

12/19/08

PROPOSED CHARGING LETTER

J. Michael Summa  
President  
Analytical Methods, Inc.  
2133 152<sup>nd</sup> Ave NE  
Redmond, Washington 98052

Re: Investigation of Analytical Methods, Inc. Regarding Potential  
Violations of the Arms Export Control Act and the International  
Traffic in Arms Regulations

Dear Mr. Summa:

The Department of State (“Department”) charges Analytical Methods, Inc. (“Respondent”) with violations of the Arms Export Control Act, as amended (“AECA”) and the International Traffic in Arms Regulations (“ITAR”) in connection with unauthorized exports of United States origin ITAR controlled technical data and other matters as set forth herein. Twenty-nine (29) 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, which may include specifying additional violations. 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 as a significant mitigating factor when determining the charges to pursue in this matter. However, given the significant national security interests involved as well as the systemic and repetitive nature of the violations, the Department has decided to charge the Respondent with twenty-nine (29) violations at this time. Had the Department not taken into consideration the Respondent’s Voluntary Disclosure and the

remedial measures already implemented by Respondent as significant mitigating factors, the Department would have charged the Respondent with additional violations, and would have pursued more severe penalties.

### JURISDICTION

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

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

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 not registered as a manufacturer and an 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 (software programs) associated with the violation(s) outlined below, are controlled under Categories VIII(i), and XI(d) of the U.S. Munitions List (“USML”), §121.1 of the ITAR.

The Defense Services, as defined in §120.9 of the ITAR, for submarine geometries/underwater maneuvering, aircraft/UAV aerodynamic analysis and design and for chaff/flare analysis is controlled under Categories XX(d), VIII(i), and XI(d) of the U.S. Munitions List (“USML”), §121.1 of the ITAR.

### BACKGROUND

Respondent is a Computation Fluid Dynamic (CFD) software development company. The software programs manufactured by the Respondent are used to create an accurate three dimensional computer model of an item that is used for design testing in a simulated environment such as flying through air or traveling through water. By performing this “virtual world testing,” manufacturers can test design changes on a computer prior to investing in building a physical prototype of an item and performing real world tests using the prototype.

Although some of the Respondent's CFD programs have been ITAR controlled, the majority of the Respondent's CFD software programs are dual-use. However, these dual-use software programs can be used in providing an ITAR regulated defense service when consulting on military systems.

In the early 1990s, Respondent and Israeli Aircraft Industries (IAI) jointly developed the MGAERO CFD software code from programs previously developed by IAI. MGAERO is a dual-use software program that computes the aerodynamic flow field and allows the user to build a virtual prototype of an aircraft and apply real-world physics to the model in order to predict performance of that design. In 1999 Respondent obtained development and marketing rights for MGAERO-FPI, a software program that combined MGAERO with an FPI module that computes the dynamic motion of any component that is identified to be free to move in the computational space. Pursuant to a January 2, 2004 Commodity Jurisdiction determination, the Directorate of Defense Trade Controls determined that MGAERO-FPI is an ITAR controlled software program that allows the user to add the ability to simulate aircraft store separation, such as ejection seat operation, missile separation, cargo deployment and other functions relevant to military aircraft functions. At the time of the violations described below, the Respondent was not registered with DDTC.

#### Unauthorized Exports to the People's Republic of China

Between August of 1999 and January of 2002, without authorization, Respondent exported directly to the People's Republic of China ("PRC") or sold through another party in the United States with knowledge of its future export to the PRC eleven (11) copies of ITAR controlled MGAERO-FPI software. In a 2003 letter to the Department, AMI's outside export control counsel stated that exports of AMI's software were handled under issued export licenses obtained by Applied Technology & Engineering, Inc. ("ATE"), in El Monte, California. ATE's Chief Executive Officer, Dr. Jack Gao is a U.S person<sup>1</sup>. However, shipping documents obtained by the Department from AMI show that five (5) shipments were directly exported by AMI to ATE's

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<sup>1</sup> Neither ATE nor Dr. Gao were registered with the Department as required by ITAR Part 122 for persons who engage in manufacturing or exporting of defense articles or defense services.

Beijing office and the six (6) shipments to ATE's El Monte office were addressed to the Chief Representative of ATE's Beijing Office. The end-users for all eleven (11) exports were various PRC government aeronautical and research entities. Because Respondent had misclassified MGAERO-FPI as not subject to the ITAR, Respondent exported the software without stating on required shipping documents that the export package contained ITAR-controlled software. These unauthorized exports likely caused harm to national security because the MGAERO-FPI software is capable of enabling the PRC users to save considerable time and costs associated with military aircraft design by greatly reducing the time to calculate trajectories and reduce wind tunnel verification.

In March of 2003, Respondent's outside export control counsel submitted a letter to the Department identified as a voluntary disclosure, stating that he was looking into whether or not the company had committed ITAR violations when it provided AMI software to a U.S. sales agent for export to an "embargoed entity" in the PRC without authorization. In April of 2003, Respondent's export control counsel submitted a second letter to the Department stating that the internal investigation determined that the Respondent had not committed any ITAR violations, on the grounds that the end-user in question was not identified on any U.S. Government list of prohibited or embargoed end-users and that the exported software was not subject to the ITAR. In May of 2003, Respondent filed a registration statement with the Department and submitted a Commodity Jurisdiction (CJ) request for the MGAERO-FPI software. In August of 2003, in response to a request from the Department for further information regarding the CJ request, Respondent provided the Department with the company names of its most recent MGAERO-FPI customers.

