

## PROPOSED CHARGING LETTER

August 19, 2013

Mr. Eric G. Lardiere  
Senior Vice President, Secretary, and General Counsel  
Meggitt-USA, Inc.  
1955 N. Surveyor Avenue  
Simi Valley, CA 93063

Re: Violations of the Arms Export Control Act and the International Traffic  
in Arms Regulations by Subsidiaries of Meggitt-USA, Inc.

Dear Mr. Lardiere:

The Department of State ("Department") charges Meggitt-USA, Inc. ("Respondent"), including certain of its subsidiaries referenced herein, with violations of the Arms Export Control Act ("AECA")(22 U.S.C. §§ 2778-2780) and the International Traffic in Arms Regulations ("ITAR")(22 C.F.R. Parts 120-130) in connection with the unauthorized export of defense articles, to include technical data; the unauthorized provision of defense services; violation of the terms of provisos or other limitations of license authorizations; and, the failure to maintain specific records involving ITAR-controlled transactions, by Respondent and certain of its subsidiaries (individually and collectively referred to herein as "Respondent"). A total of sixty-seven (67) 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 a number of mitigating factors, including Respondent's voluntary

disclosures; the fact that the majority of alleged violations occurred prior to Respondent's acquisition of certain subsidiaries and were identified by Respondent; Respondent's proposals to settle the alleged violations with the Department voluntarily and comprehensively; Respondent's settlement of certain related matters with the Department of Justice; the extensive and substantial self-initiated remedial compliance measures implemented prior to and during the course of the Department's review; and Respondent's responsiveness and ongoing cooperation with the Department.

At the same time, the Department also considered the various aggravating factors, including the long-standing nature of violations within those subsidiaries that Meggitt-USA acquired; the same subsidiaries' unfamiliarity with and apparent disregard of ITAR compliance; and that one (1) disclosure was a directed disclosure. The Department has balanced the factors outlined above and this proposed charging letter and related consent agreement reflect this balance.

## BACKGROUND

### *Overview of Organization*

Respondent is a holding company for various subsidiaries in North America which specialize in extreme environment components and sub-systems for the aerospace, defense, and energy markets. Respondent<sup>1</sup> is a corporation organized under the laws of Delaware and is registered with the Department. Respondent expands its footprint within the United States both organically and through acquisition. Over the past twenty years, Respondent has undergone a major expansion primarily through the acquisition of existing companies in compatible or complementary industries. Over the course of a multi-year review and through multiple disclosures, primarily voluntary, Respondent and the Department identified violations that occurred within Respondent entities and corporations Respondent acquired as well as some ongoing violations after acquisition. Prior to commencing its review, Respondent instituted a Group-wide defense trade control compliance program with localized management by the Group Trade Compliance Manager and supervision by Respondent's General Counsel and oversight by a senior Meggitt Group official based in the United Kingdom. During the course of the Government's review, Respondent continued to improve and enhance its Group-wide and site specific defense trade control compliance program.

---

<sup>1</sup> Respondent is a subsidiary of Meggitt PLC, a corporation organized under the laws of England and Wales and the ultimate parent of the Meggitt group of companies (the "Meggitt Group").

This section presents a description of the types of violations uncovered in certain subsidiaries of Respondent over several years, even though the Department is not alleging charges at this time for all violations.<sup>2</sup> The facts and circumstances included in this proposed charging letter that are not reflected in allegations of violations are referenced solely for the purpose of providing context to the Department's views of the Respondent's and its predecessors' compliance efforts.<sup>3</sup> The activities described herein involve the following Respondent entities.

Respondent's subsidiary, Endeveco Corporation ("Endeveco")<sup>4</sup> of California, designs and manufactures dynamic instrumentation for vibration, shock, and pressure measurements for various defense and commercial applications, including piezoelectric accelerometers, piezoresistive transducers, and related signal conditioners, measurement systems and accessories, some of which are ITAR-controlled.

