

DRAFT CHARGING LETTER

Office of Defense Trade Controls
U.S. Department of State
Washington, D.C. 20520

Douglas G. Bain
Senior Vice President &
General Counsel
The Boeing Company
P.O. Box 3707 MC 13-08
Seattle, WA 98124-2207

Re: Airborne Early Warning & Control Programs

Dear Mr. Bain:

The Department of State charges that The Boeing Company violated the Arms Export Control Act (the "Act") and the International Traffic in Arms Regulations (the "Regulations"), as described below. One hundred ten (110) violations are alleged.

RELEVANT FACTS

(1) The Boeing Company ("Boeing") is a corporation organized under the laws of the United States and the State of Delaware.

(2) Boeing is a U.S. person engaged in the business of manufacturing and exporting defense articles and defense services and is so registered with the Department of State, Office of Defense Trade Controls in accordance with § 38 of the Act and § 122.1 of the Regulations.

(3) Boeing is subject to the jurisdiction of the United States, in particular with respect to the Act and the Regulations.

(4) All of the following organizations are "foreign persons" within the meaning of § 120.16 of the Regulations: Royal Australian Air Force, Commonwealth of Australia; British Aerospace Australia, Ltd.; Boeing Australia, Ltd.; Air Force of the Republic of Singapore; Republic of Singapore Air Force;

Singapore Ministry of Defence; Ministry of Defence, Malaysia; Air Force of the Republic of Turkey; Spanish Air Force; ELSAN Defense and Communications, Turkey; Italian Air Force; and, ELTA Electronics, Israel.

(5) The Department of State (the "Department") authorized Boeing to market its 737 AEW&C systems to Australia, Singapore, Malaysia, Turkey, Spain and Italy through issuance of certain munitions licenses and other written approvals containing detailed terms and conditions governing various areas of technology transfer and assistance, and specifying which areas and assistance Boeing could offer and which it could not. Those licenses are: No. 631552; No. 680887; No. 695347; No. 707778; No. C-018113; No. 704713; No. 708059; and Agreement Nos. 1245-96 and 1108-98.

(6) During the period covered by the charges, The Boeing Company violated the express terms and conditions of munitions authorizations in 107 instances, and in three instances exported or caused the unlawful export of defense articles (i.e., technical data) and defense services controlled on the United States Munitions List.

THE CHARGES

CHARGES 1-21

In its February 14, 1997 proposal to Australia, Boeing violated the express terms and conditions of three Department of State authorizations that governed its proposal (Agreement No. 1245-96, Munitions License No. 695347, and Munitions License No. C-018113) when it offered software know-how; AEW&C technology and know-how; technology transfer related to integrated logistics support analysis; mission system integration and design technology transfer; open system architecture technology; radar manufacturing know-how; and, training in AEW&C technologies -- all in contravention of U.S. Government prohibitions against the offer or release of manufacturing technology, system integration/optimization know-how, or detailed design know-how.

CHARGES 22-37

Similarly, in its February 14, 1997 proposal to Australia, Boeing violated the express terms and conditions of one of these same Department of State authorizations (Munitions License No.

695347) and three others that governed its participation (Munitions License Nos. 631552 and 708059 and Agreement No. 1108-98) when it offered software code, tools and development know-how; software development know-how and a software development environment; delivery of software source code through delivery of source and maintenance capability; and software development tools -- all in contravention of U.S. Government prohibitions against the offer or release of software source code, operating algorithms, program maintenance documents, software development tools and software development know-how.

CHARGES 38-41

In its February 14, 1997 proposal to Australia, Boeing violated the express prohibition in Munitions License No. 631552 against comparisons of non-U.S. Government systems/platforms to U.S. Government systems/platforms when it compared Wedgetail radar to U.S. AWACS radar; Wedgetail HF net capabilities to AWACS; Wedgetail CEC to Navy E-2C; Wedgetail Internal Communication System to ABL and C-32A.

CHARGES 42-44

In its April 4, 1997 responses to questions of clarification presented by Australia, Boeing violated the express terms and conditions of three Department of State authorizations (technical assistance agreement No. 1245-96, Munitions License No. 695347, and Munitions License No. C-018113) when it offered design and manufacturing know-how for radar test equipment.

CHARGES 45-47

Similarly, in a briefing for Australia in support of Boeing's February 1997 proposal, Boeing violated the express terms and conditions of these three Department of State authorizations (technical assistance agreement No. 1245-96, Munitions License No. 695347, and Munitions License No. C-018113) when it offered large-scale integration capability.

CHARGES 48-59

In a September 1997 and again in a December 1997 review of systems design, Boeing violated the prohibition contained in its Department of State authorization (agreement no. 1245-96) on

release of comparisons of non-U.S. Government (USG) systems/platforms to USG systems/platforms when it compared Wedgetail FMC Orbits with use on E-3 and E-767; Wedgetail electronic warfare self-protection suite to systems on C130J and US helicopters; Boeing 737 speed with that of C130J; Wedgetail air-to-air refueling with E-3 AWACS design; Wedgetail TACAN to Navy's C-9; and Wedgetail IFF to Navy's 737-700 C-9.

CHARGES 60-71

In its March 1998 submittal to Australia, Boeing violated the express terms and conditions of four Department of State authorizations (Munitions License No. 631552, Munitions License 695347, Munitions License No. 708059 and technical assistance agreement No. 1108-98) when it offered software development know-how through delivery of a software development environment; software code, tools, and know-how; and software code, tools and know-how through software development library.

