



United States Department of State

*Bureau of Political-Military Affairs
Directorate of Defense Trade Controls*

Washington, D.C. 20520-0112

DRAFT CHARGING LETTER

OCT - 6 2004

Mr. Vincent A. Maffeo
Senior Vice President & General Counsel
ITT Industries, Inc.
4 West Red Oak Lane
White Plains, NY 10604

Re: Investigation of ITT Industries, Inc.

Dear Mr. Maffeo:

The Department of State (“Department”) charges that ITT Industries, Inc. (hereinafter “ITT” or “Respondent”), acting through various subsidiaries, affiliates, and divisions including ITT Night Vision and ITT Aerospace Communications Divisions violated the Arms Export Control Act (“Act”) and the International Traffic in Arms Regulations (“ITAR”) in connection with the unauthorized export of night vision products and the unauthorized export of space remote sensing technical data and defense services. A total of ninety-five (95) violations are alleged at this time.¹

The Office of Defense Trade Controls Compliance has been reviewing additional cases pertaining to ITT voluntary disclosures, directed disclosures and related compliance cases pertaining to numerous violations of the ITAR in several of ITT’s business units. These cases reflect a lack of effective

¹ The Department reserves the right to revise this Draft Charging Letter, including through a revision to incorporate additional charges stemming from the same misconduct of ITT in these matters, in connection with any administrative proceeding initiated by the Directorate of Defense Trade Controls (“DDTC”) to impose debarment or civil penalties pursuant to 22 C.F.R. § 128.3.

compliance with the ITAR by certain business units of ITT in the conduct of international business. The areas of violations, inter alia, involve the unauthorized export of technical data, unauthorized access of technical data by foreign national employees and sub-contractors, and unauthorized provision of technical data and defense services to foreign persons without State Department authorization. Some of these violations date back to 1990. These cases have been identified to ITT and, although these matters are not currently specified in this Draft Charging Letter, the underlying compliance inadequacies will be resolved with enhanced compliance measures that ITT has committed to implement, and will be specified in any Consent Agreement reached between the Department and ITT.

PART 1 – RELEVANT FACTS

Jurisdictional Requirements:

- (1) ITT Industries Inc. is a corporation organized under the laws of the State of Indiana.
- (2) ITT is engaged in the manufacture and export of defense articles and defense services. ITT is registered with the Department of State, Directorate of Defense Trade Controls (DDTC) in accordance with Section 38 of the Act and § 122.1 of the Regulations.²
- (3) ITT is a U.S. person within the meaning of § 120.15 and, as such, is subject to the jurisdiction of the United States, in particular with regard to the Act and Regulations.
- (4) Jenoptec, Pilkington Electronics, Mantek, Kuwait Reconstruction House, Elint, Assil, Farnell Electronics, Deutsche Systems Technik, Petris Solnice SRO, Gec-Marconi, Noga-Lite, Alcatel, ABB Bomem and Telops and other persons so identified below are all foreign persons within the meaning of § 120.16 of the Regulations.

² Subsequent to ITT's registration with the Department of State, the Office of Defense Trade Controls Office was "realigned and renamed" the Directorate of Defense Trade Controls.

Background:

(5) ITT manufactures military and commercial night vision devices principally for sale to the U.S. Department of Defense, but also for export to foreign governments and private entities. The night vision devices produced by ITT contribute critical war-fighting capabilities to the U.S. military. The ability to observe and target potential hostile forces at night is an important force multiplier for the U.S. military and its coalition partners. In this regard, export controls on these devices help to preserve an advantage for the U.S. military by ensuring that: (a) marketing of night vision devices through consignment programs have strict accountability requirements, and (2) permanent exports of night vision devices are limited in certain performance characteristics depending on the country of destination, the end-user and the end-use for the devices. The Department applies these controls through various provisos and limitations on export authorizations.

(6) ITT also manufactures space remote sensing systems primarily for U.S. government customers and programs. In the course of manufacturing such systems, ITT has contracted with foreign persons to obtain subsystems, parts, and components, and has provided ITAR controlled technical data and defense services to such foreign persons for this purpose. Space remote sensing provides the U.S. military with critical surveillance and intelligence-gathering capabilities.

