

PROPOSED CHARGING LETTER

August 13, 2010

Mr. Victor Esposito
Executive Vice President
Chief Operating Officer
Xe Services LLC
P.O. Box 1029
Moyock, NC 27958

Re: Investigation of Xe Services LLC Regarding Violations of the Arms Export Control Act and the International Traffic in Arms Regulations

Dear Mr. Esposito,

The Department of State ("Department") charges Xe Services LLC ("Respondent") (formerly EP Investments, LLC and also known as Blackwater Worldwide), 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, violating the terms of provisos or other limitations of license authorizations, unauthorized sales activity involving a proscribed country, the failure to maintain records involving ITAR-controlled transactions and false statements, misrepresentations and omissions of material facts. A total of 288 violations 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, the Department considered mitigating factors, including that many of these violations were committed while Respondent was servicing U.S. Government programs or providing training to U.S. allies; Respondent's Voluntary Disclosures; its remedial compliance measures imposed during the latter part of the investigation; its cooperation with the Department during the latter part of the investigation; the change in management undertaken by Respondent; and the absence of disclosure of sensitive technologies by Respondent or actual harm to national security.

At the same time, the Department considered aggravating factors in determining what charges to pursue, including that Respondent's historic inability to comply with ITAR controls were systemic failings; the frequency and nature of Respondent's violations; that Respondent did not fully cooperate with the Department during the initial 18 months of this multi-year investigation, resulting in the delay of this investigation; Respondent failed to comply with record-keeping requirements, further impeding the investigation; many of the violations by Respondent were disclosed only after the Department issued a directed disclosure; several of Respondent's statements were false and some disclosures contained misrepresentations or omissions of material fact that had to be revised as prior reports were determined to be inaccurate or incomplete; and implications for national security.

We note that had the Department not taken into consideration Respondent's Voluntary Disclosures, remedial compliance measures, cooperation in the latter part of the investigation, change in management, support of U.S. Government programs, and the absence of disclosure of sensitive technologies or actual harm to national security as significant mitigating factors, the proposed charges against and penalties imposed upon Respondent would likely have been more significant.

BACKGROUND

General Overview

Respondent provides private-sector security service solutions to U.S. Government and non-U.S. Government clients, including the provision of security services, training, logistics, and aviation services for the U.S. Government, its allies, and to multiple private parties, U.S. and foreign.

Between February 2007 and July 2009, the Department initiated to or received from Respondent a total of thirty one (31) disclosures, sixteen (16) of which were in response to the Department's directed disclosure requests and fifteen (15) of which were voluntary disclosures. These disclosures outlined hundreds of violations of the ITAR by Respondent and Respondent's five subsidiaries: GSD Manufacturing, LLC (formerly Blackwater Target Systems, LLC); Aviation Worldwide Services, LLC; Presidential Airways, Inc.; Total Intelligence Solutions, LLC; and Paravant, LLC.

These disclosures revealed that until the latter part of the investigation Respondent demonstrated a significant lack of commitment to comply with the ITAR. Throughout the first two years of the review, Respondent had systemic export compliance problems and lacked adequate compliance oversight and resources to comply with their various requirements under the ITAR. Respondent began substantive compliance initiatives in late 2008, approximately 18 months after the Department initiated its review, and by mid-April 2009, Respondent had new officials in several of its most senior positions.

Due to the significant number and nature of the violations, and Respondent's failure to cooperate fully with the Department in the first 18 months of the investigation, the Department's investigation took two and a half years to complete. The investigation revealed that Respondent historically was in systemic noncompliance with the ITAR. Also, in several instances, Respondent initially failed to thoroughly and properly investigate its violations. This fact, along with poor record keeping practices, resulted in Respondent providing the Department with incomplete or wrong information on several occasions, which caused Respondent to correct the content of some of its earlier disclosures. Respondent also made false

statements in some of its early disclosures.¹ Until the latter part of the Department's investigation, Respondent missed time-lines set by the Department for requested information, which further prolonged the Department's investigation.

SUMMARY OF INVESTIGATION

This section provides a summary of the Department's investigation into Respondent's ITAR-controlled activities and highlights the key findings in chronological order.

June – August 2005

Sudan

In the summer of 2005, Respondent began discussing business opportunities with the semi-autonomous Government of Southern Sudan ("GoSS"), the territory of which is within Sudan, a country prohibited from exports, imports or sales proposals of U.S. defense articles or services under Section 126.1 of the ITAR (a.k.a. a "proscribed country"). Respondent reported that its discussions with GoSS followed inquiries made to the Respondent by a U.S. Government agency.

However, without a U.S. Government contract, Respondent on its own initiative continued a dialogue with GoSS officials to identify services that Respondent might be able to provide. In June 2005, Respondent met with officials from the Sudanese People's Liberation Army in Washington, D.C. to provide a general overview of training and tactical solutions for the security of Sudan's Vice President.

On October 31, 2005, Respondent received a letter from its consultant stating he had met with senior officials of the GoSS and identifying specific defense export opportunities, including the provision of defense services. This consultant, though engaged in brokering activities, was not registered as a broker with the Department as required by section 129.3(a) of the ITAR.

¹ These disclosures had been signed by Respondent's (now former) General Counsel and Empowered Official, who was replaced by an Acting General Counsel in April 2009.

In November 2005, representatives of Respondent traveled to Southern Sudan with the consultant, and without authorization provided GoSS officials with proposals for the provision of defense services.

2006

Respondent violated section 126.1 on three other occasions in the fall of 2006. In early October 2006, an employee (now former) of Respondent provided GoSS representatives with a proposal to provide training to foreign persons of dual nationality of Sudan and Uganda who would be deemed Ugandans for training purposes. Respondent obtained from GoSS copies of Ugandan passports for the prospective trainees in preparation for the proposed training. Respondent, however, did not further pursue this proposal.

Respondent, on October 24, 2006, transmitted to GoSS representatives a copy of a Technical Assistance Agreement (“TAA”) that it had submitted to the Department seeking approval for the provision of training to GoSS security personnel. The transmittal letter for this TAA, which was a modified version of a similar transmittal letter previously used for another TAA, contained the statement, “Blackwater is contracted to provide basic and advanced protective security detail training to [GoSS] PSD Guards.” This statement implied that Respondent was already engaged in the provision of defense services to the GoSS. After Respondent submitted this TAA to the Department, the Department opened an inquiry into Respondent’s connections with the GoSS.

In the meantime, on November 24, 2006, Respondent without authorization provided GoSS representatives a draft “Security and Threat Assessment” that included a price for the proposed assessment and a description of the services to be furnished. Neither this nor the other proposals contained ITAR controlled technical data, although they were unauthorized due to the status of the Sudan as a section 126.1 country. Respondent’s contemplated ventures in Sudan did not materialize.

