

## **PROPOSED CHARGING LETTER**

Mr. Curtis Reusser  
President and CEO  
Esterline Technologies Corporation  
500 108th Avenue NE, Suite 1500  
Bellevue, WA 98044

Re: Alleged Violations of the Arms Export Control Act and the  
International Traffic in Arms Regulations by Esterline  
Technologies Corporation.

Dear Mr. Reusser:

The Department of State (“Department”) charges Esterline Technologies Corporation (“Esterline”), including its operating divisions, subsidiaries, and business units (collectively referred to as “Respondent”) with violations of the Arms Export Control Act (“AECA”) (22 U.S.C. §§ 2778-2780) and the AECA’s implementing regulations, the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. Parts 120-130) in connection with unauthorized exports of defense articles, including technical data; unauthorized provision of defense services; unauthorized temporary imports of defense articles; violations of terms and conditions of licenses or approvals granted; exports of defense articles in excess of quantity and value authorized; improper use of exemptions; and failure to file or filing of incorrect documentation with the Automated Export System (“AES”). A total of 282 charges are alleged at this time.

The essential facts constituting the alleged violations are described herein. The Department reserves the right to amend this proposed charging letter, including through a revision to incorporate additional charges stemming from the same misconduct of Respondent in these matters. Please be advised that this proposed charging letter, pursuant to 22 C.F.R. § 128.3, provides notice of our intent to impose debarment or civil penalties or both in accordance with 22 C.F.R. §§ 127.7 and 127.10.

When determining the charges to pursue in this matter, the Department considered various mitigating factors, including Respondent's voluntary disclosures, that many of the violating transactions likely would have been approved had the transactions been the subject of properly submitted license requests, self-initiated remedial compliance measures implemented prior to and during the course of the Department's review; cooperation with the Department during the Department's review; and the absence of disclosure of sensitive technologies by Respondent or harm to national security. Notwithstanding mitigating factors, based on information concerning certain violations provided to the Department by federal law enforcement following criminal investigations, provision of information only after initiation of such investigations, and the extensive and ongoing nature of the alleged violations, the Department has determined to charge violations at this time.

### **JURISDICTION**

Esterline is a corporation organized under the laws of the State of Delaware. Esterline is a U.S. person within the meaning of the AECA and § 120.15 of the ITAR, and is subject to the jurisdiction of the United States.

During the period covered by the violations set forth herein, Esterline was engaged in the manufacture and export of defense articles, technical data, and defense services, and was registered as a manufacturer/exporter with the Directorate of Defense Trade Controls ("DDTC") in accordance with § 38 of the AECA and § 122.1 of the ITAR.

The defense articles, technical data, and defense services associated with the alleged violations set forth herein are or were at the time of the alleged violations designated as controlled under various categories of the United States Munitions List ("USML"), § 121.1 of the ITAR. None of the defense articles, technical data, and defense services at issue are designated as Significant Military Equipment. The defense articles, technical data, and defense services at issue are or were at the time of the alleged violations controlled by the USML under the following categories: IV(h), VI(i), VI(f), VI(g), VII(g), VII(h), VIII(h), VIII(i), XI(a), XI(c), XI(d), XII(e), XII(f), XV(e), XV(f), XX(c), and XX(d).

## **STATEMENT OF FACTS**

### **A. Background**

1. Esterline, a Delaware Corporation, located at 500 108th Avenue, NE, Suite 1500, Bellevue, WA 98004, is a specialized manufacturing company principally serving aerospace and defense markets with approximately eighty percent (80%) of Esterline's total revenues generated from the aerospace and defense markets. Esterline owns and operates several subsidiary operations in the United States and abroad. Esterline is registered as a Manufacturer/Exporter with the Department.

2. Since 2004, Esterline has undergone a significant expansion, primarily through the acquisition of existing companies. Over the course of a multi-year review and through multiple disclosures, both voluntary and directed, Respondent and the Department identified violations that occurred within Respondent entities and predecessors in interest and ongoing violations despite implementation of corrective measures.