Meggitt (Xiamen) Sensors & Controls Company, Ltd. ("MXM"), an affiliate<sup>5</sup> of Respondent, is located in the People's Republic of China ("PRC"), and is in the business of manufacturing products exclusively for Meggitt businesses, including, among other products, non-ITAR-controlled silicon sensors (including micro-machined electro-mechanical systems) and piezoelectric sensors which were calibrated with manufacturing equipment subject to the ITAR.<sup>6</sup>

---

<sup>2</sup> The Department retains the discretion to charge those violations it believes may impact U.S. national security and foreign policy interests. The Department acknowledges that the statute of limitations and other legal constraints may affect that discretion. This proposed charging letter reflects the Department's exercise of discretion on the charges it may bring at this time.

<sup>3</sup> For example, Meggitt PLC's UK subsidiary, Meggitt Avionics UK ("MAVUK"), produces aviation systems for civilian and military uses, including standby flight instrumentation and air data, attitude and heading reference system units. Over 15 years ago MAVUK received QRS-11 quartz sensors from BEI of the United States. The sensors were subject to ITAR jurisdiction but no charges are alleged for activities involving MAVUK. The same situation exists for Respondent's US subsidiary, Vibro-Meter, Inc. ("VMI"), in New Hampshire, that designs and manufactures optical flame detection, monitoring and analysis systems; oil and fuel monitoring systems; and aerospace engine sensors and indicators. A number of these products are also subject to the ITAR, but no charges are alleged for activities involving VMI.

<sup>4</sup> In 2010, Endeveco Corporation changed its name to Meggitt (San Juan Capistrano), Inc. Because the name change occurred following the relevant disclosures and alleged violations, this proposed charging letter will refer to Endeveco.

<sup>5</sup> Any Meggitt Group entity identified in this proposed charging letter that is not a subsidiary of Respondent is referred to as an "affiliate" thereof.

<sup>6</sup> The calibration equipment used by MXM was subsequently modified to eliminate the ITAR-controlled elements and is no longer subject to the ITAR.

Respondent's subsidiary, Engineered Fabrics Corporation ("EFC")<sup>7</sup>, located in Rockmart, Georgia, manufactures and repairs military and commercial coated fabric products such as aircraft and vehicle fuel tanks, oil containment equipment, fabric covered parts, and de-icing surfaces for military and commercial aircraft. Respondent purchased EFC in June 2007 as part of its acquisition of K&F Industries, Inc. Some of EFC's products and technical data are subject to the ITAR.

Respondent's subsidiary, Meggitt Training Systems, Inc., ("MTSI") located in Suwanee, Georgia, provides live fire and fully integrated, interactive, virtual training simulators and services to law enforcement officers, security personnel, and armed forces, some of which are subject to the ITAR. Respondent acquired MTSI in 2006.

Wilcoxon Research, Inc. ("Wilcoxon"),<sup>8</sup> located in Maryland, manufactures accelerometers and underwater acoustics sensors (*aka* hydrophones), some of which are subject to the ITAR. Respondent acquired Wilcoxon in 2004.

#### *Types of Violations and Scope of Activities*<sup>9</sup>

Conduct disclosed by Respondent included violations of a number of ITAR sections, but can be generally categorized in the following manner: 1) unauthorized exports, re-exports, and retransfers resulting from unfamiliarity with the ITAR and/or improper classification of articles; and 2) failures related to the administration of licenses and agreements.

Between 1995 and 2005, Meggitt Avionics UK ("MAVUK"), an affiliate of Respondent, was the foreign recipient of U.S. origin defense articles, including the quartz rate sensor ("QRS") Model QRS-11 manufactured by BEI Technologies Inc., *dba* Systron Donner Inertial Division (USA), under various Department export licenses, including a warehouse & distribution agreement.<sup>10</sup> MAVUK

---

<sup>7</sup> In 2010, Engineered Fabrics Corporation changed its name to Meggitt (Rockmart), Inc. Because the name change occurred following the relevant disclosures and alleged violations, this proposed charging letter will refer to EFC.