February to June 2007

The Department sent directed disclosure requests to Respondent regarding its activities in Sudan. Respondent made a series of written

submissions in relationship to its contacts with GoSS. These submissions contained several false statements, misrepresentations and/or omissions of material fact in violation of section 127.2 of the ITAR. Respondent incorrectly reported that it had not made proposals to the GoSS when in fact it had done so on several occasions. (In its June 7, 2007 submission, Respondent made a partial disclosure that a written proposal was provided to the GoSS in October 2006). Respondent also inaccurately reported that it had never received any payments from GoSS, even though Respondent did receive payment from GoSS for non-ITAR controlled secure communication devices. Additionally, Respondent inaccurately reported on several occasions that it had provided the Department with all documents provided to or received from GoSS. The following are some examples of submissions that contained false statements, misrepresentations and/or omissions of material fact:

- a. February 9, 2007 letter included, "We further do not believe any proposal for the Presidential PSD guard training was made or delivered to the government of Southern Sudan at any point."
- b. March 21, 2007 letter included, "[Our employee] made two trips, one in December 2005 and one in February 2006 to discuss GoSS's needs. Although he observed conditions in the country and gathered general information regarding GoSS needs, there were no detailed discussions and no proposals for goods or services were submitted."
- c. March 21, 2007 letter included, "There have been a handful of subsequent visits to East Africa [Sudan], but the only proposals for specific work have involved infrastructure services and projects that do not involve provision of defense articles or services..."
- d. May 3, 2007 letter included, "To our knowledge, the only documents provided to or received from GoSS by any of the Training Companies are those previously provided ... We understand Mr. [redacted] met with Mr. [redacted], but are uncertain of with whom else he would have met."

- e. May 3, 2007 letter included, “Nonetheless, the trips by Mr. [redacted] were those described above. The purpose of the trips [to Sudan] was also as previously detailed – learning about Southern Sudan geography, hydrograph, logistics, economy, etc. There were no separate or different project beyond what has already been disclosed.”
- f. June 7, 2007 letter included, “On receipt of the Department’s initial letter on this case, all correspondence between GoSS and the Training Companies was collected. The correspondence was submitted with Blackwater’s March 21, 2007 letter. Blackwater’s May 3, 2007 letter confirmed that the original submission included all correspondence between GoSS and the Training Companies.”
- g. June 7, 2007 letter included, “On information and belief, Mr. [redacted] visited Southern Sudan on approximately seven occasions. The personal observations of [redacted] were used to analyze and assess the state of Southern Sudan’s geography, hydrograph, logistics, economy, and security at a very general level.”
- h. May 3, 2007 letter included, “Each of these accounts was accessed [Respondent’s web account at www.cryptoheaven.com] a grand total of one (1) time (verified by our system administrator) when I accessed them in the course of collecting documents and preparing the letter of March 21, 2007. ” [Respondent’s April 28, 2009 submission revealed that although the account was not used by GoSS officials, Respondent personnel used extensively the website account for conducting sales activities in Sudan].
- i. June 7, 2007 letter included, “No such payments [pertaining to the ‘Agreement for Services and Supplies’] were received. None of Training Companies have received compensation from GoSS for any reason.”

August 2007

Unauthorized Foreign Person Employees

In August 2007, Respondent submitted a voluntary disclosure regarding foreign-person employees and contractors, including nationals of South Africa, Canada, India, the United Kingdom, and Sweden. One of the foreign person employees from the United Kingdom was a senior official of Blackwater Lodge and Training Center. This employee had access to computer network directories containing technical data for security training-related programs. Another foreign person from India was an information technology manager who had access to the computer network directories containing ITAR-controlled technical data.

Respondent, without authorization, allowed this access and employed these foreign persons to participate in a variety of ITAR-controlled activities, including military training. Respondent permitted this access to continue for some of these foreign persons for another eight months after submitting its voluntary disclosure to the Department.

October 2007

Taiwanese Sniper Training

In September 2007, pursuant to a TAA authorizing the provision of technical data and defense services, Respondent conducted a Sniper Operations Course and security training for personnel from the Taiwan National Security Bureau. In October 2007, the Department, through a directed disclosure, requested that Respondent confirm its compliance with the TAA.

Respondent violated a proviso of this TAA by failing to provide biographical information on the personnel from the Taiwan National Security Bureau to the U.S. Special Operations Command (USSOCOM) prior to training. Respondent was aware of the proviso requirement, however, prior to the training. This violation had potential national security implications.

In the same disclosure, Respondent indicated that it was committed to ITAR compliance. Respondent, however, did not implement compliance measures to prevent similar violations until December 2008. The Department also later discovered through a directed disclosure that Respondent violated the same or similar proviso requirement on 13 TAAs where Respondent provided training to foreign persons under U.S. Government, allied government, and private contracts.

Providing Defense Services to Niger

In late 2007, the Department issued a directed disclosure request to Respondent asking it to confirm its compliance with a technical assistance agreement (TAA) involving the provision of defense services to foreign persons of Niger. The Department learned that despite some early steps to limit training to non-ITAR material, on November 26, 2007, prior to the approval of a required TAA, Respondent began providing military intelligence operations and firearms training to personnel of the Ministry of National Defense of Niger pursuant to a U.S. Department of Defense, Counter-Narcoterrorism Technology Program Office contract. Respondent began training while the Department was still reviewing the TAA application and provided the training before approval and execution of the TAA. The TAA was not approved until December 3, 2007, and Respondent did not execute it until January 4, 2008.

January 2008

Unauthorized Disclosures to Foreign Persons

In January 2008, Respondent submitted a voluntary disclosure on the unauthorized export of technical data and provision of defense services to two foreign person consultants from Sweden (including one Finnish/Swedish dual national), who were part of the Grizzly Armored Personnel Carrier (Grizzly APC) development program. In this disclosure, Respondent re-disclosed the unauthorized activity of one of the foreign person consultants previously disclosed in August 2007 thereby revealing that Respondent failed to cease the unauthorized activity.

Additionally, Respondent failed to stem the unauthorized provision of technical data and defense services to other foreign persons even after being

told by the Department to discontinue such unauthorized activity. For example, on two occasions, in October 2007 and February 2008, Respondent reported to the Department that Respondent had ended unauthorized access to technical data to the previously disclosed eight foreign person employees and consultants from Canada, India, the United Kingdom, and Sweden. Respondent failed, however, to cease the unauthorized access to some of these consultants until September 2008.

In addition, Respondent employed another foreign person from Sweden in January 2008 to work on a variant of the Grizzly APC, thereby providing unauthorized access to ITAR-controlled technology. Respondent allowed this foreign person to engage in the unauthorized activity until March 2008.

Respondent's senior management (now former) was responsible for these violations. Senior management also failed to implement a technology control plan that had been prepared by Respondent's then compliance officer. Senior management in Respondent's armored vehicle manufacturing division ignored or delayed response to this compliance officer's requests on the employment status, access to ITAR-controlled technology, and export control compliance regarding the foreign persons. The violations continued while senior management was fully aware of the licensing requirements for these foreign persons.

March 2008

Unaccounted Weapons in Iraq

In March 2008 in response to a directed disclosure from the Department, Respondent disclosed that approximately 113 firearms temporarily exported under licenses were lost, missing or unaccounted for in Iraq. These weapons were authorized for export to support a U.S. Government program in support of Operation Iraqi Freedom.

In addition, Respondent used some of the weapons authorized for export to support Operation Iraqi Freedom pursuant to private contracts funded by the U.S. Government.

Per a proviso, Respondent was required to report lost or missing firearms. The Department imposed the proviso to maintain accountability for lethal weapons exported to Iraq. Respondent also failed to maintain and track serial numbers of firearms for a couple of these licenses as required by another license proviso. Furthermore, Respondent failed to endorse several temporary export licenses with U.S. Customs and Border Protection (CBP) when the firearms were returned to the U.S.

