

06/11/2007

DRAFT CHARGING LETTER

Steven R. Loranger
President & CEO
ITT Corporation
Four West Red Oak Lane
White Plains, N. Y. 10604

Re: Investigation of ITT Corporation, regarding the unauthorized export of technical data and defense articles, false and misleading statements, and illegal export of classified information.

Dear Mr. Loranger:

(1) The Department of State ("Department") charges ITT Corporation, specifically its ITT Night Vision Division (ITT-NV) and ITT Aerospace/Communications Division (ITT-A/C), (hereinafter "ITT" or "Respondent") with violations of Section 38 of the Arms Export Control Act, as amended, ("Act") (22 U.S.C. 2778) and the International Traffic in Arms Regulations ("ITAR" or "Regulations") (22 CFR Parts 120-130) in connection with the unauthorized exports of defense articles, and technical data, to foreign countries and other matters as set forth herein. Two hundred eight (208) violations are alleged at this time. The essential facts constituting the alleged violations involved are described herein. The Department reserves the right to amend this draft charging letter (See 22 C.F.R. § 128.3(a)), which may include specifying additional violations.

PART I - RELEVANT FACTS

(2) Respondent is a corporation that was incorporated under the laws of the State of Indiana.

(3) Respondent was, for the period during which the offenses alleged herein occurred, engaged in the manufacturing and export of defense articles and defense services and was so registered with the Department of State, Directorate of Defense Trade Controls (“DDTC”) in accordance with Section 38 of the Act and Section 122.1 of the Regulations.

(4) Respondent is a U.S. person within the meaning of Section 120.15 of the Regulations and, as such, is subject to the jurisdiction of the United States, in particular with regard to the Act and Regulations.

(5) The export of the defense articles and technical data involved in the violations outlined below is controlled pursuant to the Act and the ITAR. Many of the items are significant military equipment (SME), as defined by Section 47(9) of the Act and Section 120.7 of the Regulations, requiring, pursuant to Section 123.10 of the Regulations, a DSP-83 (Non-Transfer and Use Certificate) for exports, retransfers and re-exports.

PART II - BACKGROUND

(6) Respondent has manufactured defense-related and night vision equipment for the United States Military for more than thirty years.

(7) ITT-NV has worked jointly with the U.S. Government in developing night vision equipment critical to the war-fighting capabilities of the United States.

(8) Some of the technical documents and information related to U.S. origin ITT night vision equipment employed by the U.S. Military is protected as classified information.

(9) On March 28, 2007, in the Western District of Virginia, after a lengthy criminal investigation by the U S. Attorney's Office, Immigration and Customs Enforcement, and the Defense Criminal Investigative Service, ITT Corporation pled guilty to two counts of violating the Act. The Respondent also entered into a deferred prosecution agreement relating to one additional count of violating the Act.

PART III – PROVISION OF FALSE AND MISLEADING INFORMATION FOR CONSENT AGREEMENT

(10) As a regular part of its foreign business practices, ITT-NV exported under temporary export licenses (DSP-73) various ITAR-controlled night vision equipment. These exports were provided to foreign customers for evaluation and testing on a temporary basis and, in accordance with the export authorization, were to be returned to the United States.

(11) Throughout the 1990's, ITT-NV failed to ensure that such night vision equipment exported temporarily was returned to the United States prior to the expiration dates of the various DSP-73 licenses. In one instance ITT-NV allowed night-vision equipment, temporarily exported to be taken by an influential customer knowing it would never be returned to the United States.

(12) On April 13, 2000, ITT-NV, made a "Preliminary Notification of Voluntary Disclosure" to DDTC regarding twenty-seven (27) violations of the Act, stating that the company "recently discovered" consignment violations and was investigating the details. Subsequent correspondence, including the final Voluntary Disclosure letter of May 19, 2000, failed to provide the Department with information correcting the original statement that the discovery of the violations was recent.