<sup>8</sup> In 2011, Wilcoxon changed its name to Meggitt (Maryland), Inc. Because the name change occurred following the relevant disclosures, this proposed charging letter will refer to Wilcoxon.

<sup>9</sup> As noted above, this section references certain facts, provided to the Department in disclosures by the Respondent, and which are not charged as allegations of violations, but which are included for the purpose of placing the Department's views in context.

<sup>10</sup> The QRS-11 is a precision instrument and is a micro electro-mechanical sensor gyroscope, which is controlled under Category XII(d) of the ITAR and is further defined as significant military equipment ("SME"), requiring a DSP-83 ("Nontransfer and Use Certificate") for retransfers and re-exports under §

engaged in exchanges with BEI as the applicant regarding the requirements of the limitations and provisos in BEI's licenses. MAVUK executed the agreement but failed to obtain the authorization required for retransfer and re-export of the QRS-11 sensors integrated into its subsystems, in reliance on the representations of the manufacturer. MAVUK did not seek guidance from the Department with respect to its obligations, and, because of its unfamiliarity with the regulatory requirements, MAVUK retransferred or re-exported, without authorization, 268 standby flight instrumentation and air data, attitude and heading reference system ("ADAHRS") units containing 804 QRS-11 sensors to Argentina, Brazil, Denmark, Finland, France, Germany, Israel, Italy, Saudi Arabia, Singapore, South Africa, the United Kingdom, and the United States. In addition, MAVUK temporarily re-exported without authorization four (4) standby flight instrumentation units embedded with twelve (12) QRS-11 sensors to Italy, South Korea, Taiwan, and the Czech Republic for sales demonstrations.<sup>11</sup> No charges are alleged against MAVUK regarding these violations

Respondent's subsidiary, Endevco, disclosed that due to inadequate or incorrect guidance from an advisor, the company erred in its jurisdictional determination for some of its products. As a result, Endevco failed to obtain a license or other authorization for over one thousand shipments of various accelerometers. Due to the Government's interest in Endevco's shipments of many of these accelerometers to an international distributor based in Denmark, Brüel and Kjaer Sound and Vibration Measurement A/S, a subsidiary of Spectris plc of the United Kingdom ("Brüel & Kjaer"), and shipments of non-ITAR controlled goods to a formerly prohibited business unit of Hindustan Aeronautics Limited in India, the company was the subject of an extended criminal investigation by Immigration and Customs Enforcement and the Department of Justice in relation to EAR and subsequently ITAR related activities. In October 2009, the Department of Justice and Endevco entered into a non-prosecution agreement involving the activities investigated by the Government. No charges are alleged against Endevco regarding these violations.

Between 1999 and 2004, Endevco also exported several of its manufacturing calibration systems to Brüel & Kjaer. Brüel & Kjaer re-exported and retransferred

---

123.10 of the ITAR. Until 2007, the QRS-11 was subject to the ITAR. After that date, the Department of State transferred jurisdiction of the QRS-11 to the Department of Commerce under the EAR. 72 Fed. Reg. 3145. Jurisdiction of the sensor is now split between State and Commerce on the basis of end use.

<sup>11</sup> Respondent's U.S. subsidiary, Vibro-Meter, Inc. ("VMI"), was the subject of disclosures of violations resulting from the jurisdictional errors involving MAVUK. Prior to July 2002, VMI exported without authorization ADAHRS systems that were manufactured by MAVUK. No charges are alleged against VMI regarding these violations.

these articles without authorization because Endevco incorrectly classified and therefore improperly informed Brüel & Kjaer that the subject articles were not ITAR-controlled. No charges are alleged against Endevco regarding these violations.

