



United States Department of State

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

Washington, D.C. 20520-0112

Draft Charging Letter

Mr. Artis M. Noel
Counsel
General Motors Corporation

Mr. David A. Savner
Sr. Vice President and General Counsel
General Dynamics Corporation

Re: Investigation of General Motors Corporation

Dear Messrs. Noel and Savner:

(1) The Department of State ("Department") charges General Motors Corporation ("GM" or "General Motors") and General Dynamics Corporation (hereinafter "Respondents") with violations of the Arms Export Control Act ("Act") and the International Traffic in Arms Regulations ("ITAR" or "Regulations") in connection with the unauthorized export of technical data, defense services and defense articles to foreign person employees to include those of proscribed countries and other matters set forth herein concerning GM's business activities. General Dynamics Corporation¹ ("GD" or "General Dynamics") is cited herein as a legally liable successor to certain GM businesses, for purposes of its ongoing responsibility to implement export compliance measures with respect to its acquired entities. Two hundred forty-eight (248) violations are alleged at this time. The essential facts constituting the alleged violations involved are described herein. The Department reserves the right to amend this draft-charging letter (See 22 C.F.R. § 128.3 (a)), including through a revision to incorporate additional charges stemming from the same misconduct of General Motors in these matters. Please be advised that this is a draft-charging letter to impose debarment or civil penalties pursuant to 22 C.F.R. § 128.3.

¹ General Dynamics is named as a Respondent solely for the purpose of assessing civil liability and other compliance remedies pursuant to their acquisition of certain business units from General Motors.

PART I – RELEVANT FACTS

Jurisdictional Requirements

(2) Respondents are corporations organized under the laws of the State of Delaware.

(3) Respondents are and were during the period covered by the offenses set forth herein engaged in the manufacture and export of defense articles and defense services and so 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.

(4) Respondents are U.S. persons within the meaning of § 120.15 of the ITAR and, as such, are subject to the jurisdiction of the United States, in particular with regard to the Act and the Regulations.

(5) Respondents identified in their separate submissions to this office foreign persons within the meaning of § 120.16 of the Regulations who had unauthorized access to ITAR controlled technical data, defense services and defense articles.

Acquisition of General Motors Defense Business by General Dynamics

(6) General Motors Defense (“GM Defense”) designed and manufactured light armored vehicles (“LAVs”) for customers in the United States and abroad, including Canada, Australia, New Zealand and Saudi Arabia. The LAVs are defense articles controlled under Category VII of the ITAR. Technical data and defense services involved in the design and manufacture of the LAVs are also controlled under Category VII of the ITAR.

(7) On October 21, 1999, GM and GD established GMGD Defense Group, L.L.C. (“Joint Venture”) for the purpose of bidding on future projects. In June 2000, GM and GD entered into the Brigade Combat Team (“BCT”) Program Joint Venture that permitted General Dynamics Land Systems (“GDLS”), a subsidiary of GD, and GM to bid on and eventually win the U.S. Army BCT Program contract.

(8) In April 2002, GD initiated discussions with GM to acquire certain business assets from General Motors Defense business. On March 1, 2003, the transaction closed, and GD assumed ownership of General Motors Defense business from GM.²

(9) In connection with this purchase of GM Defense, in April 2002, GD initiated a due diligence investigation of GM to determine in part any impediments (legal, financial or otherwise) that may affect the timing or completion of the acquisition.

(10) On or about April 29, 2002, GD requested information from GM regarding the presence of “dual nationals” at its Canadian facility. GD’s report to this office indicated that GM was not responsive to this inquiry.

(11) On August 16, 2002, GM submitted an initial directed disclosure on behalf of GM Defense London (“GMDL”), a division of General Motors of Canada Ltd. and a wholly owned subsidiary of GM. GM stated “nationals of third countries, including Canadian dual citizens, had access to U.S. origin defense articles (hardware and technical data) and received defense services at GMDL’s facility in London, Ontario, Canada without the required State Department approvals.”³

(12) On or about September 16, 2002, GM advised the Department that it had retained outside counsel to assist with its internal investigation of unauthorized access by dual and foreign nationals to U.S. technical data and that the review would encompass all of GM Defense’s foreign businesses. GM thereafter periodically provided information regarding the status of its ongoing internal investigation. On April 3, 2003, GM submitted its final report pertaining to its internal investigation.

