

PROPOSED CHARGING LETTER

June 9, 2008

Ms. Wanda Denson-Low
Senior Vice President
Office of Internal Governance
The Boeing Company
100 North Riverside Drive
Chicago, IL 60606

Re: Investigation of The Boeing Company Regarding Potential
Violations of the Arms Export Control Act and the International
Traffic in Arms Regulations

Dear Ms. Denson-Low:

The Department of State ("Department") charges The Boeing Company ("Respondent") with violations of the Arms Export Control Act (the "AECA") and the International Traffic in Arms Regulations ("ITAR") in connection with exceeding the authorized values of manufacturing licensing agreements ("MLA"); and in connection with omissions and certain administrative violations. Forty (40) violations are alleged at this time. The essential facts constituting the alleged violations are described herein. The Department reserves the right to amend charging letters, including through a revision to incorporate additional charges stemming from the same misconduct of the Respondent in these matters. Please be advised that this proposed charging letter provides notice of our intent to impose civil penalties in accordance with § 128.3 of the ITAR.

The Department considered the Respondent's Voluntary Disclosures and remedial compliance measures as significant mitigating factors when determining the charges to pursue in this matter. However, as outlined in more detail below, Respondent's record in effectively administering, updating and reviewing its agreements has been consistently flawed, and resulted in this office requiring the Respondent to conduct a repeated comprehensive review of its MLAs and then directing a disclosure of the results to this office. The Respondent voluntarily undertook a comprehensive review of its TAAs. Given the serious, systemic and longstanding nature of the violations, the Department has decided to charge

the Respondent with forty (40) violations at this time. The Department has taken into consideration the Respondent's Voluntary Disclosures and remedial compliance measures as significant mitigating factors. If the Respondent had not undertaken these actions, charges against and penalties imposed upon the Respondent would likely be more significant.

BACKGROUND

Respondent has been obtaining DDTC approval of MLAs and TAAs for more than 30 years, including approximately 170 MLAs and 200 TAAs that are the subject of this proposed charging letter. While these violations did not include exports to unauthorized parties or countries, Respondent has committed numerous administrative violations in the management of its MLAs and TAAs over the course of many years, particularly under certain heritage McDonnell Douglas Corporation programs and sites. These violations included, but were not limited to the manufacture of hardware by its foreign signatories greatly in excess of the approved amounts, as well as the failure to timely submit required documents and necessary amendments. Due to the large number of violations over an extended period of time, we have not identified each specific violation below, but have generally described the categories of violations. These violations represent systemic, long-term and recurring problems in Respondent's management of its MLAs and TAAs.

Several of these violations resulted in the inability of the Department to properly inform and involve Congress. In accordance with section 36 of the AECA and § 124.11 of the ITAR, the Department notifies Congress prior to the granting of any approval of a manufacturing license agreement or technical assistance agreement for the manufacturing abroad of any item of significant military equipment that is entered into with any country regardless of dollar value. Additionally, in accordance with section 36 of the AECA and § 123.15(a) of the ITAR, the Department notifies Congress prior to the granting of any license or other approval for transactions concerning defense articles and defense services sold under a contract: (1) in the amount of \$50,000,000 or more to any country that is not a member country of the North Atlantic Treaty Organization ("NATO"), or Australia, Japan or New Zealand, that does not authorize new sales territory; or (2) in the amount of \$100,000,000 or more to countries that are NATO members, or Japan, Australia, or New Zealand, provided the transfer does not include any other countries.

Respondent repeatedly over the course of more than fifteen (15) years manufactured hardware substantially in excess of the approved values for at least sixteen (16) of the MLAs. Respondent also failed to properly submit amendment requests for these MLAs. This failure to properly submit amendment requests to revise the authorized values concerning seven (7) of these MLAs resulted in a failure to submit the required recertification to Congress in accordance with the ITAR. Therefore, Congress did not receive the information necessary to perform the oversight role as called for in the Regulations.

Regarding one of the MLAs referenced above, the value of the hardware manufactured abroad was well over the approved amounts continuously for more than twenty (20) years. At various times in this period, this unauthorized manufacture amounted to more than \$4 billion worth of hardware. In another glaring example, Respondent had hardware manufactured substantially in excess of the approved values over the course of fourteen (14) years, totaling over \$1 billion in unapproved manufacturing by the end of December 1998. Then, when Respondent submitted an amendment to this MLA for approval in 1999, the requested value for manufacturing abroad was not sufficient to account for past amounts manufactured, let alone future manufacturing values. Therefore, even with this amendment, there was a continued discrepancy in the value of hardware manufactured versus the approved amount for this MLA, resulting in the unapproved manufacture of hardware valued at more than \$200 million by December 1999. Additionally, Respondent continued to have hardware manufactured in excess of the approved amounts for this MLA in each succeeding year, which totaled over \$500 million by December 2004.

There were also additional problems concerning Respondent's MLAs over the years. As of 2006, Respondent had problems with more than 170 of its MLAs. In addition to value discrepancies such as those described above, the Respondent had no record of submitting a number of required annual sales reports to DDTC, or of submitting certain executed MLAs. Also, certain sales reports that were submitted were inaccurate, and at times executed agreements were submitted well beyond the 30-day requirement within § 124.4 of the ITAR. Additionally, the Respondent had no record of submitting a number of required Non Transfer and Use Certificates (DSP-83). Finally, Respondent did not submit initial export notifications, or keep current the names of MLA participants.