In addition and as a result of a similar misjudgment<sup>12</sup> by one of Endevco's export consultants regarding jurisdiction, Meggitt Sensors & Controls Company, Ltd. (MXM), located in the People's Republic of China ("PRC"), also received from Endevco several such ITAR-controlled manufacturing calibration systems called the Automated Accelerometer Calibration System ("AACS") without authorization. After consultations with additional advisors and counsel, Endevco submitted and obtained a commodity jurisdiction determination in which the Department responded that these calibration systems were ITAR-controlled, unless the connectivity of a certain accessory of the system was disabled – a corrective action which Endevco completed. Endevco also exported, without authorization, technical data and provided defense services involving the operation of the AACS to members of the China Academy of Engineering Physics ("CAEP") of the PRC.

Respondent's U.S. subsidiary, Engineered Fabrics Corporation ("EFC"), voluntarily disclosed violations that highlighted failures to administer its licenses and agreements, partially based on a lack of understanding of the ITAR. As a result of these failures, EFC exported without authorization technical data and defense services, failed to properly administer authorizations, and violated terms and conditions of licenses and agreements, including a failure to maintain records. EFC also lacked sufficient compliance resources to comply with the various requirements of the ITAR. The significant majority of EFC's violations occurred prior to Respondent's acquisition of EFC in June 2007 and were disclosed to the Department through the efforts of Respondent.

Respondent's U.S. subsidiary, Meggitt Training Systems, Inc. ("MTSI"), was the subject of voluntary disclosures of violations emanating from, among other things, a lack of awareness of the ITAR, resulting in the unauthorized export of technical data and defense services. The company exported technical data and provided defense services regarding laser sight assemblies used in training simulators to the United Kingdom, provided technical data and defense services to

---

<sup>12</sup> From 1992 through the present, Endevco consistently sought to obtain advice and guidance from individuals and advisors it believed to be competent in the area of export controls and compliance. Some of Endevco's consultants provided incorrect guidance regarding export obligations, particularly with respect to reliance upon opinions of the Commerce Department concerning the products subject to, as subsequently determined, the jurisdiction of the State Department under ITAR. Endevco took action on the basis of that guidance and understands that it is responsible for those actions.

foreign persons outside the scope of an agreement and via company computer networks, and transferred to a translation service provider in the U.S. training manuals which were subsequently exported without authorization to foreign persons in India and Egypt.

Prior to Respondent's acquisition of Wilcoxon in 2004, Wilcoxon lacked adequate awareness of ITAR requirements and therefore improperly exported on ten (10) separate occasions the H506-1 and H507A acoustic sensors, including one (1) export of H507A sensors to the PRC without a license. These sensors were ITAR-controlled at the time the exports occurred. During the period when these exports took place, United States policy was (and remains today) to deny licenses and other approvals for exports and imports of defense articles and defense services destined for or originating from certain countries, including the PRC (22 CFR 126.1). Also prior to Respondent's acquisition, Wilcoxon further exported technical data involving prototype underwater directional acoustic sensors to Denmark without a license or other approval. These sensors were also ITAR-controlled at the time the exports occurred. No charges are alleged against Wilcoxon regarding these violations

The violations included in Respondent's subsidiaries' disclosures and described above occurred over a period of many years and include actions that preceded Respondent's acquisition of these businesses. However, the breadth of violations included in the disclosures, the extended duration of certain violations, and the recurrence of certain types of violations warrant this proposed charging letter. Although the facts and violations described above are included to demonstrate the necessity for settlement, the Department includes below the specific violations for which it now alleges charges.

## VIOLATIONS

### *Unauthorized Exports of Defense Articles, including to a Proscribed Country*

1. Between 2004 and 2008, Endeveco exported without authorization three (3) AACSS with a capability to connect to an ITAR-controlled Shock Motion Accelerometer Calibrator ("SMAC") and related operator manuals and software to MXM in the PRC.<sup>13</sup>

---

<sup>13</sup> The SMAC was not exported to MXM and, as part of Respondent's corrective action, the port and software providing potential connectivity to this accessory has been disabled on each of the three (3) machines located at the MXM facility. The Department confirmed this determination through the issuance of a CJ finding that the modified calibration equipment was not subject to the ITAR.