3. Concurrent with the review, in late 2009, Esterline initiated an external audit at the request of the Office of Defense Trade Controls Compliance ("DTCC"), and DTCC agreed with Esterline's choice of external auditor. Esterline and seventeen (17) of Esterline's subsidiaries, including many of the subsidiaries at issue herein, were audited. While the audit identified certain weaknesses, its overall conclusion was that, "Esterline has established effective baseline requirements for ITAR compliance that [Esterline] has flowed down to each respective Esterline company for implementation. The individual Esterline companies, in turn, have implemented specific measures to meet these requirements and to ensure that their respective activities are conducted in an ITAR-compliant manner." Esterline subsequently submitted voluntary disclosures related to discrepancies found in that audit, as would be expected. In retrospect, however, the Department and Respondent agreed that the audit failed to identify persistent compliance issues at Esterline entities and inadequacies in Esterline's compliance program.

4. To demonstrate the breadth of the violations disclosed by Esterline entities and how corporate oversight and the corporate export

compliance program were insufficient to prevent such alleged violations, this section presents a description of the types of alleged violations uncovered over several years, including periods that pre-dated the 2009-2010 audit. The Department, however, is not alleging charges at this time for all alleged violations described herein.

5. The activities described herein involve the following Respondent entities.

- a. Esterline's U.S. subsidiary, CMC Electronics Aurora LLC ("CMC"), located in Illinois, designs, manufactures, sells, and supports high-technology electronic products for aviation and global positioning markets. Forty-nine (49) charges alleged relate to CMC.
- b. Esterline's U.S. subsidiary, Hytek Finishes Co. ("Hytek"), located in Washington, provides specialized metal, anodizing, and organic coating services for the aerospace, defense, and commercial markets. Six (6) charges alleged relate to Hytek.
- c. Esterline's U.S. subsidiary, Kirkhill-TA Co. ("KTA"), located in California, manufactures elastomer, seals, clamps, insulation material, molded parts, and extrusions for the aerospace, defense, and commercial markets. One (1) charge alleged relates to KTA.
- d. Esterline's U.S. subsidiary, Korry Electronics Company ("Korry"), located in Washington, specializes in the manufacture of control solutions for operator interfaces for the aerospace, defense, and commercial markets. One hundred seventy-nine (179) charges alleged relate to Korry.
- e. Esterline's U.S. subsidiary, Leach International Corporation ("Leach"), located in California, designs and manufactures power switching and control components and equipment for aerospace, rail, and industrial applications. Leach's sister company, Leach International Europe S.A. ("LIE"), located in France, also designs and manufactures power switching and control components and equipment for aerospace, rail,

and industrial applications. Six (6) charges alleged relate to Leach.

- f. Esterline's U.S. subsidiary, Mason Electric Company ("Mason"), located in California, manufactures control devices and subsystems for military airplane cockpits and vehicles. Forty (40) charges alleged relate to Mason.
- g. Esterline's U.S. subsidiary, Memtron Technologies Company ("Memtron"), located in Michigan, manufactures various custom-designed input components, including membrane switches. One (1) charge alleged relates to Memtron.

## **B. Nature of Violations**

6. Conduct disclosed by Esterline included violations of many ITAR sections and can be generally characterized in the following manner: 1) improper classification of articles; 2) failure to administer properly licenses and agreements; and 3) incomplete or poor recordkeeping. The violations disclosed by Esterline entities were the result of (i) insufficient understanding and knowledge of the ITAR and (ii) corporate oversight and a corporate export compliance program that were insufficient to prevent the alleged violations. Although the corporate compliance function was reassured by the results of what appeared to be a generally favorable 2009-2010 external audit, program weaknesses discovered in the year that followed caused the corporate compliance function to reexamine the audit findings.

### **KTA**

7. On October 10, 2008, KTA filed a voluntary disclosure divulging, among other things, unauthorized transfers of technical data and manufacturing know-how to foreign person employees. KTA indicated the violations resulted from insufficient export controls and misclassification of its products due to a mistaken belief that all of its products and related technical data were subject to the control of the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774) administered by the Department of Commerce. KTA then implemented policies and procedures

to classify properly its products and prevent unauthorized transfers of technical data and manufacturing know-how to foreign person employees. DTCC closed the case on November 10, 2008, cautioning KTA to take immediate and necessary actions to strengthen its compliance processes and procedures. Despite DTCC's warning, KTA continued to have similar compliance issues.