² General Dynamics’ acquisition resulted in the purchase of the following assets from GM: LAV and U.S. Content LAV manufacturing facility in London, Ontario, Canada (now GDLS-CC); LAV and U.S. Content LAV turret manufacturing and repair facilities in Adelaide, Pooraka, Darwin and Canberra, Australia (now GDLS-A); LAV design and manufacturing facility in Kreuzlingen, Switzerland (now, as then, MOWAG) and U.S. Content LAV turret and weapon system engineering center in Goleta, California (now GDLS-CTC).

³ On August 19, 2002, GM Defense furloughed approximately 180 employees who were dual nationals or citizens of countries other than the United States, included in those furloughed were ten (10) employees from proscribed countries.

Part II – Exports to Foreign Nationals to include Foreign Nationals of Proscribed Countries

(13) GM's internal investigation concluded that foreign-national employees in each of GM Defense's foreign businesses, to include foreign national employees of proscribed countries at GMDL, GM Defense Australia Ltd. ("GMDA"), and Motowagenfabrik AG ("MOWAG"), accessed U.S. technical data without the Department's authorization. GM's investigation also disclosed that GMDL and GMDA both provided U.S. technical data, in the form of component part drawings; to potential suppliers without the required Department authorization.

(14) GM Defense employed nationals from non-proscribed destinations in all aspects of its U.S. content LAV programs.⁴ Non-proscribed foreign national employees were able to access ITAR-controlled defense articles, technical data and defense services on site at GMDL in most cases without any U.S. Government authorization. In cases where GM Defense was party to a technical assistance agreement or manufacturing license agreement, these authorizations only permitted exports to Canadian nationals, and did not cover dual nationals or nationals of countries other than Canada. GM also disclosed, and a review of email exchanges confirmed, that similar access existed for the non-proscribed employees at GMDA and MOWAG. GMDL employed in excess of 750 non-proscribed employees who were, with few exceptions, able to access all technical data and receive defense services on-site at this facility.

(15) On October 7, 2002, in response to a September 20, 2002, request from the Office of Defense Trade Controls Compliance ("ODTCC"), GM advised that GMDL employed ten foreign nationals from proscribed countries, (i.e. Syria, the People's Republic of China, Iran, and Afghanistan) and that MOWAG employed one (the People's Republic of China). In its April 3, 2003 final report, GM identified three additional employees of GMDL who were also nationals from proscribed countries. (i.e., one citizen of Iran and two of the People's Republic of China).

⁴ These individuals included: individuals who held only Canadian and US citizenship; individuals qualifying as dual nationals, including Canadian citizens; and individuals holding dual citizenships, not including Canadian or US citizenship and individuals who were permanent residents of Canada.

(16) GM Defense's disclosure stated that it became aware in late 1999 that certain GMDL employees were dual citizens and raised this issue with GM's Export Control Staff. However, an internal GM email dated early 1999 (April 30, 1999), states, *"as you are aware, the recent changes to the ITAR require that US exporters secure end-user certifications prior to export from the US when using the ITAR 126.5 Canadian Exemption. The regulations specifically state that the exporter must obtain written documentation that the defense article is for end-use in Canada by a Canadian citizen and use by non-Canadians in Canada."*

(17) The GM disclosure stated that GM Defense did not take action on this matter until after the new Canadian Exemption and the corresponding Canadian regulations were implemented in the summer of 2001. Yet, an internal GM email dated January 24, 2000, referencing a planned "Export Controls Meeting" indicates that GM was fully aware of the U.S. regulatory requirements and presence of third party nationals at GM Defense before the summer of 2001. This email states *"USA law prohibits foreign nationals access to controlled technical data and controlled goods that are USA origin.... The primary topic of discussion will be the appropriate involvement of non-Canadian and/or dual citizenship personnel in our business."*

(18) The GM disclosure asserted that the ITAR did not expressly require or otherwise indicate that dual citizens were to be treated differently for purposes of access to U.S. technical data than were employees who were solely citizens of Canada.⁵ This is despite, a November 8, 2000, GM internal email entitled Dual Citizens which states, *"What is the status of the review of dual citizens at DDGM? I understand that another question was*

⁵ Section 124.8 (5) of the ITAR requires that the following language be included in any manufacturing license agreement or technical assistance agreement, "The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained." In addition Section 125.1 (c) of the ITAR provides that "technical data authorized for export may not be reexported, transferred or diverted from the country of ultimate end-use or from the authorized foreign end-user (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Office of Defense Trade Controls."

