

PROPOSED CHARGING LETTER

July 24, 2008

Jay A. Brozost
Vice President and Associate General Counsel
Washington Operations
Lockheed Martin Corporation
Corporate Washington Operations
1550 Crystal Drive
Crystal Square 2, Ste. 300
Arlington, VA 22202-4127

**Re: Investigation of Lockheed Martin Corporation Regarding
Potential Violations of the Arms Export Control Act and
the International Traffic in Arms Regulations**

Dear Mr. Brozost,

The Department of State (“Department”) charges the Lockheed Martin Corporation (“Respondent”), with violations of the Arms Export Control Act (the “Act”) and the International Traffic in Arms Regulations (“ITAR”) in connection with the unauthorized export of certain classified and unclassified technical data to a foreign country, and a separate instance of the unauthorized export of classified technical data to foreign nationals, as set forth herein concerning the Respondent’s business activities. Eight (8) violations are alleged at this time. The essential facts constituting the alleged provisions are described herein. The Department reserves the right to amend charging letters, including a thorough 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 debarment and/or civil penalties in accordance with § 128.3 of the ITAR.

The Department considered the Respondent’s Voluntary Disclosures and remedial measures as mitigating factors when determining the extent of the charges to pursue in this matter. However, given the national security

and foreign policy interests involved, the Department has decided to charge the Respondent with eight (8) violations at this time. We note that had the Department not taken into consideration the Respondent's Voluntary Disclosures and remedial measures as significant mitigating factors, the Department would have charged the Respondent with additional violations. In the absence of such action, charges against and penalties imposed upon the Respondent would likely be more significant.

BACKGROUND

Unauthorized Actions Regarding Hellfire Missiles

The Hellfire missile is an air-to-ground, laser guided, subsonic missile with significant antitank capacity. The Hellfire missile is capable of defeating any known tank in the world today. It can also be used as an air-to-air weapon against helicopters or slow moving fixed wing aircraft. It is the main armament of the U.S. Army's AH-64 Apache and U.S. Marine Corps' AH-1W Super Cobra helicopters. The Blast Frag and Heat are variants of the Hellfire missile.

In 2003, Respondent initiated preliminary efforts to sell Hellfire missiles to the United Arab Emirates ("UAE") as part of a Foreign Military Sale ("FMS") and/or by a direct commercial sale.

In May 2003, Respondent met with a UAE Air Force officer to discuss the possible commercial sale of Hellfire missiles to the UAE by Respondent. During this meeting, the UAE Air Force officer requested a proposal for the missile sale. Respondent sent its first proposal to the UAE on June 11, 2003, specifically providing a planning estimate and quoting a price for 360 Hellfire Heat missiles and 100 Hellfire Blast missiles. Respondent sent two additional proposals, one on November 12, 2003, and the other on December 22, 2003. In December 2003, Respondent met again with UAE Air Force officers regarding the potential sale of Hellfire missiles.

At the meeting in December 2003, a UAE Air Force officer indicated to Respondent that he would need the performance specifications of the missiles. In response, over the next two months the Respondent compiled the information, and then attempted to make redacted copies of the classified Hellfire performance specifications for both Blast Frag and Heat variants of the Hellfire missile. On February 17, 2004, Respondent traveled to the

UAE, and provided to the UAE Air Force officer the information requested, including the “redacted” performance specifications.

Despite the Respondent’s efforts, the information and “redacted” specifications exported without authorization by the Respondent still included classified information and sensitive details on the capabilities of the missiles.

In April of 2004, the Respondent provided a Voluntary Disclosure of these issues.¹ In its disclosure, the Respondent states that at the time of the export, it mistakenly believed that since the UAE already possessed inventories of the missiles, an export license to export the associated technical data (i.e., performance specifications) must have already been in place. The disclosure further noted that the Respondent took steps to secure the return of the classified information from the UAE.

We note that the unauthorized export of this technical data, which included classified information, could cause harm to U.S. national security and foreign policy interests, because it provides information that may not have otherwise been released.