(13) After a lengthy investigation by DDTC, which included additional correspondence and assurances including certification under Section 127.12 (e) of the Regulations that "all of the representations made in connection with the voluntary self-disclosure are true and correct." and that ITT-NV had taken appropriate action and reported the violations as soon as

possible, DDTC decided to resolve the violations through an administrative settlement. The Department and ITT entered into a consent agreement on November 1, 2004 based on the representations and information provided during the course of the investigation, including ITT's Section 127.12(e) certification.

(14) The Consent Agreement related to three (3) ITT disclosures, from ITT-NV and ITT-A/C, covering twenty-one (21) violations of requirements associated with temporary export licenses, seventy-two (72) violations of license provisos and two (2) Technical Assistance Agreement proviso violations.

(15) During the course of a Department of Justice, Immigration and Customs Enforcement and Defense Criminal Investigative Service investigation into ITT-NV subsequent to the above-referenced Consent Agreement, it was discovered that when ITT-NV notified DDTC on April 13, 2000, that it recently discovered the consignment violations associated with temporary export licenses and it took corrective action, it was providing false and misleading statements.

(16) Documents, which ITT failed to provide with its voluntary disclosure, which were obtained during the criminal investigation show that ITT was aware of the consignment violations since at least the mid-1990's but did not rectify or report them. The documents also show that ITT did not take corrective action until immediately prior to the disclosure of the violations to the DDTC.

(17) ITT was aware from the date of its initial notification that the violations were not recently discovered. Nevertheless, ITT failed to provide that information to the Department and continued to negotiate a settlement based on the false information provided in the initial notification.

(18) Count Two of the criminal information filed in the United States District Court for the Western District of Virginia involved the knowing provision of false information in the consignment related reports to the Department.

PART IV – UNAUTHORIZED EXPORTS OF TECHNICAL DATA TO
SINGAPORE

(19) Between the early 1980's and September 2005, ITT-NV provided ITAR-controlled technical data and defense services related to the design and production of night vision optics to Avimo Electro-Optics ("Electro Optics") in Singapore¹ without the required DDTC authorizations. While ITT-NV was aware of the Act and the Regulations, little effort was made to ensure full compliance with their requirements.

(20) Between 1994 and 2000, ITT-NV applied for and obtained approval of three DSP-5 export licenses and one Technical Assistance Agreement for work with Electro-Optics. However, during this period ITT-NV exported ITAR-controlled technical data to Electro-Optics that was outside the scope and limitations of these approvals.

(21) Through 2000, Light Interference Filters ("LIF"), a counter measure used in ITT night vision goggles, were manufactured by an ITT-NV supplier in the United States. Under pressure from ITT-NV to cut LIF costs, the supplier applied for an export license that would have authorized the manufacture of the LIF blanks in China. In August of 1999, this export license application was denied by DDTC for reasons of "National Security". In February of 2000 the supplier provided ITT-NV with a copy of the denial. ITT-NV instructed the supplier to request a quote for the LIF blanks from Electro-Optics in Singapore. The supplier did so. Electro-Optics declined to respond to the request for a price quote on the LIF blanks.

(22) On February 28, 2000, ITT-NV contacted Electro-Optics regarding its non-response for a price quote for the ITT supplier. In its e-mail ITT-NV stated that Electro-Optics could manufacture the items in "either Singapore or in one of your other facilities (China)." Electro-Optics responded that it was unaware that the company requesting the quote was an ITT-NV supplier. Electro-Optics subsequently provided the ITT-NV supplier with a favorable quote to manufacture LIF blanks.

¹ The Singaporean company Avimo Singapore became Avimo Electro-Optics in March of 1994. In the end of 2001 the company was acquired by Thales France and became Thales Electro-Optics. In April of 2006 the company was again sold and became Qioptiq Singapore.

(23) Despite the favorable quote from Electro-Optics, on March 27, 2000, the U.S. supplier notified ITT-NV that it would need to increase the price it was charging for the LIFs. On August 17, 2000, ITT-NV informed the supplier that ITT-NV had received favorable quotes on LIFs from other U.S. suppliers.