CHARGES 72

In its December 1998 submittal to Australia, Boeing violated the express terms and conditions of its Department of State authorization (technical assistance agreement No. 1108-98) prohibiting the release or discussion of the capabilities of U.S. intelligence systems and U.S. implementations when it discussed information describing the capabilities of the Multi-Mission Advanced Tactical Terminal.

CHARGES 73-81

In its January 21, 1999 submittal to Australia, Boeing violated the express terms and conditions of these three Department of State authorizations (technical assistance agreement No. 1245-96, Munitions License No. 695347, and Munitions License No. C-018113) when it offered radar design and manufacturing know-how; design know-how and manufacturing technology through access to Boeing and Northrop Grumman proprietary processes; and AEW&C design knowledge and open architecture know-how.

CHARGE 82

During a May 1997 technical interchange meeting Boeing exported without the required Department of State license technical data to ELTA concerning the placement of antenna and ESM blanking signals.

CHARGES 83-88

In violation of the express terms and conditions of its State Department authorization (technical assistance agreement No. 1108-98) prohibiting the offer or discussion of automatic detection and identification of complex signals, Boeing discussed and offered complex signals to Australia in October 1998; offered a complex signal database in November 1998; discussed and offered complex signal identification in December 1998; discussed and offered complex signal identification in March 1998; discussed and offered complex signal identification in its February 1997 proposal; discussed and offered complex signal identification in its January 1999 proposal.

CHARGES 89-91

In an October 1998 submittal to Australia, Boeing violated the express terms and conditions of its State Department authorization (technical assistance agreement No. 1108-98) that limited T/R module power, radar components and radar detection range for the Wedgetail program when it offered T/R module power in excess of the authorized limits; offered radar components in excess of the authorized limits; and offered radar detection range in excess of the authorized limits.

CHARGES 92-96

Similarly, in a December 1998 submittal to Australia, Boeing repeated the three violations associated with Charges 89-91 above, and yet again repeated two of these violations in its January 1999 proposal to Australia with respect to T/R module power and radar components.

CHARGE 97

On November 18, 1998, without having obtained the required Department of State license Boeing demonstrated to Australia the Kongsberg HCI developed for the NATO Mid-Term AWACS program.

CHARGE 98

During a presentation on April 12, 2000 to the Republic of Singapore Air Force Boeing presented classified data without having obtained the required Department of State license.

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CHARGE 99

In a February 1998 overview provided to Singapore, Boeing violated the express terms and conditions of its State Department authorization (Munitions License No. 707778) prohibiting the release of Link 16 to Singapore when it incorporated reference to Link 16 in its presentation.

CHARGE 100

In a February 1998 overview provided to Malaysia, Boeing violated the express terms and conditions of the same State Department authorization (Munitions License 707778) prohibiting the release of US Government data links to Malaysia when it incorporated reference to Links 4, 11 and 16 in its presentation.

CHARGES 101 and 102

In program overviews provided to Singapore in July 1998 and in March 1999 Boeing violated the express terms and conditions of the same State Department authorization (Munitions License No. 707779) when it offered Mode IV/IFF and Military GPS.

CHARGES 103-105

In proposals to the Turkish Air Force and ELSAN Defense and Communications, Inc. of Turkey in December 1998, April 1999 and May 1999, Boeing violated the express terms and conditions of its State Department authorization (Munitions License No. 704713) when it offered T/R module power limits and radar detection range which exceeded the limits authorized by the U.S. Government, and when it discussed an approach to offset requirements as including the transfer of integration experience.

CHARGE 106

In a November 1998 presentation to the Spanish Air Force, Boeing offered T/R module power growth exceeding the limits established in its authorization for Australia, without the necessary authorization from the Department of State.

CHARGE 107

In a June 1999 presentation to the Italian Air Force, Boeing offered T/R module power that similarly exceeded the limits established in its authorization for Australia, without the necessary authorization from the Department of State.

CHARGES 108

In its June 21, 1999, letter to the Office of Defense Trade Controls requesting reconsideration of U.S. Government terms and conditions applicable to technical assistance agreement No. 1108-98 (specifically, as they related to automatic detection and identification of complex signals), Boeing omitted material facts and violated § 127.2 of the Regulations when it failed to inform the Department in that submission that it had already made offers in violation of the relevant license condition.

CHARGES 109-110

In its June 17, 1997 letter to the Office of Defense Trade Controls requesting reconsideration of U.S. Government terms and conditions applicable to manufacturing agreement No. 1245-96 (specifically, as they related to manufacturing technology and system integration know-how, as well as comparisons to U.S. Government systems), Boeing omitted material facts and violated § 127.2 of the Regulations when it failed to inform the Department in that submission that it had already made offers in violation of the relevant license conditions.

Administrative Proceedings

Pursuant to 22 C.F.R. § 128 administrative proceedings are instituted against The Boeing 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. Civil penalties, not to exceed \$500,000 per violation, may be imposed in accordance with § 127.10.

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 prior to service of a charging letter. Please be advised that the U.S. Government is free to

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pursue civil, administrative, and/or 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 United States from pursuing another type of enforcement action.

Sincerely,

William Lowell
Director

Enclosures