(7) ITT did not establish adequate export compliance systems to: (a) secure and monitor night vision devices exported under approved temporary export licenses, (b) ensure that night vision devices exported under permanent export licenses were in compliance with provisos limiting the authorized performance of the devices, and (c) comply with the provisos under approved technical assistance agreements regarding the export of technical data and defense services to foreign subcontractors in the acquisition of space remote sensing subsystems, parts, and components.

(8) ITT's inadequate corporate export compliance policies and procedures permitted unauthorized exports and unauthorized exports that exceeded the limits of export authorizations for night vision and space remote sensing capabilities contrary to U.S. national security and foreign policy interests.

Part II-Violation of the Terms and Conditions of Temporary Export Licenses:

(9) ITT Night Vision manufactures state of the art image intensification tubes and devices, characterized as Generation III, for military, law enforcement and commercial customers both in the domestic and international markets. ITT's primary customer is the U.S. Military.

(10) Night Vision equipment cited within this Draft Charging Letter specifically refers to that equipment and its components controlled for permanent export or temporary export by the Regulations as defense articles defined in § 120.6 and are classified under Category XII (c) and Category XII (e) of the U. S. Munitions List.

(11) The Office of Defense Trade Controls Licensing (ODTCL) issues licenses for the temporary export of unclassified defense articles (DSP-73). Such licenses are valid only if (1) the article will be exported for a period of less than 4 years and will be returned to the United States and (2) transfer of title will not occur during the period of temporary export. Accordingly, articles exported pursuant to a temporary export license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license.

(12) ITT was issued twenty-one (21) temporary export licenses by ODTCL for the temporary export of image intensifier tubes and component parts to its foreign customers that are the subject of the violations specified in Part 1 of this Draft Charging Letter.

(13) On May 19, 2000, ITT submitted a voluntary disclosure to the Department as a result of an internal audit which determined that 27 consignments of ITAR-controlled night vision goggles or related parts or components exported temporarily had not been returned to the U.S. within the time required by the applicable DSP-73.

(14) ITT utilized the DSP-73 temporary export license to employ a business practice of loaning night vision equipment to prospective or current customers who are foreign persons to permit them to evaluate the items for

potential purchase, or to facilitate training of personnel in the use of these items.³

(15) ITT's internal investigation subsequently located eight (8) consignments in question. Nineteen (19) consignments were unrecoverable. ITT did not recover certain night vision devices and components it loaned to potential customers in the nineteen (19) consignments either because the company that received the night vision equipment is no longer in business or because the company had informed ITT that it could not locate the items.

(16) ITT-violated the terms and conditions of the approvals granted for the export and/or temporary export of night vision equipment. ITT demonstrated a serious lack of attention to adequate compliance measures for consignments and as such posed a significant potential harm to the national security of the United States as a result of their actions due to the sensitivity of night vision devices in regard to U.S. war-fighting capability.

Part III- Violations of the License Provisos Pertaining to Thin-Film Tubes, Gated Power Supply & Figure of Merit (FOM) Metric

(17) On October 22, 2002, the President of ITT Night Vision directed that an internal audit be conducted of ITT exports to ensure compliance with export provisos. On October 28, 2002, the audit commenced and covered shipments of tubes and devices incorporating tubes between January 1, 1997 and December 4, 2002. The audit was completed on December 4, 2002. Of over 425,000 tubes sold during the 1997 to 2002 period, over 118,000 were sold to international customers. The audit team compared the information on the tubes audited (118,000) to the export license authorizing its shipment and the relevant provisos in that license.

(18) On November 27, 2002, ITT submitted a preliminary notification to ODTC disclosing that ITT had identified 47 image intensifiers that were exported during the period January 2001 to October 2002 that violated one or more provisos of applicable export licenses.

³ Temporary export licenses were issued to ITT for shipments of night vision equipment pertaining to this matter to the following countries. Saudi Arabia, Spain, Germany, Kuwait, France, Singapore, Czech Republic, United Kingdom, Turkey, Egypt, Austria, Netherlands and Israel.

(19) On January 9, 2003, ITT submitted a final report to ODTC disclosing that the completed audit had found 93 tubes that had been exported over the period of January 1, 1997 to December 4, 2002 that potentially violated one or more provisos of applicable export licenses.