8. In May 2011, the Department of Homeland Security, Homeland Security Investigations ("HSI") initiated a criminal investigation of KTA and its activities related to the AECA and ITAR. HSI investigated potential unauthorized exports of ITAR-controlled technical data that were alleged to have occurred during a facility tour between January 10-13, 2011, by a visiting delegation comprised of foreign persons from the People's Republic of China ("PRC"); potential provision of defense services to the PRC delegation; and potential access to ITAR-controlled items by a foreign person employee with U.K./Indian dual nationality.

9. On January 3, 2012, following discussions with HSI regarding its investigation of KTA, the United States Attorney's Office ("USAO") for the Central District of California declined to prosecute KTA. HSI subsequently provided to DTCC its investigation report, dated December 16, 2011.

10. Following the investigation by HSI, on October 14, 2011, Esterline, on behalf of KTA, provided credible evidence refuting the allegations set forth in the HSI investigation, but disclosed access by foreign person employees from El Salvador, Honduras, India, Mexico, and the U.K. to defense articles and technical data controlled by USML Categories IV(h), IV(i), VI(f), VI(g), VII(g), VII(h), VIII(h), VIII(i), XII(e), XII(f), XV(e), XV(f), XX(c), and XX(d). According to Esterline, these violations resulted from inadequate export compliance measures and weakness in internal export controls at KTA. The KTA management and empowered official were subsequently replaced.

### **Korry**

11. In September 2009, HSI initiated a criminal investigation of Korry and its activities related to the AECA and ITAR.

12. On October 5, 2009, HSI served Korry with an Export Subpoena for records relating to exports between Korry and an entity in Liechtenstein.

13. In response to the subpoena, Korry conducted an internal compliance review. On May 28, 2010, Esterline, on behalf of Korry, filed an initial notice of voluntary disclosure concerning unauthorized exports to foreign suppliers, including those which were the subject of the subpoena. As described in the following paragraphs, the full disclosure, filed on September 13, 2010, provided the results of the internal compliance review with respect to the subpoena. Part of the full disclosure included a description of activities that, in the Department's view, were consistent with many of the alleged violations asserted by HSI.

14. Beginning in 1997, an entity in Liechtenstein began manufacturing thin film-coated glass parts controlled by USML Categories VII(g), VII(h), VIII(h), VIII(i), XI(c), and XI(d) for Korry. Korry failed to obtain authorization from the Department for the manufacture of these parts. While transaction records for the parts are mostly incomplete, Esterline disclosed that between 1997 and 2010, Korry transferred technical data for the manufacture of the glass parts to Liechtenstein on several occasions.

15. On May 12, 2009, the Department approved MA 1224-09 authorizing the manufacture of optical filters for liquid crystal displays compatible with night vision imaging systems ("NVIS") controlled by USML Category XI by a Liechtenstein entity. The parties executed MA 1224-09 on May 13, 2009. Prior to the approval and/or execution of MA 1224-09, however, Korry transferred without authorization technical data related to the optical filters to Liechtenstein. Additionally, between February and September 2009, Korry exported without authorization eight (8) shipments of optical filter parts for repair or replacement to Liechtenstein.

16. In 2001, Korry began operating with a U.K. entity under MA 1047-01, which was amended in 2004. MA 1047-01A, as amended, authorized the transfer of technical data and defense services for the manufacture of parts and components for certain Light-Emitting Diode Displays controlled by USML Category VIII(h) and VIII(i) for the T-50, F-16, F-22, F-35, KS-135 and EF2000 aircraft and the UH 60 and AH-1 helicopter applications.

17. Between 2006 and 2010, while operating under MA 1047-01A, Korry exported twenty-three (23) shipments of aircraft parts to the U.K. for repair or replacement despite MA 1047-01A not authorizing exports of defense articles. Esterline disclosed Korry mistakenly believed the exports qualified for the exemption under 22 C.F.R. § 123.4(a)(1). Of these shipments, only seventeen (17) shipments could be reconciled with AES filings. One (1) shipment was made under a DSP-73 license and the remainder of the AES filings indicated improper use of the exemption under § 123.4(a)(1). Review of violations was complicated by Korry's failure to maintain records or a copy of the executed agreement, and there were no records of Korry's submissions of the required annual reports of sale or other transfers under the agreement for 2004 and 2005 pursuant to 22 C.F.R. § 124.9(a)(5).