raised over whether or not this is actually a legal requirement, so that the question can be asked under Canadian law. However, I am not sure that any US legal opinion was sought.” Subsequent email documentation reviewed by this office reflects that GM management and compliance officials sought an opinion from Dewey Ballantine, LLP, their outside counsel, pertaining to the Dual Citizen issue. A November 9, 2000, email reflects the importance of this issue as it states, *“As this issue (Canadian Exemption and Dual Citizenship) is most significant to GM Defense and we have already identified nationalities of a significant portion of the workforce. I suggest we have legal staff in London (GM Defense London Ontario) continue to work this issue.”*

(19) On November 29, 2000, a GM email entitled “ITAR Canadian Exemption” refers to a Dewey Ballantine opinion stating, *“GM would incur substantial risk of liability if it were to rely on the Canada Exemption to export defense articles to Canadian persons known to have dual nationality. In addition, it would be prudent to establish safeguards aimed at preventing such dual nationals from having access to defense articles that are exported under Canadian Exemption.”*

(20) A February 6, 2001, GM email entitled “Dual Citizens” reflects GM’s knowledge of the serious violations of the ITAR that were occurring. It states, *“We are now in a position where DDGM has advised us that there are dual-nationals with access to US Technical data, we have been advised by the State Department Deputy Director of Licensing (Rose Biancaniello) on more than one occasion that this requires a State Department license, and we have an outside opinion confirming that this is correct interpretation of the regulations. Failure to act on this could be a willful violation of the ITAR.”* GM did not act on this matter nor did they notify the Department of these violations.

(21) The foreign national employees from proscribed countries worked on all of GM Defense’s five major programs: APC, NZLAV, ASLAV, SANG, and BCT.⁶ Computer network access was granted based primarily

⁶ The Armored Personnel Carrier program (“APC”) was awarded to GM by the Canadian Department of National Defense in 1996. The contract provided for the production and delivery of several vehicle configurations of the APC. The Australian Light Armored Vehicle Program (“ASLAV”) began in 1989 and in 1992 the Australian Government placed an order with GM Defense for an additional 111 vehicles. The

on the basis of job responsibilities, without assessment of an individual's citizenship, therefore the foreign nationals from proscribed countries, identified above, had access to ITAR controlled technical data housed on various GM computer network systems. With regard to the inability of GM to monitor its workforce as to unauthorized access to ITAR controlled data a February 28, 2001, GM email regarding "Citizenship Status" states, *"to further complicate the current issue of determining nationalities of workers with access to US Defense information, when asked citizenships of contract employees we were provided information which showed six employees with either dual citizenship or landed immigrant status. Unfortunately the countries involved are Syria, Iran and China. All those countries are precluded from receiving US defense information. We cannot continue to allow access to US information by citizens of embargoed countries. Additionally we may have a disclosure requirement under the ITAR for allowing access."*⁷ GM did not submit any voluntary disclosure at that time nor did they notify DTCC of potential violations of the ITAR.

Part III – Unauthorized Access to ITAR Controlled Technical Data Contained in GM's Electronic Databases

(22) GM's final disclosure stated that many of its engineering and other technical program support personnel, to include foreign persons from proscribed countries and other foreign or dual nationals, "had computers and access to various programs and/or drives on which most of the GM Defense Technical data required by particular departments (e.g., reliability and maintainability data) was located. Thus, they technically "had access" to that data."⁸ A January 30, 2002, GM internal email reflects that GM was aware of the regulatory requirements regarding foreign national access to

Kingdom of Saudi Arabia National Guard ("SANG") program, which included 10 LAV variants, was awarded to GM Defense in 1991 and the production contract in 1993. The New Zealand LAV ("NZLAV") program was awarded to GM Defense in January 2000 to include two variants, an infantry mobility vehicle and a recovery vehicle. The United States Army Brigade Combat Team (BCT) Program was a joint venture between GM and GDLS. The Army selected the joint venture to equip its Combat Brigade Teams with GM Defense LAVs. The contract provides for the production of up to 2131 vehicles.

⁷ A search of the DTCC databases does not disclose any submission or notification to DTCC by GM of a potential violation of the ITAR as it may relate to unauthorized access to ITAR controlled data by foreign national employees of proscribed countries.