Respondent was aware that the weapons were lost or missing since 2007, however, Respondent failed to disclose this information to the Department as required by the proviso until the Department issued a directed disclosure request letter in early 2008. In its response, Respondent explained that the failure to disclose was due to the lack of proper inventory procedures and poor record keeping at Respondent's weapons storage facility in Baghdad, Iraq.

Also, Respondent did not disclose the violations regarding the failure to maintain and track serial numbers until September 2008, six months after the initial disclosure.

June 2008

Compliance with TAA Provisos

By June 2008, the Department had concluded that Respondent had serious and systemic compliance problems, and the Department was concerned that Respondent might not be adhering to the terms, conditions, and provisos of other agreements. Accordingly, the Department issued a directed disclosure to Respondent to confirm its compliance with all TAA provisos, focusing on those TAAs that included a proviso requiring the submission of biographical or biometric information to USSOCOM on foreign persons prior to training.

In response, Respondent reported that there were administrative and proviso compliance violations concerning nearly every TAA where training had actually been conducted between 2003 and 2008. Respondent performed training in support of U.S. Government programs, or those of allied governments and other private contracts. Regarding 13 TAAs, Respondent failed to provide biographical information on 2,723 foreign

persons from different countries prior to their training (2,202 of these foreign persons were Afghan Border Patrol personnel selected by the U.S. Government prior to the training.).

Respondent also neglected to provide required biographical information on foreign persons who were members of the defense forces from Azerbaijan, Kuwait, Niger, and Canada. The nationals of Azerbaijan and Niger were trained pursuant to programs with the U.S. Department of Defense and the U.S. Department of Justice Bureau of International Narcotics and Law Enforcement Affairs programs.

In four other TAAs, Respondent did not provide required biographical information to USSOCOM before training, but provided it during or shortly after training. Additionally, Respondent had no record of submitting required biographical information regarding foreign persons from the Kuwait Ministry of the Interior General Department of Special Forces SWAT team trained under a private contract with the Kuwaiti government in 2006. Respondent also had no record of submitting required biographical information regarding Canadian foreign persons who were members of the Canadian Military Police trained under a private contract.

Under a private contract with the Maritime Staff Office, Japanese Ministry of Defense, in 2008, Respondent submitted foreign person biographical information to USSOCOM prior to the commencement of training, but had no record of submitting the biographical information regarding instructors that was also required.

USSOCOM needed to vet these foreign persons to ensure that only *bona fide* persons were being trained. Training included courses on the following which had ITAR-controlled components: maritime breaching; advanced law enforcement; fundamentals of shooting, tactical pistol and military shotgun use; border patrolling; executive protection; firearms and tactical skills; counter-narcotics; static guarding; personal security; driver tactics; and use of monocular night vision devices.

Respondent's failure to provide information on these foreign persons (instructors and students) may have implications for U.S. national security because the training courses provided skills or tactics, techniques, and procedures that could have given special capabilities to defense or security

forces of U.S. allies. Also, Respondent trained some foreign persons of dual nationality in violation of TAA provisos. Among the Afghan Border Patrol foreign persons who received training pursuant to a U.S. Government contract, one was born in Pakistan and the other in Iran, a proscribed country.

August 2008

In February 2008, the Department had directed Respondent to consolidate the registration of all its subsidiaries with the Department under one registration number and to amend all of its TAAs to update the registration information. Respondent also reported that it did not provide accurate initial export dates for ten approved agreements involving defense services provided pursuant to private contracts and two agreements in support of U.S. Government contracts.

October to November 2008

Additional Unauthorized Training

The Department issued, on October 22 and October 23, 2008, additional directed disclosure requests to Respondent to confirm its compliance with other authorizations, including DSP-5 permanent export licenses and DSP-73 temporary export licenses.

Respondent reported that it provided military training to foreign persons from Colombia and the Philippines in 2005 and 2006 prior to obtaining required authorizations through DSP-5 licenses. (The Office of Defense Trade Controls Licensing authorized certain defense service activities in support of Operation Iraqi Freedom via DSP-5 licenses on a case-by-case basis.) The Colombian and Filipino foreign persons were trained and deployed as third-country nationals in support of a contract with the U.S. Department of State. Each Colombian and Filipino foreign person had to receive a Moderate-Risk Public Trust clearance and was approved by the U.S. State Department prior to deployment in accordance with the contract. Respondent stated that at the time those license applications were submitted, in 2005, there was a general misunderstanding among Respondent personnel that simply submitting a license application was sufficient to begin training.

In a voluntary disclosure submitted in October 2008, Respondent reported its unauthorized provision of defense services in the United States performed under private contracts in the form of law enforcement training (that included ITAR-controlled training components) to numerous foreign persons. On more than 50 occasions between April 2004 and June 2008, Respondent without authorization provided such law enforcement and military training to more than 690 foreign persons at its U.S. facility.

September to November 2008

Respondent's Compliance Initiative and Export Compliance Committee

By the fall of 2008, Respondent acknowledged significant shortcomings in its compliance systems, engaged different outside legal counsel and began to institute substantive reforms. In September 2008, Respondent initiated the implementation of an employee training system that provided training on export controls. In October 2008, Respondent publicly stated through a press release and notification to the Department its compliance failings and announced an initiative to enhance export compliance throughout its global operations. Respondent stated that the ongoing investigation by the Department (and other U.S. Government agencies) called for a significant and enterprise-wide initiative.

The initiative included creation of an independent oversight committee, the Export Compliance Committee (ECC). The ECC was provided oversight authority for Respondent's compliance and remediation of violations of U.S. export controls. Respondent also created an office of Vice President of Export Compliance and began implementing a formal export control compliance department.

The creation of the ECC and an office of Vice President of Export Compliance, their scope of authorities, and other aspects of Respondent's compliance initiative were at the voluntary discretion of Respondent. Respondent provided notice to the Department of this initiative.

December 2008 to March 2009

Policy of Denial

By this point in the investigation, however, the Department had lost confidence in Respondent's ability and willingness to comply with the ITAR without formal action by the Department. The Department assessed that Respondent had numerous unauthorized exports and had violated the terms, conditions, or provisos of nearly all of its authorizations. Consequently and in order to help institute a more effective compliance program and to enhance ITAR oversight, the Department placed Respondent under a policy of denial, with certain conditions, on December 2, 2008. The policy of denial included a presumption of denial for new authorizations, except for those in direct support of the U.S. Government. For these authorizations, while there was no presumption of denial, other requirements were imposed.

The Department recognized that Respondent had taken recent steps to enhance its compliance program, for example setting up the ECC, and therefore drafted the policy of denial to leverage these measures by permitting certain exceptions to be made. Specifically, the Department required that Respondent's license applications include a certification by the ECC that the submission was accurate, and that the training and internal controls necessary to implement the authorization were in place.

The ECC also was required to provide reports to the Department 30 and 60 days after export activities commenced under each authorization. These reports would certify that Respondent complied with provisions of authorizations, completed training necessary to implement the authorization and that appropriate internal controls were in place.

To implement such compliance measures, the Department recommended that the ECC engage an independent ITAR expert to serve as a special advisor to the committee. The ECC did so in December 2008.