(24) On October 9, 2000, the U.S. supplier informed ITT-NV that it was considering transferring its entire filter coating work to a United Kingdom facility. After discussing and agreeing with ITT that the classified specifications for the LIF coating could not be transferred to the United Kingdom, ITT-NV indicated to the supplier that ITT-NV wanted to complete one last buy of LIFs to cover future needs.

(25) On October 18, 2000, ITT-NV informed the supplier it wanted to enter into one final purchase of 4,000 LIFs. When the supplier informed ITT-NV these LIFs would cost \$150,000 more than previous orders, ITT-NV asked for 30 days to look for a new supplier.

(26) By March 2001 ITT-NV still had not ordered the additional LIFs. ITT-NV also learned that by using a new U.S. supplier it would require up to 10 months of lead time for delivery of the needed LIFs.

(27) Looking to trim costs and lead time, and despite knowing that the export of technical data needed to manufacture the LIF blanks would require DDTC authorization, on April 1 and 3, 2001, ITT-NV knowingly exported to Avimo Electro-Optics Singapore, without required authorization, ITAR-controlled unclassified technical data relating to manufacturing LIF blanks. At the time, Avimo Electro-Optics Singapore advised ITT-NV to check with Electro-Optics' sister company in the United Kingdom regarding the LIF coating.

(28) When ITT-NV exported the LIF blank technical data to Electro-Optics it was aware that the Singaporean company obtained subcomponents from suppliers in the PRC, a proscribed country, and that such suppliers might be used to manufacture optical blanks for Electro Optics.

(29) When ITT-NV decided to use an unauthorized procurement through Singapore, the People's Republic of China (PRC) and the U.K. for

LIF production it was more economical in the short-term and required less lead time.

(30) Near the end of 2001 through a take over bid, Thales SA, France, acquired Avimo Electro-Optics and Avimo Thin Films Technologies. The companies were renamed Thales Electro-Optics and Thales Thin Films Technologies, respectively.

PART V – UNAUTHORIZED EXPORTS OF CLASSIFIED TECHNICAL DATA TO THE UNITED KINGDOM

(31) On April 6, 2001, ITT-NV informally inquired with the U.S. Army Night Vision lab regarding the possibility of obtaining approval for a foreign LIF coating supplier. ITT-NV was informed this type of approval would be unlikely because the information was classified and was prohibited for foreign distribution.

(32) Despite this knowledge, ITT-NV obtained a copy of classified LIF coating specifications from the U.S. Army and asked Avimo Thin Films Technologies whether it was a cleared facility for classified material. Avimo Thin Films Technologies informed ITT-NV that it was not cleared but provided the address of a sister company also in the United Kingdom that was cleared to receive U S. classified information.

(33) On April 18, 2001, ITT-NV knowingly exported ITAR-controlled classified technical data for LIF coatings, designated “Secret” “No Foreign,” to the unsecured Avimo Thin Films Technologies facility² in the United Kingdom without DDTC authorization.

(34) After receiving the package containing the classified data, Avimo Thin Films Technologies informed ITT-NV that the classified data was sent to its facility that was not cleared to receive, store, or handle classified data and asked ITT-NV what it should do with the package. ITT-NV instructed Avimo Thin Films Technologies to open the package containing the

² ITT-NV did not use the address provided by Avimo Thin Films Technologies for the cleared sister company.

classified data and prepare the requested price quotation for the LIF coatings.

(35) On June 12, 2001, after the violation had already occurred, ITT-NV requested from the DDTC authorization to provide unclassified LIF technical data to Avimo Thin Films Technologies in the United Kingdom. On this same date, despite not having a DDTC authorization, ITT-NV issued a purchase order to Avimo Thin Film Technologies for 20 LIFs. The requested June 12, 2001 authorization omitted the fact that ITT-NV had already exported the classified technical data to Avimo Thin Films Technologies in the United Kingdom, had requested a price quote and had issued a purchase order for the LIFs. The application was subsequently "Returned Without Action" by the DDTC, based on a lack of justification to purchase LIFs from a foreign source.