(20) ITT obtained from DDTC the required licenses authorizing the above exports. These licenses contained several provisos and limitations on the performance and other capabilities of the night vision devices. The provisos relevant to this matter are: (a) image intensifier tubes that utilize an unfilmed or so-called "thin-filmed" microchannel plate or a gated power supply must not be released; and, (b) the Figure of Merit (FOM) for individual tubes may not exceed 1600, where FOM is calculated by multiplying the signal-to-noise ratio by the resolution as measured in line-pairs per millimeter.

(21) During the period of October 2001 through January 2002, ITT Night Vision stated they put in place a number of automated "gates" or checks and balances in its system to ensure compliance with relevant provisos of export licenses. Of the 93 tubes exported in violation of one or more provisos, 66 were exported prior to complete implementation of these automated gate checks. However, even after the "gates" were implemented to ensure compliance with the export authorization provisos, the remaining twenty-seven (27) unauthorized tube exports resulted due to the following failures in the system: (a) fourteen (14) tubes for weapon sights were handpicked and handled outside the mainstream gates; (b) eight (8) tubes were improperly exported because operators made errors indicating the power supply type was not gated, even though it was gated; and, (c) five (5) tubes were improperly exported because product data specification entries (resolution, signal to noise, etc.) were entered improperly by operators.

(22) Beginning on December 20, 2002, ITT cooperated with the Department to attempt to obtain the return of the 93 tubes from the original customers and to replace them with tubes in compliance with applicable export provisos. To date, ITT has recalled 64 tubes and confirmed that 40 were exported in violation of one or more provisos of applicable export licenses. ITT also found that 24 tubes that ITT had originally determined were shipped in potential violation of applicable export licenses were, in fact, in compliance with limitations on the applicable licenses.

(23) In addition to the tubes ITT confirmed were exported in violation of one or more provisos, ITT also advised that the audit team identified 21 additional tubes that were exported during the 1997-2002 period for which there was insufficient information available to confirm or deny whether the tube was in compliance with relevant export provisos. Of these 21 tubes, 15 have been recalled to date and ITT has confirmed that 13 had been exported in compliance with applicable export licenses and 2 had been exported in violation of provisos on applicable export licenses.

(24) As a result of the violations noted above, ITT subsequently implemented additional compliance enhancements, i.e., instituted a management certificate fail safe procedure, established a senior level position at ITT Industries to coordinate all ITT export and compliance matters, separated the compliance and program management functions, implemented several checks and balances (“gates”) relating to ordering, processing, manufacturing and shipment of tubes and devices, updated ITT Night Vision Export Compliance Manual, and established an audit program and export compliance training programs.

Part IV-Violations pertaining to TAA 1381-99 between ITT A/CD and ABB Bomem and Telops

(25) On January 12, 2004, ITT Industries submitted an interim report concerning a voluntary disclosure of ITT Aerospace Communications Division (“A/CD”) regarding certain unauthorized activities relating to the Cross Track Infrared Sounder (CrIS) Program involving ABB Bomem and Telops, both Canadian subcontractors contracted by ITT A/CD.

(26) ITT A/CD designs, develops, and manufactures space remote sensing equipment for various U.S. Government agencies. Bomem and Telops were subcontractors to ITT A/CD and worked with them on developing interferometers for incorporation into remote sensing instruments and provided software development services.

(27) ITT A/CD and Bomem worked on the CrIS Program to design and build a space-qualified interferometer that would be incorporated into a remote sensing instrument that ITT A/CD was building for the National Polar-orbiting Operational Environmental Satellite System (NPOESS).

(28) On February 17, 2000, the Department issued TAA 1381-99 to ITT A/CD to cover its work with Bomem. TAA 1381-99 required that certain technical information be reviewed prior to export by the Defense Technology Security Administration (DTSA) before export to Bomem. The TAA also required that ITT A/CD maintain a library of technical information submitted to DTSA. TAA 1381-99 was subsequently amended several times through June 2003.