Failure to Provide Correct Information Regarding Foreign Person Training

Respondent had to correct information contained in a previous disclosure on the number of foreign persons for whom biographical information had not been provided. In the course of this investigation,

Respondent repeatedly made modifications to the content of its previous submissions to the Department.

Failure to Comply with Provisos Prior to Commencement of Foreign Person Training

As in mid-2008, Respondent again did not comply with TAA provisos that required the submission of biographical or biometric information to USSOCOM on foreign persons prior to conducting ITAR-controlled training in Afghanistan. Specifically, on December 17, 2008, a TAA was re-issued to Respondent to provide technical data and defense services for training Afghan Narcotics Interdiction Unit (NIU) personnel. This training was in support of a contract with the U.S. Department of Defense, Counter-Narcoterrorism Technology Program Office.

On January 19, 2009, Respondent violated a proviso by not ensuring that biometric data for Afghan foreign persons had been collected and vetted by U.S. Government personnel and subsequently transmitted by these U.S. Government personnel in a required format to USSOCOM. Respondent reported that these foreign persons were selected for training by the U.S. Department of Defense.

On February 6 and 7, 2009, in connection with submissions required by the ECC in accordance with the policy of denial, Respondent conducted an internal review of certain export files. In conducting this review, Respondent determined that its personnel were not complying with certain provisos that required affirmative participation in the collection and vetting of background data by several U.S. Government offices in Afghanistan. On February 6, 2009, Respondent suspended training of the NIU under the TAA until a review could be completed. Respondent voluntarily notified the Department of these violations on February 11, 2009.

Around February 12, 2009, in connection with a further voluntary internal review of TAA compliance that was at the direction of the ECC, Respondent discovered that a TAA for training Afghan Border Police (ABP) contained similar provisos. This program also supported Operation Enduring Freedom and was pursuant to a contract with the U.S. Department of Defense, Counter-Narcoterrorism Technology Program Office. Due to concerns regarding potential non-compliance, on February 13, 2009,

Respondent suspended ITAR-controlled training under that TAA until it could verify that proviso requirements were met.

Following the review, the ECC notified the Department that it had reviewed the findings of counsel who determined Respondent could re-initiate services under both of these TAAs after biographical data in the biometric format had been provided to USSOCOM and certification of compliance with other provisos had been obtained. The ECC notified the Department that it concurred with outside legal counsel that Respondent was in compliance. The ECC directed Respondent to provide the ECC with evidence of compliance with provisos related to these TAAs at least 48 hours before beginning any subsequent course.

In this review, Respondent raised concerns to the Department about certain TAA provisos and problems concerning their application in light of operational requirements in Afghanistan. In response, the Department deleted all of the provisos at issue for the NIU program. For the ABP program, the Department deleted one proviso and amended two others. The after-the-fact reclama or modification of these provisos did not excuse Respondent's earlier non-compliance.

April to July 2009

Senior Management Changes

By mid-April 2009, Respondent had new officials in the positions of Chief Executive Officer, President, Chief Operating Officer, Vice-President of Manufacturing, and Acting General Counsel.

Unauthorized Training of Afghan National Army Personnel

In September 2008, Respondent entered into a subcontract to provide training to the Afghan National Army, as a part of the U.S. Department of Defense, Combined Security Transition Command – Afghanistan (CSTC-A) New Equipment Training (NET) program. Respondent reported that the U.S. Department of Defense selected the trainees and determined the training curriculum. Respondent, however, was required to obtain authorization from the Department prior to training. Respondent trained more than thirty thousand of these Afghan National Army personnel in support of this contract beginning in December 2008.

This issue was discovered after the ECC initiated a review of this activity, beginning in May 2009. The ECC-directed review determined that Respondent's provision of defense services and technical data may not have been authorized and/or Respondent may not have complied with the policy of denial. The ECC-directed review found that Respondent reportedly relied on information provided by an official from the U.S. Department of Defense via email that the training was a "pseudo-FMS case" and that no TAA was required. However, the Letter of Offer and Acceptance provided by the U.S. Department of Defense described the training program as a "Non-FMS [Foreign Military Sales] – No Purchaser Signature Required" program.²

The FMS exemption was not applicable because this was not an FMS activity. Also, any use of exemptions by Respondent at this time would have contravened the policy of denial. The ECC review of these statements and other information raised additional questions concerning authorization for this training. Respondent relayed these questions via a General Correspondence request to the Department. Respondent submitted a voluntary disclosure regarding unauthorized training to Afghan National Army personnel to the Department at the same time.

On review of the General Correspondence request, the Department concluded that the training had not been authorized. On receipt of that determination at the end of July 2009, Respondent voluntarily suspended training on July 31, 2009. A week later, the Department authorized continued training under a DSP-5 license on August 7, 2009.

Information from U.S. Department of Defense officials and Respondent's confusion over proper authorizations may have contributed to these errors. Respondent, however, failed to (1) correctly analyze whether there were applicable exemption requirements; (2) report accurately to the Department concerning exemption use; or (3) correlate the policy of denial with the use of ITAR exemptions to ensure compliance.

² The Letter of Offer and Acceptance stated, "This sale is made under the authority of PL 109-209 as supplemented by PL 110-28. Any reference in this Letter of Offer and Acceptance to the United States Arms Export Control Act, to defense articles, and to defense services shall be construed instead to be a reference to PL 109-289 as supplemented by PL 110-28. Any reference in this LOA to 'purchaser' shall be construed as a reference to the Department of Defense."

Unauthorized Export of Firearms

A response to a directed disclosure in May 2009 revealed that Respondent gave to the King of Jordan during an official visit to the United States, five firearms (three glock pistols, one carbine rifle and one shotgun) in March 2005. Respondent only disclosed this violation after the Department explicitly requested information on this violation.

Additionally, in response to directed disclosure requests from the Department, Respondent made written submissions in June and December 2008 and March 2009 relating to the export of firearms to Afghanistan. These submissions contained several false statements, misrepresentations and/or omissions of material fact. Respondent incorrectly reported that it had not exported firearms to Afghanistan. These submissions included for example:

- a. June 30, 2008 letter included, "As mentioned above, the Company has also obtained licenses for the export of firearms to Afghanistan but has not exported any firearms to that country."
- b. December 10, 2008 letter included, "The Company informed your office on June 30, 2008 that no firearms had been exported to Afghanistan under these licenses."
- c. March 17, 2009 letter included, "As stated in the Company's June 30, 2008 submission in this case, it received three DSP-73 licenses authorizing export of firearms to Afghanistan..., but has not exported any firearms pursuant to those licenses. Further, the company has not found any evidence of any unlicensed firearm exports to Afghanistan during its investigation of this case."

Respondent's June 22, 2009 letter, however, disclosed that Respondent without authorization exported at least 32 Beretta pistols and two M4 carbine rifles to Afghanistan in 2004, and that Respondent's employees were aware of these exports as early as March 2006.

Inventory Report

To verify that Respondent was adequately maintaining ITAR-controlled defense articles located overseas, the Department sent a directed disclosure to Respondent requesting a complete inventory of these articles.

Respondent's inventory report failed to include armored vehicles that were temporarily exported to Iraq. These armored vehicles were some of the largest articles that Respondent exported.