18. On June 25, 2008, DDTC approved MA 1816-08, which authorized the manufacture of printed wiring board assemblies controlled by USML Category XI by a Canadian entity for Korry. Prior to the execution of MA 1816-08, however, Korry exported without authorization technical data related to the assemblies to Canada and provided unauthorized defense services for the manufacture of these assemblies. Moreover, following execution of MA 1816-08, Korry exceeded the scope of MA 1816-08 authorizations by transferring technical data controlled by USML Categories VII(h) and VIII(i) to Canada for the manufacture of defense articles.

19. Between 2005 and 2009, on at least fifty-three (53) occasions, Korry exported without authorization technical data related to variable resistor parts and assemblies for control panels and NVIS respectively controlled by USML Categories VI(g) and VIII(i) to a U.K. entity. Korry also exported without authorization the variable resistor parts and assemblies for repair or replacement to the U.K. AES filings could not be reconciled for these shipments because the shipments were most likely mistakenly identified as controlled under the EAR, and the shipments were likely shipped using an exemption under 15 C.F.R. § 30.37(a). According to Esterline, these violations were the result of failure to properly self-determine the classification of parts and related technical data and establish controls to verify jurisdictional status at Korry.

20. Further, between 2007 and 2009, as part of the Canadian Maritime Helicopter Program, Korry exported without authorization

technical data and defense services for retrofit design and installation of NVIS-compatible optical filters on lighted systems, controlled by USML Category VI(f), of Halifax-Class Frigates for night-time helicopter operations to a Canadian entity and a U.K. entity. Korry stated it erroneously believed the transactions were covered by 22 C.F.R. § 126.5 (the “Canadian Exemption”).

21. On or about November 10, 2010, HSI concluded its criminal investigation, finding Korry violated on several occasions the AECA and the ITAR. HSI presented its case to the USAO for the Western District of Washington. On or about November 17, 2010, the USAO declined prosecution of Korry, and HSI subsequently referred the matter to DTCC for potential administrative proceedings.

### **Leach**

22. From 2006 to 2010, Leach exported without authorization parts and components and related technical data controlled by USML Category VI(f), VI(g), VII(g), VII(h), VIII(h), and VIII(i) for use in submarines; the M2 Infantry Fighting Vehicle; and EF2000, F-16, and B-1B aircraft, respectively, to Leach’s Mexican facility, Leach International de Mexico S. de R.L. de C.V. (“LIMEX”), for further processing of the parts.

23. Additionally, Leach without authorization exported technical data and provided defense services to LIMEX for the manufacture by LIMEX of subassemblies controlled by USML Categories IV(h), VI(f), VIII(h), and XX(c) for use in missile launch vehicle systems; naval vessels or equipment; UH-60 helicopter and B-1, F-16, and V-22 aircraft; and submarines, respectively. A total of fifty-two (52) subassemblies were manufactured by LIMEX for Leach.

24. In 2008, Leach began operating with a German entity and its French and Spanish affiliates under TA 2449-07, which authorized technical data and defense service exchanges controlled by USML Category VIII(i) relating to a CH-53 helicopter update program. Between 2008 and 2010, Leach permitted its sister company located in France, LIE, to participate in technical data exchanges under TA 2449-07 despite LIE not being party to said agreement.

25. Also in 2008, Leach without authorization exported one (1) shipment of EP-231 diode assemblies for use in the T-50 trainer aircraft controlled by USML Category VIII(h) to Leach's sister company, Leach International, Asia-Pacific Ltd. for use by a South Korean entity.

26. As indicated by Esterline's disclosure, the aforementioned violations articulated in Paragraphs 22, 23, and 25 primarily resulted from Leach's failure to make jurisdictional determinations for its products. The violations articulated in Paragraph 24 resulted from a misunderstanding as to who were the authorized parties under TA 2449-07.

### CMC

27. From 2004-2009, CMC without authorization temporarily imported for repair or replacement 253 shipments of defense articles, including, but not limited to, INS/GPS Guidance Units, Head Up Displays, Multi-Function Displays, Pilot Displays, Mission Computers, Aviation Computers, Aviation Display Computers, Interface Computers, Assembly Armament Interface Units, Navigation Control Panels, and other control panel assemblies controlled variously by USML Categories VIII and XI. Specifically, 101 shipments of the 253 shipments of articles were temporarily imported without properly invoking § 123.4(a)(1) at import or were improperly exported citing "NLR" (no license required) pursuant to the EAR; 149 shipments were temporarily imported and cited § 123.4(a)(1) at the time of import yet improperly exported as NLR; and 3 shipments were temporarily imported without citing § 123.4(a)(1) at the time of import, but cited § 123.4(a)(1) at the time of export.