In January of 2004 the Department notified the Respondent that it had determined, in response to the CJ request, that MGAERO-FPI was ITAR controlled. Respondent failed to notify the Department immediately after this CJ determination that it had exported ITAR controlled MGAERO-FPI software to the PRC. Instead in March of 2004 the Respondent notified the Department that it had ceased manufacturing and exporting the ITAR controlled MGAERO-FPI software and would not re-register with the Department.

### Unauthorized Exports to Israel, Turkey, the U.K. and Singapore

In November of 2007 Respondent filed a voluntary disclosure and again registered with the Department. The Respondent disclosed that it used CFD software while providing various defense services without authorization to Israel, Singapore, Turkey, and the UK. The Respondent stated it believed this CFD software was not ITAR controlled. However, DoD's review found that one of the software modules had been modified and was controlled on the U.S. Munitions List ("USML") under Category XI(d).

The disclosure documented numerous violations from 2003 to 2005 where the Respondent provided unauthorized defense services related to consulting on military aircraft, UAVs and submarines.

- In 2005, Respondent provided a defense service when it conducted a design presentation for a new Israeli UAV;
- In 2004 Respondent performed a defense service by conducting design analysis for adapting an Israeli aerial reconnaissance camera pod to a SU 30MK1 aircraft;
- Also in 2004, Respondent performed a defense service by virtual world testing of the impact of modifying a Cheyenne III aircraft with an Israeli radome and the impact of modifying an E-2C Hawkeye early warning aircraft's navigation antennas;
- Between August and September of 2003, Respondent provided defense services by performing aerodynamic analysis for an Israeli UAV program and conducting a design presentation for a new Israeli UAV;
- In 2003 Respondent performed a defense service when it designed an Israeli camera pod for aerial reconnaissance using a F-16 aircraft;

- Also in 2003, Respondent performed defense services by participating in two Singaporean projects specifically performing underwater submarine maneuver calculations;
- In June of 2003, Respondent exported to Turkey an ITAR controlled modified software module specifically developed to perform chaff/flare trajectory calculations from aircraft in order to improve defense effectiveness. Respondent also performed a defense service by providing training using the modified software;
- Later in 2003, Respondent performed defense services by analyzing maneuvers on several UK submarine cases.

### RELEVANT ITAR REQUIREMENTS

Section 120.9(a) of the ITAR defines a Defense Service to include the furnishing of assistance to foreign persons in the design, development, engineering, modification, or use of a defense article, even if the technical data being used is in the public domain.

Part 121 of the ITAR identifies the items that are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the AECA.

Section 122.1(a) of the ITAR provides that any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with DDTC.

Section 123.22 of the ITAR provides that any export of a defense article controlled by the ITAR requires electronic reporting of export information.

Section 124.1(a) of the ITAR provides that approval from DDTC is required prior to providing a section 120.9(a) defense service, whether or not the information relied upon in providing the defense service is in the public domain or otherwise exempt from license requirements.

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 for exports and imports of defense articles and defense services destined for or originating in certain countries, including the PRC<sup>2</sup>.

Section 126.1(e) of the ITAR provides that anyone that knows or has reason to know of a proposed or actual sale or transfer, of a defense article, defense service or technical data to a proscribed country, such as the PRC 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 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 127.1(a)(3) of the ITAR provides that it is unlawful to conspire to export, import, reexport, or cause to be exported, imported or reexported, any defense article or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from DDTC.

Section 127.1(a)(5) of the ITAR provides that it is unlawful to engage in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services without complying with the ITAR registration requirements.

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

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<sup>2</sup> Section 902 of the Foreign Relations Authorizations Act, Fiscal Years 1990 and 1991 (P.L. 101-246) prohibits the issuance of licenses for the export of any defense articles and defense services to the PRC unless the President makes a determination authorizing the export.

Section 127.2(b) of the ITAR provides that a Shipper's Export Declaration (SED) is an export control document.

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

### CHARGES

#### Charges 1-5 - Unauthorized Export of Defense Articles to the PRC.

Respondent violated section 127.1(a)(1) of the ITAR when it exported ITAR controlled technical data to the PRC without authorization.

#### Charges 6-11 - Causing the Unauthorized Export of Defense Articles to the PRC.

Respondent violated section 127.1 (a)(3) of the ITAR when it provided ITAR controlled technical data to a US person knowing the technical data would be exported to the PRC without Department authorization.

#### Charge 12 - Failure to Notify the Department of Unauthorized Exports to the PRC

Respondent violated section 126.1(e) of the ITAR when it failed to immediately notify the Department of the sale and transfer of defense articles to the PRC.

#### Charges 13-25 - Unauthorized Exports of Defense Services.

Respondent violated section 127.1(a)(1) of the ITAR when it provided defense services to Turkey, Singapore, the United Kingdom and Israel without authorization.

Charge 26 - Unauthorized Export of a Defense Article.

Respondent violated section 127.1(a)(1) of the ITAR when it exported a software Chaff Module to Turkey without authorization.

Charges 27-28 - Unregistered Manufacturing and Exporting.

Respondent violated section 127.1(a)(5) of the ITAR when it manufactured and exported defense articles and provided defense services without first being registered with the Department.

Charge 29 - Misrepresentation and Omission of Facts.

Respondent violated section 127.2(a) of the ITAR when it filed export control documents containing false statements that the exports of ITAR controlled software was non ITAR controlled inter company 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 AECA and section 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 section 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, pursuant to section 128.11 of the ITAR, cases may be settled through consent agreements, including after service of a proposed charging letter.

Be advised that the U.S. Government is free to pursue civil, administrative, and/or criminal enforcement for violations of the AECA and the ITAR. The Department of State's decision to pursue one type of enforcement action does not preclude it, or any other department or agency, from pursuing another type of enforcement action.

Sincerely,

David Trimble  
Director  
Office of  
Defense Trade Controls Compliance