Six months after receiving an inquiry from the Department, Respondent submitted a full disclosure on several unauthorized exports of ammunition contained in shipments of animal food product. Respondent could not provide full details regarding some of these exports because Respondent failed to maintain records as required.

Failure to Meet Exemption Criteria for Otherwise Eligible Exports

As noted above, many of these violations occurred while Respondent was providing services in support of U.S. Government programs, including sales or provision of defense articles, services and technical data to foreign governments, combined military operations and training, and unilateral U.S. military operations abroad. Pursuant to the ITAR and established Department of Defense guidelines, some of these activities might have been exempt from ITAR licensing requirements if Respondent had followed the requirements of the exemptions outlined in the ITAR, as well as certain record-keeping requirements.

VIOLATIONS

This section provides a summary of all known violations committed by Respondent. Respondent was involved in the following types of ITAR violations: violating provisos of multiple authorizations regarding firearms exported to Iraq; unauthorized activities involving Sudan, a section 126.1 proscribed country; violating provisos of agreements involving various military and security training to various end-users; unauthorized exporting of technical data and providing defense services involving military and security training to various end-users; unauthorized exports of defense articles,

including firearms; unauthorized export of technical data and provision of defense services involving various military programs to foreign person employees and consultants; violating record-keeping requirements; and making false statements, misrepresentations and omissions of material fact.

I. Violating Provisos of Licenses involving Firearms

1. Between February 2004 and March 2008, Respondent violated provisos of eight (8) DSP-73 temporary export licenses by not reporting theft, loss and/or unauthorized access to firearms. For those licenses authorizing temporary exports to Iraq, Respondent did not report the loss of 20 Glock pistols, 12 Bushmaster carbines, and one Beowulf rifle. Respondent also did not report as missing 42 Glock pistols and 29 Bushmaster carbines.
2. In addition, Respondent violated provisos of two DSP-73 licenses by not submitting a list of serial numbers of the firearms prior to the export. Additionally, Respondent did not submit written verification of the return of the firearms for three other DSP-73 licenses.

II. Unauthorized Proposals to a Proscribed Country

1. Between 2005 and 2006, Respondent made several unauthorized proposals to GoSS, in the Sudan, a section 126.1 country.

III. False Statements or Misrepresentations, and Omissions of Material Facts

1. In response to inquiries from the Department, Respondent made a series of written submissions in early to mid-2007 relating to its contacts with the GoSS that contained several false statements, misrepresentations and/or omissions of material fact.
2. In response to directed disclosure requests from the Department, Respondent made written submissions in June and December 2008 and March 2009 relating to the export of firearms to Afghanistan that contained several false statements, misrepresentations and/or omissions of material fact.

3. Respondent also made false statements, misrepresentations, or omissions of material fact concerning foreign-person consultants or employees whom Respondent continued to employ from 2006 to 2008 and who had unauthorized access to technical data even after Respondent informed the Department on two occasions that the unauthorized activities had ceased.

IV. Violating Terms of Authorizations involving Military/Security Training

Respondent conducted the following ITAR-controlled training courses in support of U.S. Government contracts, and Respondent reported that the U.S. Government selected Afghan, Azeri, and Nepalese foreign persons for training:

1. From July 2007 to May 2008, on six occasions, Respondent provided narcotics interdiction unit training to 162 Afghan foreign persons without submitting biographical information prior to training as required by a TAA proviso. Respondent violated another TAA proviso by training dual national Afghani-Iranian and Afghan-Pakistani foreign persons. Additionally, Respondent failed to submit the initial export notification to the Department as required by section 123.22(b)(3)(ii).
2. From 2006 to August 2008, on 65 occasions, Respondent provided border patrol training to approximately 2,202 Afghan foreign persons without submitting biographical information prior to training as required by a TAA proviso. Respondent also failed to obtain an executed agreement as required by another proviso. Additionally, Respondent, without authorization, provided defense services to nine Afghan foreign persons who acted as translators in order to facilitate training.
3. Between November 2008 and December 2008, Respondent provided counternarcotics/mentor/anti-terrorism training to the Afghanistan Border Patrol without complying with numerous provisos. The proviso violations included training prior to execution of the TAA; failure to provide a DSP-83 Nontransfer

and Use Certificate prior to training; failure to provide biographical information in the biometric format to USSOCOM; training on additional weapons not authorized; and employing foreign persons from a third country without authorization. Respondent conducted ITAR-controlled training without executing the agreement and without providing biographical information to USSOCOM regarding Afghan foreign persons who were members of the Afghanistan Border Patrol. Respondent also failed to submit in a timely fashion a report of the first export of technical data pursuant to section 123.22(b)(3)(ii).

4. Between January 2009 and February 2009, Respondent provided narcotics interdiction unit training to 27 Afghan foreign persons without submitting biographical information as required by several TAA provisos.
5. From June 2006 to February 2007, Respondent provided maritime security training to 15 Azerbaijan foreign persons without submitting the biographical information prior to training as required by a TAA proviso. One of these foreign persons was an Azeri-Armenian dual national. Respondent also exported hardware pursuant to a DSP-5 permanent export license in violation of another proviso of the same TAA. This proviso precluded the export of hardware against the agreement until Respondent obtained an amendment to the agreement. Additionally, Respondent omitted information on its DSP-5 license application that the hardware was being exported in furtherance of the agreement.
6. In August 2007, Respondent provided advanced law enforcement training to eight Azerbaijani foreign persons without submitting the biographical information prior to training as required by a TAA proviso.
7. From June 2007 to September 2007, Respondent provided security training to four Nepalese foreign persons without submitting the biographical information prior to training as required by a TAA proviso. Respondent also failed to submit the initial export

notification to the Department as required by section 123.22(b)(3)(ii).

Respondent conducted the following ITAR-controlled training courses pursuant to private contracts with foreign governments:

8. From July to August 2006, Respondent provided advanced law enforcement special weapons and tactics (SWAT) training to 27 Kuwaiti foreign persons without submitting the biographical information prior to training as required by a TAA proviso.
9. From 2005 to November 2007, Respondent provided pistol, carbine, and protective services training to 131 Canadian foreign persons without submitting the biographical information prior to training as required by a TAA proviso.
10. From September 2006 to April 2008, on three occasions, Respondent provided protective security detail training to 20 Jordanian foreign persons without submitting the biographical information prior to training as required by a TAA proviso. Respondent also exported hardware in violation of another proviso of the same TAA. This proviso precluded the shipment of hardware against the agreement until Respondent obtained an amendment to the agreement. Additionally, Respondent omitted information on its DSP-5 license application that the hardware was being exported in furtherance of the agreement. Moreover, Respondent failed to submit the initial export notification to the Department as required by section 123.22(b)(3)(ii).
11. From February to September 2007, Respondent provided personal security training to one Jordanian foreign person without submitting the biographical information prior to training as required by a TAA proviso. This person was a dual national of the Netherlands and Jordan, in violation of another TAA proviso. Additionally, Respondent conducted training prior to the execution of the TAA.
12. In September 2007, Respondent provided advanced executive protection training to a foreign person who was a dual national of

the United Kingdom and the People's Republic of China (Hong Kong) prior to submitting an executed agreement as required by a TAA proviso.

13. From August 2007 to September 2007, Respondent provided defense training to 10 Jordanian foreign persons without submitting the biographical information prior to training as required by a TAA proviso. Respondent also failed to identify a foreign person of dual Jordanian-Saudi Arabian nationality as required by another proviso.