⁸ GM's disclosure stated, *"the objective of this investigation, however, was not to identify the proscribed nationals and other foreign or dual nationals who theoretically could access data. Rather, we attempted to determine which individuals actually accessed U.S. technical data, and the data they accessed."*

ITAR controlled technical data and that there was unfettered access to ITAR controlled data by all GM employees to include foreign nationals, including foreign nationals of proscribed countries. The email states, *"James tells me everybody with a GM-issued computer anywhere in the world has access to IDOCS. Because this suggests export control exposure, I'd appreciate an estimate of when access will be restricted to GMD employees. In addition, in order to comply with the ITAR record keeping requirements, it is necessary to institute a mechanism for recording when US technical data is accessed in IDOCS and AMAPS."* Further an August 20, 2002 email entitled "Request for Documents-Immediate Action Required", reflects the volume of ITAR controlled technical data that was accessible by foreign nationals without Department authorization. The email states, *"GM Defense operates a system called AMAPS in which manufacturing information for defense articles is stored. It is not certain if these data constitute technical data under the meaning of the term ITAR. GM Defense also operates systems called IDOCS in which engineering drawings for defense articles are stored. IDOCS contains over one million documents...300,000 are directly related to defense articles."*

(23) GM Defense maintained four primary electronic databases and a series of shared network drives that housed various forms of technical data related to the U.S. content LAVs.⁹ Access to these databases existed for those GM Defense employees who were authorized to use the GM Defense computer network. Prior to August 2002, an employee's status as a foreign person under applicable export laws was not considered in granting computer access. Available documents reviewed by ODTCC indicate that these databases contained ITAR-controlled technical data, either in the form of libraries of information concerning parts for the U.S. content LAVs, drawings of ITAR controlled parts, assemblies and subsystems, or engineering change orders discussing technical aspects of the design and manufacture of the U.S. content LAV. Canadian citizens and Canadian dual-national citizens were permitted unauthorized access to technical data that was for non-Canadian programs such as ASLAV, NZLAV and SANG.

⁹ The databases and drives consist of: the Automated Manufacturing Accounting Production Systems ("AMAPS"), iDOCS, repository for two-dimensional technical drawings of parts and assemblies; iMAN, the electronics parts data management system that supports UniGraphics engineering processes at GM Defense containing images and parts of the LAVs; ECR, including engineering drawings of LAVs and subsystems and Network Drives, a series of shared drives.

(24) Information received by DTCC reflects that between 1997 and March 2003, GM Defense employed foreign persons from proscribed countries listed in ITAR Section 126.1, to include employees who were citizens solely of a proscribed country, as well as dual citizens, who had unlimited access to ITAR controlled defense articles, technical data and received defense services up to August 2002.

(25) DTCC has estimated that 750 GM Defense employees of proscribed and non-proscribed countries at GMDL had the ability to access the aforementioned databases containing ITAR controlled technical data. These employees did not have authorization from the Department for access to this ITAR controlled data.

Part IV – Unauthorized Access to U.S. Technical Data by Suppliers and Vendors

(26) GM transferred ITAR-controlled technical data and provided defense services to foreign person vendors without Department authorization.

(27) The GM disclosure states that the GMDL purchasing department was responsible for identifying and contracting with vendors and suppliers for certain piece parts and components not manufactured by GMDL that it utilized for the production of LAVs. When soliciting quotations from potential suppliers of such components, it was the practice at GMDL to include a drawing of the item to be procured. Vendors received technical information from GM Defense-London, as well as GM-Defense Goleta and GMDA during the procurement, design and manufacture of U.S. component LAVs.¹⁰

¹⁰ A January 31, 2002, internal GM email entitled "GM Defense London Export Control Status Report", states, "US suppliers on ASLAV program not in compliance with GMD purchase order terms that require them to obtain export approvals,Technical Data has been released to subcontractors in Australia and New Zealand. Inquiry underway to determine if export control violations occurred....GMD has signed TAA on file with State Department in which GMD avows US Technical data will not be released to nationals of countries other than US or Canada. These employees will be identified and licenses obtained....Access to the technical data in IDOCS and AMAPS is not restricted. Export violations may be occurring..."

(28) GM's disclosure report indicated that they identified within GMDL three GM parts or components for which GMDL sent U.S. technical data, without an approved Manufacturing License Agreement ("MLA"), Technical Assistance Agreement ("TAA") or other license or approval authorizing such transfer to eleven (11) non-Canadian companies (eight in Australia, two in Israel and one in Norway) for the purpose of soliciting a price quote.

(29) GM's internal investigation also identified two hundred and thirty-six (236) parts or components for which GMDL sent U.S. technical data to seventy-six (76) Canadian companies for the purpose of soliciting a price quote. Forty nine (49) of these vendors received U.S. technical data after the 2001 amendments to the ITAR requiring Canadian entities to register under the Canadian Goods Program ("CGP") to qualify for the Canadian Exemption. GMDL did not identify the data as subject to the ITAR and did not inquire whether the Canadian vendors had registered under the CGP before providing the data.