2. Between 2007 and 2008, EFC exported without authorization twelve (12) shipments (35 units) of an ITAR-controlled fairing heating bulb and fuel tank assembly intended for the CH-124 helicopter to IMP Group Ltd. in Canada for the Canadian Department of National Defence.

*Unauthorized Export of Technical Data and Provision of Defense Services, including to a Proscribed Country*

3. Between 2004 and December 2008, Endevco provided defense services without authorization involving repair, maintenance, training, and troubleshooting of the AACS to foreign person employees of MXM in the PRC.
4. Between April 2005 and July 2009, EFC exported without authorization technical data and provided defense services involving integration of certain foil-related defense articles on the PX & CX aircraft de-icing systems to SEI Hybrid Products, Inc., and SHC Company, Ltd. in Japan. These two (2) companies were not parties to a related technical assistance agreement ("TAA").
5. Between December 2008 and January 2009, EFC exported without authorization technical data and provided defense services for the manufacture of fuel tanks for the UH-60J helicopter to seven (7) different manufacturers in Japan.
6. Between 2000 and 2009, MTSI provided access without authorization to a foreign person employee from the United Kingdom to its network containing ITAR-controlled technical data involving various firearms simulation systems.
7. In April 2009, MTSI exported without authorization four (4) training manuals involving operation and maintenance of stationary infantry targets, stationary armor targets, and a computer range control system for targeting, to foreign persons from India and Egypt. MTSI provided the manuals to a translation services vendor in the United States who subsequently provided the materials to foreign persons in India and Egypt.

Violating the Terms, Conditions, and Provisos of Licenses

8. Between 1997 and 2009, EFC violated a proviso of a manufacturing license agreement ("MLA") by failing to obtain non-disclosure agreements from sublicensees. The foreign licensee retransferred without authorization technical data and provided defense services for the manufacture of door plates involving the CH-47 helicopter to sublicensees.
9. Between August 1997 and July 2009, EFC violated the terms of an MLA, including a proviso, by failing to obtain non-disclosure agreements from sublicensees; providing defense services and exporting technical data to a party that did not sign the MLA; exceeding the manufacturing value; and, exporting technical data and providing defense services after the expiration of the MLA. This MLA authorized the manufacture of fuel tanks for the CH-47D, OH-1, and UH-1J helicopters to various end-users in Japan. EFC also violated a proviso of the MLA by failing to timely amend the agreement.
10. Between October 1999 and October 2007, EFC violated a proviso of an MLA by failing to obtain non-disclosure agreements from sublicensees. The end-user, without authorization, retransferred technical data and provided defense services for the manufacture of the tank assembly and associated components intended for the UH-60J helicopter to six (6) sublicensees in Japan. EFC also failed to amend timely the agreement as required by a proviso.
11. Between 2003 and 2009, EFC committed several violations involving an MLA that authorized the export of technical data and provision of defense services for the production of the main heating element on the UH/SH-60 helicopter to Japan. EFC disclosed to the Department the following violations under the MLA:
  - a. Failed to submit sales reports to the Department as required under §124.9(a)(5) of the ITAR;
  - b. Manufactured articles greater than the value authorized by the MLA by approximately \$559,861.00;
  - c. Failed to comply with a proviso by not referencing the MLA on

exports of defense articles under 16 DSP-5 licenses;

- d. Failed to comply with a proviso when EFC did not provide an update to the valuation of the MLA;
  - e. Provided incorrect sales reports under the MLA. EFC originally reported to the Department that no sales took place. However, sales occurred from 2004 to 2006;
  - f. Without authorization exported technical data and provided defense services related to the MLA;
  - g. Failed to identify a broker to the MLA;
  - h. Omitted relevant information and provided inaccurate information when Respondent proposed amendments to the Department. EFC failed to identify the known violations identified involving the MLA;
  - i. Without authorization exported eleven (11) shipments of hardware in support of the MLA. EFC temporarily imported two (2) shipments without authorization; and
  - j. Failed to comply with a proviso by not executing amendments A and B to the MLA prior to the exports.
12. Between 2004 and 2009, EFC violated a proviso of an MLA by failing to obtain a non-disclosure agreement from a sublicensee in Japan. The end-user, without authorization, retransferred technical data and provided defense services involving the production of fuel tank assemblies for the T-3KAI and T-5 aircraft to the sublicensee. Also, EFC failed to file timely and accurately annual sales reports and exported defense articles in violation of a proviso.
13. Between December 2004 and January 2008, EFC violated a proviso of a TAA by failing to obtain non-disclosure agreements from sublicensees. The TAA's end-user retransferred technical data and provided defense services without authorization involving the manufacture of ITAR-controlled tank assemblies to four (4) sublicensees in Japan.