28. From 2005-2009, CMC without authorization exported for repair and replacement thirty-four (34) shipments of voltage power supplies, data computers, data transfer units, and anode modules for the A-10 aircraft controlled by USML Categories XI(a) and XI(c) to certain foreign vendors located in Canada, France, and Israel. Technical data, controlled by the USML, in the form of test results and/or test reports related to the aforementioned defense articles were also transferred without authorization. Many of these unauthorized exports were either erroneously cited as NLR, erroneously exported under § 123.4(a)(1), or exported pursuant to the Canadian Exemption in the absence of a proper citation to the relevant exemption.

29. In 2008, CMC failed to properly invoke the Canadian Exemption, for three (3) shipments containing aircraft display computers, power control units, cables, and boresight modules controlled by USML Categories XI(a) and XI(c) to its parent company, CMC Electronics, Inc., in Canada. Misunderstanding how to properly use the Canadian Exemption, CMC cited NLR as export authorization rather than citing to the Canadian Exemption.

30. AES entries associated with the temporary imports and exports set forth in Paragraphs 27-29 were incorrect because CMC either erroneously indicated the shipments were NLR or failed to cite to the exemptions under § 123.4(a)(1) or the Canadian Exemption.

31. According to Esterline, the violations resulted from inadequacies in the existing policies and procedures and a fundamental misunderstanding about the ITAR, including how to properly handle temporary imports and invoke appropriate exemptions at CMC.

### **Hytek**

32. From 2008-2010, Hytek temporarily imported without authorization 388 shipments of aircraft parts and components controlled by USML Category VIII(h) from Canada through the improper use of the Canadian Exemption. Specifically, Hytek's Canadian customers shipped the parts and components to Hytek without indicating on the import documentation that the shipments were being made in accordance to the Canadian Exemption. Despite being aware of the issue, Hytek failed to advise its customers of the proper use of the Canadian Exemption when such incidents occurred. The AES entries for these unauthorized temporary imports were either incorrect or not filed.

33. Similar to CMC, the violations were primarily due to inadequacies in existing policies and procedures and misunderstandings of the ITAR, including misunderstandings of the use of exemptions at Hytek.

### **Mason**

34. In 2002, Mason began operating under TA 1655-02A, as amended, which authorized the export of defense articles, technical data, and defense services between Mason and a U.S. entity and its related Brazilian

entity to integrate a cockpit control system into the A-29 aircraft, controlled by USML Category VIII for the Government of Brazil. On June 23, 2010, Mason disclosed that it had exceeded the authorized value of exports in furtherance of TA 1655-02A by \$1,928,233.27. Mason also disclosed that fees or commissions in the aggregate amount of \$100,000 or more were paid, offered, or expected to be paid to Mason's Brazil agent for sales of defense articles manufactured under TA 1655-02A. Mason failed to report these fees or commissions to DDTC as required under 22 C.F.R. § 130.9. As a result of these violations, Mason implemented corrective measures to prevent similar violations from occurring in the future.

35. On September 1, 2011, over one year after disclosing compliance issues with the administration of TA 1655-02A, Esterline, on behalf of Mason, disclosed additional violations related to the administration of TA 1655-02A. Specifically, Mason submitted DSP-5 license applications in furtherance of TA 1655-02A, many of which failed to identify that the licenses were in furtherance of TA 1655-02A. This failure contributed to Mason exceeding the value of exports authorized under TA-1655-02A. On November 29, 2011, Esterline disclosed that it further exceeded the value of exports authorized under TA 1655-02A. In total, Mason exceeded the value of exports authorized under TA 1655-02A by \$3,064,869.06. Additionally, thirty-one (31) DSP-5 licenses in furtherance of TA 1655-02A involved unauthorized end-users in Burkina Faso, Chile, Colombia, Dominican Republic, and Ecuador despite TA 1655-02A only authorizing end-use by the Brazilian government.