14. In March 2008, Respondent provided maritime operation and close battle training to nine Japanese foreign persons without submitting biographical information on the instructors prior to training as required by a TAA proviso. Respondent also failed to submit the initial export notification of technical data to the Department as required by section 123.22(b)(3)(ii).

V. Unauthorized Export of Technical Data and Provision of Defense Services involving Military / Security Training (Conducted Internationally)

Respondent conducted the following ITAR-controlled training courses in support of U.S. Government contracts, and Respondent reported that the U.S. Government selected Afghan and Azeri foreign persons for training (excluding Paravant training):

1. In June 2005, Respondent without authorization provided security training to Filipino foreign persons.
2. From September 2004 to August 2006, Respondent without authorization exported technical data and provided defense services involving Narcotics Interdiction Unit training to 154 Afghan foreign persons prior to approval of a TAA. Respondent held five courses before a TAA was requested and conducted one class while a TAA request was pending with the Department. Additionally, Respondent without authorization provided defense services to 10 Afghan foreign persons acting as translators to help facilitate the training courses offered to Afghan foreign persons.

3. From March 2005 to July 2005, Respondent without authorization exported technical data and provided defense services on Maritime Interdiction training to 15 Azerbaijani naval commando personnel. Respondent held five training sessions without authorization. The TAA for these activities was not approved until April 2006.
4. Between April 2005 and May 2005, Respondent without authorization provided security training to Colombian foreign persons.
5. From January 2006 to March 2006, Respondent without authorization exported technical data and provided defense services involving Border Patrol training to 120 Afghan foreign persons. Respondent conducted three training courses prior to approval of a TAA.
6. In November and December 2007, Respondent without authorization exported technical data and provided defense services to 120 foreign persons from the Ministry of National Defense of Niger prior to approval of a TAA. When a TAA was approved, Respondent also failed to provide biographical information for the 120 foreign persons as required by a proviso. Respondent also failed to provide initial export notification of technical data as required by section 123.22(b)(3)(ii).
7. From December 2008 to August 2009, Respondent without authorization provided defense services involving "Paravant North Atlantic Treaty Organization (NATO) Weapons Weekly Training" to tens of thousands of Afghan National Army personnel. The training was provided pursuant to a subcontract with the U.S. Department of Defense.

Respondent conducted the following ITAR-controlled training courses pursuant to private contracts:

8. Between July 2005 and June 2006, Respondent without authorization exported technical data and provided defense

services involving law enforcement tactics, weapons handling and safety, and checkpoint operations to approximately 74 Afghan foreign persons over the course of five training sessions. The foreign persons who participated in the training were members of the Afghan Counter-Narcotics Police Academy and were trained in cooperation with the British government.

9. From mid-2006 to April 2008, Respondent without authorization provided technical data and defense services involving the design, development, support and operation of the Polar 400 Remotely Piloted Airship; unclassified failure analyses, performance information and testing results for the Polar 400's use of a German-origin Thielert Jet Fuel Reciprocating Engine; and the engine's controlling software to German foreign persons employed by Thielert Aircraft Engines GmbH in Germany and British foreign persons employed by Respondent.

VI. Unauthorized Export of Technical Data and Provision of Defense Services involving Military / Security Training (Conducted Domestically)

Respondent conducted the following ITAR-controlled training courses pursuant to private contracts:

1. Between March 2004 and June 2008, on 22 occasions, Respondent without authorization provided defense services involving firearms training to the following: five Canadian foreign persons; approximately 112 foreign persons from the Department of National Defense of Canada; a foreign person from the British Royal Navy; a member of a special force unit of the United Kingdom; 16 foreign persons from the Royal Bahamas Police Force Training Academy; a foreign person from Paraguay; a foreign person who was a dual national of Canada and Jamaica; a foreign person who was a dual national of the United Kingdom and the Cayman Islands; two Canadian foreign persons from the Royal Canadian Mounted Police; a Canadian foreign person from the Sault Ste Marie Police Service; and a Canadian foreign person from the Ontario Provincial Police Academy. Respondent

obtained two TAAs authorizing the Department of National Defense of Canada firearms training after the training occurred.

2. In September 2007, Respondent provided a "Sniper Operations" course to three foreign military personnel with the Special Service Center, National Security Bureau of Taiwan prior to executing its TAA. Respondent also provided "Sniper Operations" and "Protective Security Detail" courses to 14 foreign military personnel with the Special Service Center, National Security Bureau of Taiwan prior to providing biographical information on the foreign persons to USSOCOM as required by a TAA proviso.
3. From May 2005 to November 2005, Respondent without authorization exported technical data and provided defense services involving pistol, carbine, tactical driving, and protective services training to 34 Canadian foreign persons of the Canadian Military Police prior to approval of a TAA. Respondent held two training sessions prior to approval of the TAA.
4. In June 2008, Respondent without authorization exported technical data and provided Mirror Image training to 39 Canadian foreign persons from the Canadian Forces, Directorate of Army Training prior to approval of a TAA.
5. In 2004, on three occasions, Respondent without authorization provided Carbine Instructor training to a foreign person from the Sault Ste Marie Police Service; a foreign person from the Department of National Defense of Canada; and a foreign person from the Ontario Provincial Police Academy of Canada. Respondent obtained a TAA authorizing the Department of National Defense Training after the training had occurred.
6. Between June 2004 and July 2008, on 12 occasions, Respondent without authorization provided Mirror Image training to the following foreign persons: a foreign person from the United Kingdom employed by the United Nations, Department of Peacekeeping Operations; a foreign person from the United Kingdom employed by the Independent Research & Development (IR&D) organization in Iraq; 64 foreign persons from the Canadian

Forces, Directorate of Army Training; a foreign person from Germany employed by Deutsch Bank, Germany; a foreign person from the United Kingdom employed by Deutsch Bank; four foreign persons from Singapore employed by the Ministry of Defense, Singapore; and a foreign person from New Zealand working as a contractor for the U.S. Department of the Air Force/Multi-National Force, Iraq. Respondent obtained a TAA authorizing the Canadian Forces training after the training had occurred.

7. Between August 2004 and September 2007, on seven occasions, Respondent without authorization provided Executive Protection training to the following persons: a foreign person from the Department of National Defense, Canadian Airborne Regiment; a foreign person from Paraguay; two foreign persons from Canada; a foreign person from the Guelph Police Service of Canada; two foreign persons from the Durham Regional Police Service of Canada; and a foreign person from the Hong Kong Police Force. Respondent obtained a TAA authorizing the Canadian Department of National Defense and the Hong Kong police training after the training had occurred.
8. Between September 2004 and November 2005, on five occasions, Respondent without authorization provided High Risk Warrant / Hostage Rescue training to eight foreign persons from the Peel Regional Police of Canada; a foreign person from the Department of National Defense of Canada; a foreign person from the South African Police Service; two foreign persons from the Halifax Regional Police of Canada; and two foreign persons from the York Regional Police of Canada. Respondent obtained a TAA authorizing the Canadian Department of National Defense and the York Regional Police training after the training had occurred.
9. In February 2005, Respondent without authorization provided Carbine Armor training to a foreign person from the Dorset Police, United Kingdom.
10. Between July 2005 and June 2008, on six occasions, Respondent without authorization provided High Risk Security Operations

training to two foreign persons from Canada; a foreign person from the Danish Ministry of Defense; a foreign person from the Police Academy of the Netherlands; two foreign persons from the Royalty and Diplomatic Protection Agency of the Netherlands; and two foreign persons from the Department of National Defense of Canada. Respondent obtained a TAA authorizing the Canadian Department of National Defense training after the training had occurred.