14. Between April 2005 and March 2008, EFC violated a proviso of an MLA by failing to obtain non-disclosure agreements from twelve (12) sublicensees. The end-user without authorization retransferred technical data and provided defense services involving the production of fuel cells for the F-15, T-4, US-1, and US-2 aircraft to eleven (11) sublicensees in Japan.
15. Between 1988 and July 2009, EFC violated a proviso of an MLA by failing to obtain non-disclosure agreements from nine (9) sublicensees. The MLA's end-user without authorization retransferred technical data and provided defense services for the manufacture of components of the SH-60J helicopter to nine (9) sublicensees in Japan.
16. EFC violated a proviso of two (2) manufacturing license agreements by exporting hardware. The proviso prohibited hardware exports.
17. EFC failed to submit annual reports of sales as required pursuant to § 124.9(a)(5) of the ITAR for three (3) manufacturing license agreements.
18. EFC provided inaccurate sales reports for two (2) manufacturing license agreements.
19. EFC failed to reference six (6) manufacturing license agreements and one (1) technical assistance agreement on various DSP-5 licenses as required by a license proviso.
20. MTSI violated the terms of four (4) DSP-73 temporary licenses by failing to return from Japan various firearms simulation training equipment before the expiration of the licenses.
21. EFC violated the terms of three (3) DSP-5 licenses for the export of the coated fabric, nylon cord, and acrylonitrile-butadiene rubber intended for the T-2 and F-15J aircraft, and SH-60J helicopter to Japan by using an unauthorized freight forwarder.

Violations involving Administrative Requirements

22. EFC failed to modify four (4) manufacturing license agreements and three (3) technical assistance agreements prior to execution, as required by an agreement proviso.
23. Between 2002 and 2008, EFC failed to return ninety-nine (99) expended, unused and/or expired licenses obtained between 2002 and 2007 in accordance with § 123.21(b) of the ITAR.
24. EFC failed to execute thirteen (13) agreements and amendments within 30 days or provide a written status of unexecuted agreements on a yearly basis, as required by § 124.4(a) of the ITAR.
25. EFC failed to submit an amendment to extend five (5) agreements at least 60 days prior to the expiration of the agreements.

Failure to Maintain Required License Records

26. EFC failed to maintain records of thirteen (13) technical assistance and manufacturing license agreements.
27. EFC failed to novate timely nine (9) manufacturing license agreements and three (3) technical assistance agreements to reflect a change in ownership.

JURISDICTION

Respondent is a corporation organized under the laws of the State of Delaware. Respondent 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, Respondent's subsidiaries included in Respondent's registration statement with the Department were engaged in the manufacture and export of defense articles and defense services. Respondent was registered as a manufacturer/exporter with DDTC in accordance with section 38 of the AECA and § 122.1 of the ITAR.

The defense articles and defense services associated with the violations set forth herein are designated as controlled under various categories of the USML, §

121.1 of the ITAR. These defense articles and defense services include the following items:

The Shock Motion Accelerometer Calibrator ("SMAC") and the Automated Accelerometer Calibration System ("AACS") when it includes the SMAC or a connectivity interface for the SMAC are, or were at time of violation, controlled under Category XII(e) of the USML, § 121.1 of the ITAR.

Certain piezoceramic crystals are controlled under Category XII(e) of the USML.

