppliers, and ironically, has counterfeit parts at the beginning of the supply chain and

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[4] https://www.usitc.gov/publications/332/pub4356.pdf
[5] https://www.gpo.gov/fdsys/pkg/FR-2014-05-06/pdf/2014-10326.pdf

they are not associated with the equipment recycler. It is also unclear how any efforts to prohibit the export of electronic waste would reduce the amount of electronics counterfeiting. Electronic waste could, in theory, be used to harvest used parts, and pass them off as new, but any well-controlled supply chain should be able to catch that. Additionally, any serious effort at intellectual property theft, which would then be used to create true counterfeit parts, could easily be accomplished through the purchase of new equipment rather than going through the process of acquiring electronic waste.

CONCLUSIONS

ELFA believes that this proposal, if enacted, will significantly harm the equipment leasing and finance industry by significantly raising the costs of remarketing used equipment. ELFA believes that the net result of the proposals described by the Notice of Inquiry will be to:

- Increase the U.S. trade deficit with key trading partners by limiting the export of used electronics;
- Potentially hinder advances made in the reduction of trade barriers by the USMCA;
- Increase the cost of both new and used electronics sold in the United States and around the world;
- Increase the amount of usable, and heretofore desired, electronics that are recycled or landfilled prior to the end of their useful life; and
- Significantly harm the U.S. electronics leasing market by increasing the cost of remarketing used electronics.

Thank you for the opportunity to comment on this important matter. Should you have any questions regarding this submission, please contact Andy Fishburn, ELFA's Vice President of Federal Government Relations at afishburn@elfaonline.org.

Respectfully submitted,

Ralph Petta

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