(30) GM's internal investigation reported that GMDA disclosed U.S. technical data to entities outside the company that were not included in Department approved TAAs, MLAs or licenses.¹¹ As part of an offset program GMDA attempted to develop and utilize a local supplier base in conjunction with its performance of the LAV contracts in Australia. GMDA sent U.S. technical data to one hundred fifty-three (153) Australian and twenty-one (21) New Zealand companies for the purposes of soliciting a price quote without an approved MLA, TAA or license authorizing such transfer.

Part V- GM's Pattern of Inaction in Addressing Violations of the Act and Regulations

(31) GM's final internal report states, "*although improper access to U.S. technical data involved multiple foreign employees, the transgression stemmed from a single failing at GM Defense's foreign businesses, i.e., not*

¹¹ October 29, 2002 email entitled "Confidential", states in part (names have been redacted), "Some export control issues There are about 15-20 vendors who have been provided technical data from GMDA. The issue was identified during a visit to Australia last year, but never resolved."

recognizing that all employees may not be eligible to access properly received, non-classified U.S. technical data". GM acknowledges that it became aware of this "failing" in 1999, but did not correct or report the issues until 2002.

(32) GM's failure and negligence to address obvious ITAR violations at GMDL, GMDA and MOWAG raises serious questions as to the reliability of GM to comply with the Regulations and the Act. Time and again, ITAR related matters (e.g., unauthorized access to technical data by foreign nationals to include foreign nationals of proscribed countries) were raised to management level officials including Legal and Compliance officials, and these matters were not resolved.

(33) As discussed above, on or about February 6, 2001, approximately eighteen (18) months before this issue was brought to the attention of the Department, GM acknowledged internally that dual-nationals had unauthorized access to U.S. technical data; that the Department on several occasions had advised GM that a Department License or other approval was required; that GM had received a separate opinion from its outside law firm specializing in ITAR matters confirming that opinion; and, that GM personnel raised the issue of a potential willful violation of the ITAR if it did not act. GM did not act to resolve these issues or notify the Department of the violations in a timely manner.

(34) Approximately ten months later, on or about December 13 and 14, 2001, GM internal emails involving GM compliance personnel demonstrate the unwillingness and/or inability of GM to act on the foreign national issue and the lack of direction GM provided to its employees tasked with overseeing export compliance procedures. A December 13, 2001 internal GM email states, *"As we have discussed, we need to proceed with complying with both the many technical assistance agreements we have entered into and the U.S. ITAR provisions regarding nationals other than the U.S. and Canada. To my knowledge the legal principles have been established. If this is not the case please advise."* A December 14, 2001, internal GM email states, *"If legal doesn't act on this today, I'm considering starting to draft self-disclosures. If you have any other suggestions about how to get legal to act I'd like to hear them."*

(35) Seven months later, on or about July 9, 2002, a GM email again raises this issue, *"What was the conclusion from your meeting in Detroit on the citizenship issue and potential voluntary disclosure? Has the Tax or Legal Staff issued any specific direction or guidance on content or timing? The response was "it was concluded more information is necessary. After that information is collected the matter will be revisited."*

(36) Since the early part of January 2004, GM has advised this office of several changes that it is in the process of making in the way it manages Export Controls compliance to provide senior level corporate management greater involvement, accountability and oversight. These changes are being assessed by this office and will be incorporated and expanded in a Consent Agreement at the conclusion of this matter.¹²

License and Reporting Requirements

(37) § 124.8 (5) of the Regulations requires that all manufacturing license agreements and technical assistance agreements must provide that technical data or defense services exported from the United States in furtherance of these agreements and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized by these agreements unless the prior written approval of the Department of State has been obtained.

(38) § 125.1 (c) of the Regulations provides that technical data authorized for export may not be reexported, transferred or diverted from the country of ultimate use or from the authorized foreign end-user (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Directorate of Defense Trade Controls.

(39) § 126.1 (a) of the Regulations provides that it is the policy of the

¹² ODTCC has been in discussions with GM to incorporate VD 03-258 into any proposed settlement. If incorporated into any settlement with GM pertaining to the instant case, additional compliance penalty measures will be imposed, which will be outlined in an Annex to any Consent Agreement reached with GM, to ensure remedial action is taken in regard to VD 03-258 as well.