Technical data, as defined in § 120.10 of the ITAR, and defense services, as defined in § 120.9 of the ITAR, for certain piezoceramic crystals is controlled under Category XII(e) and VIII(i) of the USML.

Defense services, as defined in § 120.9 of the ITAR, for various accelerometers are controlled under Category XII(f) and VIII(i) of the USML, § 121.1 of the ITAR.

The backing board, fuel cell, and door plate intended for the AH-64 Apache helicopter; fairing heating bulb and fuel tank assembly intended for the CH-124 helicopter; the oil pressure transmitter, backing board, fuel cell, door plate, heater bulb, RGR fuel tank bag, RGR fuel tank – large spray, fairing heating bulb, and fuel tank assembly intended for the VH-71A helicopter and F-18 aircraft; the main heating mat intended for the SH-60J helicopter; the coated fabric, nylon cord, and acrylonitrile-butadiene rubber intended for the T-2 and F-15J aircraft, and SH-60J helicopter; and door plates for the CH-47 helicopter outlined above are controlled under Category VIII(h) of the USML, § 121.1 of the ITAR.

Technical data, as defined in § 120.10 of the ITAR, for the door plate intended for the CH-47 helicopter; the fuel cell intended for the US-1, US-1A, US-2, F-15, and T-4 aircraft; the fuel tank assembly intended for the T-3KAI and T-5 aircraft; the main heating element intended for the UH/SH-60 helicopter; and coated fabric products outlined above is controlled under Category VIII(i) of the USML, § 121.1 of the ITAR.

Defense services, as defined in § 120.9 of the ITAR, for the fuel cells, fuel tanks, main heating element, door plates, fuel tank assemblies, and coated fabric products are controlled under Category VIII(i) of the USML, § 121.1 of the ITAR.

Technical data, as defined in § 120.10 of the ITAR, for the laser assembly,

simulation training equipment, and various firearms simulation systems is controlled under Category IX(e) of the USML, § 121.1 of the ITAR.

Defense services, as defined in § 120.9 of the ITAR, for the live fire and interactive simulation training equipment are controlled under Category IX(e) of the USML, § 121.1 of the ITAR.

### RELEVANT ITAR REQUIREMENTS

Part 121 of the ITAR identifies the items that are defense articles, technical data, and defense services pursuant to section 38 of the AECA.

Section 122.5 of the ITAR provides that a person who is required to register must maintain records concerning the manufacture, acquisition and disposition (to include copies of all documentation on exports using exemptions and applications and licenses and their related documentation), of defense articles; of technical data; the provision of defense services; brokering activities; and information on political contributions, fees, or commissions furnished or obtained, as required by part 130 of ITAR. All records must be maintained for a period of five (5) years from the expiration of the license or other approval, to include exports using an exemption; or, from the date of the transaction.

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.

Section 123.22(b) of the ITAR provides that before exporting any hardware controlled by the ITAR, using a license or exemption, the DDTC registered license applicant/exporter, or an agent acting on the filer's behalf, must electronically file the export information with U.S. Customs and Border Protection using the Automated Export System.

Section 124.4(a) of the ITAR provides that the U.S. party to a manufacturing license or a technical assistance agreement must file one (1) copy of the concluded agreement with DDTC not later than 30 days after it enters into force.

Section 126.1(a) of the ITAR provides that it is the policy of the United States to deny, among other things, licenses and other approvals, destined for or originating in certain countries, including the People's Republic of China.

Section 126.1(e) of the ITAR provides that no sale or transfer and no proposal to sell or transfer any defense articles, including technical data, may be made to any of the countries listed under § 126.1(a) of the ITAR, including the PRC, without authorization from the Department.

Section 126.1(e) of the ITAR also provides that anyone who knows or has reason to know of a proposed or actual sale or transfer of a defense article or technical data to a proscribed country must immediately inform DDTC.