(29) In order to cover Telops' work on the programs, TAA 1199-00 was approved by the Department on November 3, 2001 and amended on October 7, 2002. Proviso 7 of TAA 1199-00B states, "ITT must only provide clarification of the requirements and specifications authorized under this license. ITT may evaluate the consignee's component design, manufacture, and testing, indicating only whether the component meets or does not meet the requirements and specifications." Proviso 8 states in part, "Manufacturing technology, systems optimization know-how, or design know-how will not be released."

(30) ITT's disclosure and review of other information provided to DTCC indicates that ITT A/CD disclosed technical data to Bomem and Telops that was not authorized by DTCC prior to its export. For example, ITT provided updates of drawings, specifications and test results to Bomem prior to receiving approval from DTSA as required by the TAA. Further, ITT A/CD exported to Bomem technical data without first making the redactions required by DTSA.

(31) Further, ITT cannot categorically determine the scope of documents transferred to Bomem or Telops because ITT A/CD failed to keep adequate records (as required by the TAAs) of all technical data sent to Bomem and if those documents were reviewed by DTSA.

(32) ITT A/CD provided Bomem and Telops with improved technical capabilities related to space qualified interferometers beyond levels authorized by the Department of State because of ITT A/CD's unauthorized export of technical data and defense services that exceeded the scope of the TAA.

Licensing & Reporting Requirements:

(33) Section 122.5 of the Regulations requires that a person who is required to register must maintain records concerning the manufacture, acquisition and disposition of defense articles; the provision of defense services; and information on political contributions, fees, or commissions furnished or obtained, as required by part 130 of this subchapter.

(34) Section 123.1 of the Regulations provides that any person who intends to export or import temporarily a defense article must obtain the approval of the Directorate of Defense Trade Controls prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter.

(35) Section 123.5 (a) of the Regulations states that the Directorate of Defense Trade Controls may issue a license for the temporary export of unclassified defense articles (DSP-73). Such licenses are valid if (1) the article will be exported for a period of less than 4 years and will be returned to the United States and (2) transfer of title will not occur during the period of temporary export.

(36) Section 127.1 (a) (1) of the Regulations states it is unlawful to export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Directorate of Defense Trade Controls.

(37) Section 127.1 (a) (4) of the Regulations states that it is unlawful to violate any of the terms and conditions of licenses or approvals granted pursuant to this subchapter.

(38) Section 127.1 (b) of the Regulations provides that any person who is granted a license or other approval under this subchapter is responsible for the acts of employees, agents, and all authorized persons to whom possession of the licensed defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad.

Part V- The Charges

CHARGES 1-21

(39) ITT received twenty-one (21) temporary export licenses authorizing the temporary export of Night Vision Devices and component parts that are covered by this Draft Charging Letter. ITT failed to return the defense articles to the United States within the specified time-period and did not have adequate safeguards in place to ensure that the defense article would not be transferred to a foreign person thereby violating § 123.5 (a) and §127.1 (a)-(4) of the ITAR.

CHARGES 22-93

(40) During the period 1997 to 2002, ITT exported 72 image intensifier tubes that exceeded one or more provisos of authorized export licenses violating § 127.1 (a)(4) of the ITAR.

CHARGES 94-95

(41) During the period February 2000 to May 2003, ITT A/CD exported technical data and defense services to ABB Bomem and Telops that were not in compliance with the provisos of TAA 1381-99 as amended and TAA 1199-00 as amended, relating to the CrIS program in violation of § 127.1 (a) (4) of the ITAR.

Administrative Proceedings:

(42) Pursuant to 22 CFR § 128, administrative proceedings are instituted against ITT Industries for the purpose of obtaining an Order imposing civil administrative sanctions that may include the imposition of debarment or civil penalties. The Assistant Secretary for Political Military Affairs shall determine the appropriate period of debarment, which generally shall be for a period of three years in accordance with § 127.1. Civil penalties, not to exceed \$500,000 per violation, may be imposed in accordance with § 127.10.

(43) A Respondent has certain rights in such proceedings as described in § 128, a copy of which I am enclosing. Furthermore, pursuant to § 128.11 cases may be settled through consent agreements, including after service of a Draft Charging Letter. Please be advised that the U.S. Government is free to pursue civil, administrative and criminal enforcement for violations of the Arms Export Control Act and the International Traffic in Arms Regulations. 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,

David C. Trimble
Director
Office Defense Trade Controls Compliance