Unauthorized Release of Classified Information

Respondent submitted another Voluntary Disclosure in March 2008 regarding the unauthorized export of classified information concerning the Joint Air-to-Surface Standoff Missile (“JASSM”) by one of its Lockheed Martin Missile and Fire Control (“LMMFC”) employees. Specifically, although the employee was told prior to an overseas trip that certain classified JASSM information had not been approved for export to any country, this employee confused information authorized for public release with classified information and mistakenly discussed some of this classified JASSM information with foreign persons of a major non-NATO ally.

JURISDICTION

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

¹ We note that Respondent provided an initial notice of Voluntary Disclosure in March of 2004.

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 broker and an exporter with the Department of State, Directorate of Defense Trade Controls (“DDTC”) in accordance with section 38 of the Act and § 122.1 of the ITAR.

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

The Hellfire Air-to-Ground Missile System (“AGM”) and the JASSM are defense articles controlled under the U.S. Munitions List (“USML”), § 121.1 of the ITAR. Technical data, as defined in § 120.10, for the AGM and JASSM are also controlled under the USML.

REQUIREMENTS

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

Section 126.8(a)(2) of the ITAR provides that no proposal or presentation concerning the sale of Significant Military Equipment (“SME”) valued at \$14 million or more that is intended for use by the armed forces of a country other than a member of the North Atlantic Treaty Organization, Australia, New Zealand, or Japan, when identical equipment has been previously licensed for permanent export or approved for sale, under the FMS program, may be made without prior notification to the DDTC.

Section 127.1(a)(1) of the ITAR provides that it is unlawful to export or attempt to export from the United States, or to reexport or retransfer or attempt to reexport or retransfer from one foreign destination to another foreign destination by a U.S. person of any defense article or technical data or by anyone of any U.S. origin defense article or technical data or to furnish any defense service for which a license or written approval is required by the ITAR without first obtaining the required license or written approval from DDTC.

Section 123.10(a) of the ITAR provides that a Non-transfer and Use Certificate (Form DSP-83) is required for the export of SME and classified technical data.

Section 125.3(a) of the ITAR provides that a request for approval from the Department must be sought prior to the export of classified technical data, and it establishes the requirements for such requests.

Section 125.3(b) of the ITAR provides that the export of classified technical data must be in accordance with the requirements of the Department of Defense National Industrial Security Program Operating Manual ("NISPOM"), unless such requirements are in direct conflict with guidance provided by DDTC, and other requirements imposed by cognizant U.S. departments and agencies.

CHARGES

Charges [1-3] - Unauthorized Presentation/Proposal Concerning Sale of SME

Respondent violated § 126.8(a)(2) of the ITAR when it made a presentation to UAE officials, and then provided three (3) proposals to the UAE regarding SME, offering to sell 360 Hellfire missiles without providing the appropriate notification to the Department.

Charge [4] - Unauthorized Export of Technical Data

Respondent violated § 127.1 (a)(1) of the ITAR when it exported technical data in the form of performance specifications for Hellfire missiles to the UAE without authorization from the Department.

Charge [5] - Unauthorized Export of Classified Technical Data

Respondent violated § 125.3(a) of the ITAR when it exported technical data in the form of classified performance specifications for Hellfire missiles to the UAE without submitting a request for appropriate authorization from the Department.

Charges [6-7] – Failure to Comply with Requirements for Classified Information

Respondent violated § 125.3(b) of the ITAR when it exported classified technical data to non-cleared personnel of the UAE, and when it exported classified JASSM technical data to foreign persons of a major non-NATO ally, thereby failing to export classified technical data in accordance with the requirements of the NISPOM.

Charge [8] - Failure to Obtain Non-Transfer and Use Certificate

Respondent violated § 123.10(a) of the ITAR when it failed to obtain a Non-Transfer and Use Certificate (Form DSP-83) for the export of classified technical data.

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 Act 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. 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 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, in accordance with § 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 Act 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 Trimble
Director
Office of Defense Trade Controls Compliance