11. Between January 2006 and December 2006, on three occasions, Respondent without authorization provided Extreme Officer Survival training to two foreign persons from the Edmonton Police Services of Canada; a foreign person from the Department of National Defense of Canada; and the Canadian Forces Military Police. Some aspects of the training provided to the Canadian Department of National Defense and Canadian Forces Military Police were authorized by TAAs, however, Respondent failed to obtain TAAs authorizing all aspects of this training.
12. In April 2006, Respondent without authorization provided Swat Instructor training to two foreign persons from the York Regional Police of Canada. Some aspects of this training were licensed, however, Respondent failed to obtain a TAA authorizing all aspects of this training.
13. From October to November 2006, Respondent without authorization provided Pistol / Carbine / Close Quarter Battle / Drive training to approximately 59 foreign persons from the Department of National Defense of Canada. Respondent obtained a TAA authorizing this training after the training had occurred.
14. Between December 2006 and March 2008, on three occasions, Respondent without authorization provided HK Armorer training to two foreign persons from the Department of National Defense of Canada and a foreign person from the Sault St. Marie Police Service. Some aspects of this training were licensed, however, Respondent failed to obtain a TAA that covered all aspects of the course.

15. From May to June 2007, Respondent without authorization provided Pistol / Carbine / Executive Protection training to ten foreign persons from the Military Security Guard Unit, Foreign Affairs of Canada. Respondent obtained a TAA authorizing this training after the training had occurred.
16. In June 2007, Respondent without authorization provided HK M5 Sub-Machine Gun Instructor training to two foreign persons from the Peel Regional Police of Canada.
17. Between June and August 2007, on two occasions, Respondent without authorization provided Close Quarter Defense training to a foreign person from the Department of National Defense of Canada and a foreign person from the Canadian Ministry of Defense.
18. In June 2008, Respondent without authorization provided VIP Escort training to 11 foreign persons from the Department of National Defense of Canada. Respondent obtained a TAA authorizing this training after the training had occurred.

VII. Unauthorized Export of Defense Articles including Significant Military Equipment

1. In October 2004, Respondent without authorization exported 32 Beretta 9mm pistols and two Bushmaster carbine rifles to Afghanistan to support a U.S. Government contract in support of Operation Enduring Freedom.
2. Between February 2004 and March 2008, Respondent without authorization exported three Bushmaster carbine rifles and two Glock pistols to Iraq in support of a contract with the U.S. Department of State. Respondent also failed to obtain a DSP-83 Non-Transfer and Use Certificate for this export.
3. In March 2005, Respondent gave to the King of Jordan without authorization three Glock pistols, one Bushmaster Carbine, and one Remington Shotgun while the King was visiting Respondent's facility in Moyock, North Carolina.

4. Between March 2005 and March 2006, Respondent without authorization exported at least three shipments of several thousand rounds of 9 mm, 7.62 mm, and 5.56 mm ammunition to Iraq and Afghanistan in support of U.S. Government contracts in Operations Iraqi and Enduring Freedom.
5. In February 2006, Respondent without authorization exported several black helmets, medium body armor units, and body armor plates to Afghanistan to support U.S. Government contracts for Operation Enduring Freedom.

VIII. Unauthorized Exports to Foreign Person Employees and Contractors

1. Between July 2005 and April 2007, Respondent without authorization exported technical data and provided defense services involving High Risk Firearms and Tactics Instruction training course to a Canadian foreign person employed in one of its U.S. subsidiaries. This employee in the course of his duties and without authorization used numerous ITAR-controlled High Risk Firearms and Tactics Instruction course documents to provide defense services to various foreign persons.
2. From November 2003 and August 2007, Respondent without authorization provided continuous access to various technical data from United States Munitions List (USML) Categories I to XIII to a foreign person from India employed in one of its U.S. subsidiaries.
3. Between March 2004 and August 2007, Respondent without authorization exported technical data on USML Categories I to XII to a foreign person from the United Kingdom employed by one of its U.S. subsidiaries.
4. Between July 2006 and June 2007, Respondent without authorization exported various technical data involving USML Categories VII, IX, and XI to a Canadian foreign person employed as a driving instructor at Respondent's facility.

5. From June 2006 to May 2008, Respondent without authorization exported technical data and provided defense services involving the Grizzly APC to two Swedish foreign person consultants.
6. From January 2008 to March 2008, Respondent without authorization exported technical data and provided defense services involving a variant of the Grizzly APC to a foreign person from Sweden.
7. From 2006 to 2008, Respondent without authorization continued to export technical data and provide defense services to foreign person employees and consultants, including nationals of India, the United Kingdom and Sweden even after being informed to cease the unauthorized activities.

IX. Violations involving Administrative Requirements

1. Respondent failed to notify the Department that two TAAs remained unsigned within one year of their approval dates as required under section 124.4 of the ITAR.
2. Respondent failed to provide the initial export notification for 9 TAAs pursuant to section 123.22 (b)(3)(ii) of the ITAR.
3. Respondent failed to do the required endorsements through the Automated Export System (AES) or decrements with U.S. Customs & Border Protection (CBP) concerning several licenses and exports.

X. Record Keeping Violations

1. Respondent failed to maintain required records regarding more than 18 licenses.

JURISDICTION

Respondent is a Limited Liability Company 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 was engaged in the manufacture and export of defense articles and defense services, and was registered as a manufacturer/exporter with the Department of State, Directorate of Defense Trade Controls (“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 U.S. Munitions list (“USML”), § 121.1 of the ITAR. These defense articles and defense services include the following items:

The Beretta pistol, Glock pistol, Bushmaster carbine, Beowulf rifle, and Remington shotgun outlined above are controlled under Category I (a) of the USML, § 121.1 of the ITAR. The Glock pistol, Bushmaster carbine, and Beowulf rifle are further defined as significant military equipment (“SME”), requiring a DSP-83 Non-Transfer and Use Certificate for exports, retransfers, and re-exports pursuant to § 123.10 of the ITAR.

The 5.56mm, 7.62mm, and 9mm ammunition outlined above are controlled under Category III(a) of the USML, § 121.1 of the ITAR. The 5.56mm, 7.62mm, and 9mm ammunition are further defined as significant military equipment (SME), requiring a DSP-83.

Defense services, as defined in § 120.9 of the ITAR, for installing countermeasure systems are controlled under Category XI(d) of the USML, § 121.1 of the ITAR.

Defense services, as defined in § 120.9 of the ITAR, for providing firearms training are controlled under Category I(i) of the USML, § 121.1 of the ITAR.

Technical data, as defined in § 120.10 of the ITAR, for the Grizzly Armored Personnel Carrier is controlled under Category VII(h) of the USML, § 121.1 of the ITAR.

Defense services, as defined in § 120.9 of the ITAR, for development of the Grizzly APC are controlled under Category VII(h) of the USML, § 121.1 of the ITAR .