36. In 2004, Mason began operating with a Spanish entity under TA 2078-04A, as amended, which authorized exchanges of technical data and defense services related to a Boom Flight Control Assembly for use on the A400M aircraft controlled by USML Category VIII(h). In January 2010, however, Mason exceeded the scope of TA 2078-04A authorizations when Mason transferred technical data in furtherance of TA 2078-04A to another Spanish entity that was not a party to the agreement.

37. Further, in 2009, Mason began operating under TA 1960-09, which authorized the export of defense articles, technical data, and defense services to a Brazilian entity to permit said entity to use, test, repair, evaluate, install, and operate stick grip, throttle grip, forward and aft stick grip, and forward and aft throttle grip assemblies for the AM-X Modernization (A-1M) Program controlled by USML Category VIII. The

scope of TA 1960-09 was exceeded when Mason permitted Korry, which was not a party to the agreement, to provide technical data to the Brazilian entity in furtherance of the agreement.

38. Also in 2009, Mason began operating under TA 0370-09, which authorized the export of defense articles, technical data, and defense services related to Right Hand and Left Hand Grip Assemblies for the TOW ITAS Weapons System Program controlled by USML Category IV. In a February 2010 shipment of assemblies, Mason exceeded the quantity and value authorized by DSP-5 license 050156632 in furtherance of TA 0370-09.

### **Memtron**

39. In 1998, Esterline acquired Memtron, which manufactures various membrane switches controlled by the USML Categories VII(c), VIII(h), and XI(c). In 2007, Esterline consolidated its subsidiary registrations under a single registrant code. From 2007 up until January 2010, Esterline failed to include Memtron as a manufacturer of defense articles on Esterline's registration with the Department due to an administrative error.

## **RELEVANT ITAR REQUIREMENTS**

40. Paragraphs 1-39 are hereby incorporated and re-alleged.
41. Part 121 of the ITAR identifies the items that are defense articles, technical data, and defense services pursuant to Section 38 of the AECA.
42. Section 122.1(a) of the ITAR provides that any person who engages in the U.S. in the business of either manufacturing or exporting of defense articles is required to register with DDTC.
43. Section 123.1(a) of the ITAR provides that any person who intends to export or to import temporarily a defense article must obtain the approval of DDTC prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter.

44. Section 123.22(a) of the ITAR provides that any export of controlled defense articles, to include defense articles transiting the U.S., requires the electronic reporting of export information. The reporting of the export information shall be to the U.S. Customs and Border Protection (“CBP”) using the AES or directly to the DDTC. Any license or other approval authorizing the permanent export of hardware must be filed at a U.S. Port before any export. Licenses or other approvals for the permanent export of technical data and defense services shall be retained by the applicant who will send the export information directly to DDTC. Temporary export or temporary import licenses for such items need not be filed with CBP, but must be presented to CBP for decrementing of the shipment prior to departures and at the time of entry.

45. Section 124.1(a) of the ITAR provides that approval from DDTC must be obtained before defense services may be furnished.

46. Section 127.1(a)(1) of the ITAR provides that without first obtaining the required license or other written approval from DDTC, it is unlawful to export any defense article or technical data or to furnish any defense service for which a license or written approval is required.

47. Section 127.1(a)(3) of the ITAR provides that without first obtaining the required license or other written approval from DDTC, it is unlawful to import any defense article whenever a license is required.

48. Section 127.1(b)(1) of the ITAR provides that it is unlawful to violate any of the terms or conditions of licenses or approvals granted, any exemption, or any rule or regulation.

49. Section 127.1(b)(3) of the ITAR provides that it is unlawful to engage in the U.S. in the business of either manufacturing or exporting defense articles without complying with registration requirements.

50. Section 130.9(a)(1)(ii) of the ITAR provides that each applicant must inform DDTC as to whether the applicant or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested for fees or commissions in the aggregate amount of \$100,000 or more.