Respondent has also had several issues regarding the administration of more than 200 of its TAAs. These include, for example, the failure to keep track of whether copies of executed agreements and amendments were submitted to DDTC; the failure to submit non-Transfer and Use Certificates (DSP-83), obtain non-disclosure agreements and submit initial export notifications; the failure to update company name changes in amendments; the failure to identify sublicensees and the scope of the work within the TAAs and amendments; and the failure to identify dual nationals and third country nationals.

These problems have been recurring, and on more than one occasion the Department had to address these issues with the Respondent. Respondent has submitted several Voluntary Disclosures that outlined the issues and mistakes in administration noted above, and undertook to correct its errors, including a comprehensive review of all of its MLAs and TAAs. Respondent also repeatedly claimed to have addressed the problems, citing the initiation of various procedures to help ensure the correct handling of its agreements.

In an August 27, 1998 letter to the Department, Respondent stated, "MDC [McDonnell Douglas Corporation, now a wholly owned subsidiary of Respondent] proceeded to review every existing and pending Agreement and amendment (as of April 23, 1998) in accordance with the items outlined in those documents. In addition, MDC separately analyzed the estimates of every Agreement based on the Guidelines confirmed by ODTC." However, this 1998 audit did not result in the correction of the value issue in one of the MLAs noted above. Moreover, within one year of the audit, Respondent exceeded the value of authorized production on two of these audited MLAs, clearly demonstrating that corrective measures had not been effectively implemented.

In 2004, DDTC provided a notice to Respondent to submit an amendment to correct the authorized value on an MLA. Respondent ignored this notice for months until Respondent noted that it had exceeded the authorized value on yet another MLA. Respondent later provided in a letter to DDTC that, "[t]his failure to respond is unacceptable and we apologize...we have been and will continue to be conducting significant corrective actions so that the various sites can better maintain, monitor,

audit, and validate their agreements...the incident confirms the fact that Boeing has a poor MLA maintenance system that is unreliable.”

A subsequent Voluntary Disclosure to the Department eventually led the Respondent to perform a divisional review of the MLAs in 2004. This review uncovered three MLAs with value discrepancies (not included in this charging letter). It also generated a 2004 enterprise-wide review of MLAs that uncovered a value discrepancy in one additional MLA. However, the 2004 enterprise review did not detect any of the MLA value discrepancies listed in this proposed charging letter. When the Respondent realized that the 2004 review was incomplete, it conducted a second more comprehensive enterprise-wide review in 2005 that uncovered value discrepancies for hardware manufactured abroad under twelve (12) of the MLAs listed in this proposed charging letter. However, the remaining four MLA value discrepancies in this proposed charging letter have been disclosed since the Respondent's September 2005 submission.

JURISDICTION

Respondent is a corporation organized under the laws of the State of Delaware.

During the period covered by the offenses set forth herein, Respondent was engaged in the manufacture and export of defense articles and defense services, and was registered as a manufacturer and exporter with the Department of State, Directorate of Defense Trade Controls (“DDTC”) in accordance with § 38 of the AECA and § 122.1 of the ITAR.

Respondent is a U.S. person within the meaning of the AECA and the ITAR, and is subject to the jurisdiction of the United States.

Respondent entered into MLAs and TAAs with foreign entities as defined in § 120.21 and § 120.22 of the ITAR, and these were approved by the Department pursuant to Part 124 of the ITAR.

LEGAL REQUIREMENTS

Section 127.1(a)(4) of the ITAR provides that it is unlawful to violate any of the terms or conditions of licenses or approvals granted pursuant to the ITAR.

Section 127.2(a) of the ITAR provides that it is unlawful to use any export or temporary import control 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 by the ITAR.

Section 124.1(c) of the ITAR requires that changes to the scope of approved agreements (including modifications, upgrades, or extensions), must be submitted for approval, and that the amendments may not enter into force until approved by DDTC.

CHARGES

Charges 1 through 20 - Violation of the Terms of MLAs

Respondent violated § 127.1(a)(4) of the ITAR twenty (20) times when it exceeded the authorized values of DDTC approved MLAs.

Charges 21 through 30 - Failure to Request Approval for MLA Amendments

Respondent violated § 124.1(c) of the ITAR ten (10) times when it failed to submit for approval amendments to DDTC approved MLAs.

Charges 31 through 35 - Omissions of Material Facts

Respondent violated § 127.2(a) of the ITAR five (5) times when it submitted for approval amendments to its MLAs that reflected values that were less than the actual value already manufactured, thus Respondent omitted material facts about the values of the agreements.

Charges 36 through 40 - Failure to Comply with Administrative Requirements

Respondent violated § 127.1(a)(4), § 127.2, and § 124.1(c) of the ITAR five (5) times when it failed to abide by the administrative terms and conditions associated with the approvals of DDTC approved MLAs.

ADMINISTRATIVE PROCEEDINGS

Pursuant to Part 128 of the ITAR, administrative proceedings are instituted by means of a charging letter against Respondent for the purpose of obtaining an Order imposing civil administrative sanctions. The Order issued may include an appropriate period of debarment, which shall generally be for a period of three 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 § 127.10 of the ITAR.

A Respondent has certain rights in such proceedings as described in Part 128 of the ITAR. Currently, this is a proposed charging letter. However, in the event that you are served with a charging letter, you are advised of the following matters: You are required to answer the charging letter within 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. These documents 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 Director of the Office of Defense Trade Controls Compliance, Department of State, 2401 E. Street, NW, Washington, D.C. 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.

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. 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 action.

Sincerely,

David C. Trimble
Director
Office of Defense Trade Controls Compliance