United States to deny, among other things, licenses and other approvals, destined for or originating in certain countries, including China, Syria, Iran and Afghanistan.

(40) § 126.1 (e) of the Regulations provides that no sale or transfer and no proposal to sell or transfer any defense service or technical data may be made to any country referred to in this section and that any person who knows or has reason to know of any actual transfer of such services must immediately inform the Directorate of Defense Trade Controls.

(41) § 127.1 (a) (1) of the Regulations provides that 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 without first obtaining the required license or written approval from the Directorate of Defense Trade Controls.

(42) § 127.1 (a) (3) of the Regulations provides that it is unlawful to conspire to export, import, reexport or cause to be exported, imported or reexported, any defense article or to furnish any defense service for which a license or written approval is required without first obtaining the required license or written approval from the Directorate of Defense Trade Controls.

(43) § 127.1 (a) (4) of the Regulations provides that it is unlawful to violate any terms and conditions of licenses or approvals.

(44) § 127.1 (b) of the Regulations provides that any person who is granted a license or other approval 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.

(45) § 127.1 (d) of the Regulations provides that no person may willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C. § 2778, 22 U.S.C. § 2779, or any regulation, license, approval, or order issued thereunder.

(46) § 127.2 of the Regulations provides that it is unlawful to use any export document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required.

PART VI – CHARGES

Foreign Nationals Unauthorized Access to U.S. Technical Data to include Foreign Nationals of Proscribed Countries

Charges 1-13

(47) General Motors violated 22 C.F.R. § 126.1 (e) of the Regulations when it failed to inform DDTC of the actual transfer of technical data it had made, or knew or had reason to know of, as outlined above, to foreign nationals or dual citizens of a country prohibited by § 126.1 (a).¹³

Charges 14-26

(48) General Motors violated 22 C.F.R. § 127.1 (a) (1) of the Regulations when, without the required license or other approval from DDTC, General Motors provided technical data related to Light Armored Vehicles to foreign nationals or dual citizens of a country prohibited by § 126.1 (a).

Charges 27-39

(49) General Motors violated 22 C.F.R. § 127.1 (d) of the Regulations when it willfully caused, or aided and abetted, the commission of an act prohibited by 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license, approval or order issued thereunder, by providing technical data to foreign persons or dual nationals of a country prohibited by § 126.1 (a).

¹³ The proscribed national employees were either citizens of or born in the following proscribed destinations: the People's Republic of China; Syria; Iran and Afghanistan.

Charges 40-93

(50) General Motors violated 22 C.F.R. § 127.1 (a) (4) of the Regulations when it disclosed without State Department authorization U.S. technical data to foreign national employees to include foreign persons from proscribed countries thereby violating the terms and conditions of export authorizations issued by the Department.

Charges 94-147

(51) General Motors violated 22 C.F.R. § 127.1 (b) of the Regulations, when it provided unauthorized access to U.S. technical data to foreign national employees including foreign persons from proscribed countries by failing to account for the acts of its employees, agents, and all authorized persons to whom possession of the licensed defense articles or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data.

Charges 148-197

(52) General Motors violated 22 C.F.R. § 127.1 (a) (1) of the Regulations when, it disclosed without the Department's authorization U.S. technical data to foreign national employees or dual national employees at its business units at GMDA, GMDL and MOWAG.

Unauthorized Access to U.S. Technical Data by Foreign Suppliers and Vendors

Charges 198-247

(53) General Motors violated 22 C.F.R. § 127.1 (a) (1) and 126.5 of the Regulations when, GMDL and GMDA transferred without the Department's authorization U.S. technical data and defense services to foreign person vendors and suppliers for the production of ITAR-controlled components of the LAV.

Charge 248

(54) General Motors violated 22 C.F.R. § 127.2 (a) of the Regulations concerning misrepresentations and omission of material facts when, it failed to disclose to the Department in munitions license applications, that foreign person employees, to include those of proscribed countries, would have unauthorized access to technical data, defense services and defense articles.

Part 7- Administrative Proceedings

(55) Pursuant to 22 C.F.R. § 128 administrative proceedings are instituted against General Motors and General Dynamics (as a successor company) 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 shall generally be for a period of three years in accordance with § 127.7 of the Regulations. Civil penalties, not to exceed \$500,000 per violation, may be imposed in accordance with § 127.10.

(56) 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 of the U.S. Government from pursuing another type of enforcement.

Sincerely,

David C. Trimble
Director
Defense Trade Controls Compliance