## **CHARGES**

51. Paragraphs 1-50 are hereby incorporated and re-alleged.

52. Charges 1-217: Respondent violated 22 C.F.R. § 127.1(a)(1) two hundred and seventeen (217) times when Respondent exported defense articles, technical data, and furnished defense services controlled by USML Categories IV(h), IV(i), VI(f), VI(g), VII(g), VII(h), VIII(h), VIII(i), XI(a), XI(c), XI(d), XII(e), XII(f), XV(e), XV(f), XX(c), and XX(d) to Brazil, Burkina Faso, Canada, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, France, Honduras, India, Liechtenstein, Mexico, Spain, South Korea, and the U.K. without first obtaining a license or written approval from the Department as set forth in Paragraphs 10, 14, 15, 17-20, 22-25, 29, and 35-38.

53. Charges 218-223: Respondent violated 22 C.F.R. § 127.1(a)(3) six (6) times when Respondent temporarily imported defense articles controlled by USML Categories VIII and XI without first obtaining from the Department a license or written approval as set forth in Paragraphs 27 and 32.

54. Charges 224-260: Respondent violated 22 C.F.R. § 127.1(b)(1) thirty-seven (37) times when Respondent violated terms and conditions of TA 1655-02A, TA 2078-04A, TA 2449-07, MA 1816-08, TA 0370-09, and TA 1960-09, as set forth in Paragraphs 18, 24, and 34-38.

55. Charges 261-280: Respondent violated 22 C.F.R. § 127.1(b)(1) twenty (20) times when Respondent exported defense articles, technical data, and furnished defense services controlled by USML Categories VI, VIII and XI without first reporting required information to CBP or DDTC prior to departure and at the time of entry as required under 22 C.F.R. § 123.22(a) and as set forth in Paragraphs 17, 19, 27-30, and 32.

56. Charge 281: Respondent violated 22 C.F.R. § 127.1(b)(1) one (1) time when Respondent failed to inform DDTC as to whether Respondent or its vendors were paid or offered or agreed to pay, in respect of any sale concerning TA 1655-02A, fees or commissions in an aggregate amount of \$100,000 or more as required under 22 C.F.R. § 130.9 and as set forth in Paragraph 34.

57. Charge 282: Respondent violated 22 C.F.R. § 127.1(b)(3) one (1) time when Respondent failed to include on its registration with the Department Respondent's U.S. subsidiary, Memtron, which engages in the business of manufacturing and/or exporting defense articles as set forth in Paragraph 39.

### **ADMINISTRATIVE PROCEEDINGS**

Pursuant to Part 128 of the ITAR, administrative proceedings are instituted by means of a charging letter against a respondent for the purpose of obtaining an Order imposing civil administrative sanctions. The Order issued may include an appropriate period of debarment, which shall generally be for a period of three (3) years, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed \$500,000 per violation, may be imposed as well in accordance with § 38(e) of the AECA and § 127.10 of the ITAR.

A respondent has certain rights in such proceedings as described in Part 128 of the ITAR. This is currently a proposed charging letter. However, in the event that you are served with a charging letter, you are advised of the following matters: You are required to answer the charging letter within thirty (30) days after service. If you fail to answer the charging letter, your failure to answer will be taken as an admission of the truth of the charges. You are entitled to an oral hearing by a written demand filed with the answer or within seven (7) days after service of the answer. You may, if so desired, be represented by counsel of your choosing.

Additionally, in the event that you are served with a charging letter, your answer, written demand for oral hearing, if any, and supporting evidence required by § 128.5(b) of the ITAR, shall be in duplicate and mailed to the administrative law judge ("ALJ") designated by the Department to hear this case. These documents should be mailed to the ALJ at the following address: United States Coast Guard, Office of Administrative Law Judges G-CJ, 2100 Second Street, SW Room 6302, Washington, D.C. 20593. A copy shall be simultaneously mailed to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, PM/DDTC, SA-1, 12<sup>th</sup> Floor, Washington, D.C. 20522-0112. If you

do not demand an oral hearing, you must transmit within seven (7) days after the service of your answer, the original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue.

Please be advised that a charging letter may be amended from time to time, upon reasonable notice. Furthermore, pursuant to § 128.11 of the ITAR, cases may be settled through consent agreements, including after service of a proposed charging letter.

Be further advised that the U.S. Government is free to pursue civil, administrative, and/or criminal enforcement for violations of the AECA and the ITAR. The Department of State's decision to pursue one type of enforcement action does not preclude it, or any other department or agency, from pursuing another type of enforcement action.

Sincerely,

Sue Gainor  
Director  
Office of Defense Trade Controls  
Compliance