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

Section 127.1(a)(2) of the ITAR provides that it is unlawful to re-export or retransfer or attempt to re-export or retransfer any defense article, technical data, or defense service from one (1) foreign end-user, end-use, or destination to another foreign end-user, end-use, or destination for which a license or written approval is required by this subchapter, including, as specified in §126.16(h) and §126.17(h) of this subchapter, any defense article, technical data, or defense service that was exported from the United States without a license pursuant to any exemption under this subchapter, without first obtaining the required license or written approval from DDTC.

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

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 pursuant to CFR Title 22, Subchapter M.

## CHARGES

### Charges [1-16] – Unauthorized Exports of Defense Articles, including to a Proscribed Country

Respondent is charged with sixteen (16) violations of § 127.1(a)(1) of the ITAR for the conduct described in Violations paragraphs 1-2. Subsidiaries of Respondent exported without authorization defense articles, including USML Category XII(e) articles to the PRC; and Category VIII(h) to Canada.

### Charge [17] – Failure to Notify of Exports to a Proscribed Country

Respondent is charged with one (1) violation of § 126.1(e) of the ITAR for the conduct described in Violations paragraph 1. Respondent failed to notify the Department that it was exporting USML Categories XII(e) defense articles to the PRC.

### Charges [18-22] – Unauthorized Export of Technical Data and Provision of Defense Services, including to a Proscribed Country

Respondent is charged with five (5) violations of § 127.1(a)(1) of the ITAR for the conduct described in Violations paragraphs 3-7. Respondent subsidiaries Endevco, EFC, and MTSI without authorization exported technical data and provided defense services involving USML Categories XII(e), XII(f), and VII(h) involving USML Categories XII and VIII articles to Japan and the PRC; Category VIII(i) to Japan; and Category IX(e) to Egypt, India, and the United Kingdom.

### Charges [23-61] – Violating the Terms, Conditions, and Provisos of Licenses

Respondent is charged with thirty-nine (39) violations of § 127.1(a)(4) of the ITAR for the conduct described in Violations paragraphs 8-21. Respondent's subsidiaries EFC and MTSI violated the terms, conditions or provisos of various technical assistance agreements, manufacturing license agreements, and DSP licenses involving USML Category VIII(e) defense services.

### Charges [62-65] – Violations involving Administrative Requirements

Respondent is charged with four (4) violations of §§ 124.4(a) and 123.22(b)(3)(ii) of the ITAR for the conduct described in Violations paragraphs 22-25. Respondent's subsidiary EFC failed to abide by the administrative requirements associated with approved agreements.

Charges [66-68] – Failure to Maintain Required License Records

Respondent is charged with two (2) violations of § 122.5 of the ITAR for the conduct described in Violations paragraphs 26-27. Respondent's subsidiaries Endeveco and EFC failed to maintain records properly.

ADMINISTRATIVE PROCEEDINGS

Pursuant to Part 128 of the ITAR, administrative proceedings are instituted by means of a charging letter served against a respondent. The purpose of administrative proceedings is to obtain an Order imposing civil administrative sanctions, to include debarment and civil penalties. The Order issued may include an appropriate period of debarment in accordance with 22 C.F.R. §127.7, 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 section 38(e) of the AECA and 22 C.F.R. §127.10.

A respondent has certain rights in such proceedings as described in Part 128 of the ITAR. Currently, this is a proposed charging letter. In the event that you are served with a charging letter, however, you are advised of the following matters: You are required to answer the charging letter within 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, if a written demand for one is 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 designated by the Department to hear the case. The U.S. Coast Guard provides administrative law judge services in connection with these matters, so the answer should be mailed to the administrative law judge at the following address: USCG, 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 Managing Director, Directorate of Defense Trade Controls, SA-1 Room 1200, Department of State, Washington, DC 20522-0112, or delivered to 2401 E Street, NW, Washington, DC addressed to Managing Director, Directorate of Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20037.

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 also that charging letters 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.

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. Be advised that the U.S. Government is free to pursue civil, administrative, and/or criminal enforcement for violations of the AECA and the ITAR.

Sincerely,

Daniel J. Buzby  
Acting Director  
Office of Defense Trade Controls  
Compliance