Technical data, as defined in § 120.10 of the ITAR, for the “Sniper Operations,” “Protective Security Detail,” firearm training modules of “Mirror Image,” Pistol/Carbine/Executive Protection,” “Carbine,” “Carbine Operator,” “Tactical Pistol,” “Close Quarter Defense,” “HK MP5 Sub-Machine Gun Instructor,” “Narcotics Interdiction Unit Training,” “Training for Afghanistan Border Patrol,” “Maritime Security Training,” “Security Training for Nepalese Guards,” Protective Security Detail Training,” “Advanced Law Enforcement Training for Azerbaijan Ministry of Internal Affairs,” “Personal Security Training,” “Training Hong Kong Police in Advanced Executive Protection,” “Defense and Non-Defense Training Courses in Driving, Introduction to Improved Explosive Devices and Combat Medicine,” “Maritime Operations and Close Battle Training,” “Counter-narcotics/mentor/terrorism Training,” “Training Columbian Security Personnel,” “Training Filipino Security Personnel,” “Fundamentals of Shooting: Tactical Pistol and Shotgun,” “Training in Pistol, Carbine, Tactical Driving and Protective Services,” “Intelligence Training for Canadian Forces for Afghanistan,” “Paravant North Atlantic Treaty Organization (NATO) Weapons Weekly Training,” “Presidential Security Guards,” “Law Enforcement,” “Extreme Officer Survival,” “Close Protection/High Risk Protection,” “Executive Protection,” “High Risk Security,” “Carbine Instructor,” “High Risk Warrant/Hostage Rescue,” “HK Armorer,” “Shotgun/Carbine,” “VIP Escort,” “SWAT Instructor,” military and intelligence training, and operating firearms courses are controlled under Categories I(i) and IX(e) of the USML, § 121.1 of the ITAR.

Defense services, as defined in § 120.9 of the ITAR, for providing the “Sniper Operations,” “Protective Security Detail,” “Mirror Image,” Pistol/Carbine/Executive Protection,” “Carbine,” “Carbine Operator,” “Tactical Pistol,” “Close Quarter Defense,” “HK MP5 Sub-Machine Gun Instructor,” “Narcotics Interdiction Unit Training,” “Training for Afghanistan Border Patrol,” “Maritime Security Training,” “Security Training for Nepalese Guards,” Protective Security Detail Training,” “Advanced Law Enforcement Training for Azerbaijan Ministry of Internal Affairs,” “Personal Security Training,” “Training Hong Kong Police in Advanced Executive Protection,” “Defense and Non-Defense Training

Courses in Driving, Introduction to Improved Explosive Devices and Combat Medicine,” “Maritime Operations and Close Battle Training,” “Counter-narcotics/mentor/terrorism Training,” “Training Columbian Security Personnel,” “Training Filipino Security Personnel,” “Fundamentals of Shooting: Tactical Pistol and Shotgun,” “Training in Pistol, Carbine, Tactical Driving and Protective Services,” “Intelligence Training for Canadian Forces for Afghanistan,” “Paravant North Atlantic Treaty Organization (NATO) Weapons Weekly Training,” “Presidential Security Guards,” “Law Enforcement,” “Extreme Officer Survival,” “Close Protection/High Risk Protection,” “Executive Protection,” “High Risk Security,” “Carbine Instructor,” “High Risk Warrant/Hostage Rescue,” “HK Armorer,” “Shotgun/Carbine,” “VIP Escort,” “SWAT Instructor,” military and intelligence training, and operating firearms courses are controlled under Categories I(i) and IX(e) of the USML, § 121.1 of the ITAR.

The Tactical Helmet IIIA, Level IV body armor, and Level IV body armor plate outlined above are controlled under Category X of the USML, § 121.1 of the 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 123.1(a) provides that any person who intends to export or to import temporarily a defense article must obtain the approval of the Directorate of Defense Trade Controls (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 123.10(a) of the ITAR provides that a Non-Transfer and Use Certificate (Form DSP-83) is required for the export of significant military equipment (SME) and classified technical data.

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 Sudan.

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

Section 126.1(e) of the ITAR also provides that anyone that 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, or to re-export or retransfer or attempt to re-export or retransfer from one foreign destination to another foreign destination by a U.S. person of any 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 127.2 of the ITAR provides that it is unlawful to make any false statement, misrepresentation, or omission of material fact in an export control document.

CHARGES

Charges [1 - 10] – Violating Provisos of Licenses involving Firearms

Respondent violated § 127.1(a)(4) of the ITAR ten (10) times when Respondent violated the terms, conditions, or provisos of eight (8) DSP-73 licenses involving USML Category I articles.

Charge [11] – Unauthorized Proposals to a Proscribed Country

Respondent violated § 126.1(e) of the ITAR one (1) time when Respondent without authorization made proposals to provide USML Category IX defense services to Sudan, and also failed to notify the Department of these proposals.

Charges [12 - 14] – False Statements or Misrepresentations, and Omissions of Material Facts

Respondent violated § 127.2(a) of the ITAR three (3) times when Respondent provided false statements, misrepresentations or omitted material facts regarding its activities.

Charges [15 - 117] – Violating Terms of Authorizations involving Military/Security Training

Respondent violated § 127.1(a)(4) of the ITAR 103 times when Respondent violated provisos of technical assistance agreements involving USML Category IX defense services.

Charges [118 - 194] – Unauthorized Export of Technical Data and Provision of Defense Services involving Military/Security Training (Conducted Internationally)

Respondent violated § 127.1(a)(1) of the ITAR 77 times when Respondent without authorization exported technical data and defense services covered under USML Category IX technical data and defense services to various foreign end-users.

Charges [195 - 271] – Unauthorized Export of Technical Data and Provision of Defense Services involving Military/Security Training (Conducted Domestically)

Respondent violated § 127.1(a)(1) of the ITAR 77 times when Respondent without authorization exported technical data and defense services covered under USML Category IX technical data and defense services to various foreign end-users.

Charges [272 - 276] – Unauthorized Exports of Defense Articles, including Significant Military Equipment (SME)

Respondent violated § 127.1(a)(1) of the ITAR 17 times when Respondent without authorization exported USML Categories I, VIII and XI articles to Afghanistan, the Bahamas, Burkina Faso, and Iraq.

Charge [277] – Failure to Obtain DSP-83s Certificates

Respondent violated § 123.10(a) and § 127.1 of the ITAR one (1) time when Respondent failed to obtain a Non-Transfer and Use Certificate (Form DSP-83) for the export and re-export of Categories I SME defense articles.

Charges [278 - 286] – Unauthorized Exports to Foreign Person Employees and Contractors

Respondent violated § 127.1(a)(1) of the ITAR nine (9) times when Respondent without authorization provided defense services to foreign person employees and consultants, and provided these same individuals with unauthorized access to technical data covered under various USML categories.

Charge [287] – Violations involving Administrative Requirements

Respondent violated § 124.4(a) and § 123.22(b)(3)(ii) of the ITAR one (1) time when Respondent failed to abide by the administrative requirements associated with DDTC-approved agreements.

Charge [288] – Failure to Maintain Required License Records

Respondent violated § 122.5 of the ITAR one (1) time when Respondent 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 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 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,

Lisa V. Studtmann
Director
Office of Defense Trade Controls
Compliance