(36) On June 13, 2001, during a conversation with a U.S. Government Night Vision Laboratory employee, an ITT-NV employee mentioned that ITT-NV was obtaining LIFs from a foreign source, but the ITT employee was unable to explain how that was possible when the classified LIF specification was designated "No Foreign." This information was provided to the Defense Security Service (DSS) as a possible National Industrial Security Program Operating Manual (NISPOM) violation and an official inquiry was initiated into the matter.

(37) On August 9, 2001, at the specific direction of the DDTC, ITT-NV directed Thales Thin Films Technologies and Thales Electro-Optics to stop all production of the LIFs. By this time the United Kingdom company had produced as many as 10,000 coated filters using ITT-NV provided classified data referred to in paragraph 33 above, and the manufacturing company in China had manufactured as many as 20,000 LIF blanks. Many of these coated LIFs and LIF blanks have not been recovered. ITT NV did not put the LIF purchase order on indefinite hold until February 6, 2002.

(38) Subsequently, on August 22, and again on August 27, 2001, after learning from DSS about ITT-NV's unauthorized export of classified technical data, the DDTC directed ITT to disclose the ITAR violations relating to this unauthorized export and provide DDTC with pertinent correspondence and documents to include all technical data (classified and

unclassified) exported to the United Kingdom. DDTC also referred the violation to the U.S. Customs Service³ for criminal investigation.

(39) ITT failed to provide DDTC with the classified data requested on August 22 and August 27, 2001.

(40) On March 1, 2002, ITT-NV informed the DDTC that ITT-NV had turned over all of the classified information requested.

(41) On October 29, 2002, during a search conducted by federal agents at ITT-NV, classified data returned from the UK that had not been provided to the DDTC was located in an ITT-NV classified container. Subsequently, it was also learned that ITT-NV had been aware that Avimo Thin Films Technologies in the United Kingdom had made a duplicate copy of the classified data and using it as late as July of 2001 to continue the manufacturing of the LIFs for ITT-NV. ITT-NV failed to report this to DDTC.

PART VI – UNAUTHORIZED EXPORTS OF ENHANCED NIGHT VISION TECHNICAL DATA

(42) In July of 2000, ITT-NV entered into a contract with the United States Army to design an Enhanced Night Vision Goggle (ENVG) capable of incorporating image intensification and long-wave infrared sensors into a single integrated military night vision system.

(43) As mentioned above, at the end of 2001 through a take over bid, Thales SA, France, acquired Avimo Electro-Optics and the company was renamed Thales Electro-Optics.

(44) From the beginning of this program in 2001, ITT-NV worked collaboratively on the development of the ENVG prototype with Thales Electro-Optics Singapore (formerly Avimo Electro-Optics). Without authorization, ITT-NV exported ENVG technical data to Singapore. ITT-

³ In March of 2003 the investigative section of the Customs Service became Immigration and Customs Enforcement (ICE) under the Department of Homeland Security.

NV also brought a “foreign person” optical engineer from Thales Electro-Optics Singapore to the United States to work at an ITT-NV facility on the ENVG prototype. ITT-NV did not have authorization for this foreign person to work at the ITT-NV facility.

(45) Starting in September 2002, ITT-NV began considering amending the existing Technical Assistance Agreement it had with Thales Electro-Optics to allow for the export of previously unauthorized exports of technical data. An amendment was written to add specific ENVG technical data drawings already exported and technical data needed on ENVG systems being developed. ITT drafted but did not submit the amendment to the DDTC due to concerns that the information being provided would reveal ITT’s previous violations. A second draft amendment to the TAA was also never submitted because ITT-NV concluded it would never be approved by the DDTC.

(46) ITT-NV continued to work collaboratively with Thales Electro-Optics Singapore providing technical data and defense services without authorization. In September of 2003, mounting legal concerns, brought on by the ongoing criminal investigation of its exports to the UK and the mishandling of temporary exports caused ITT-NV to look for another means of exporting the ENVG technical data to Singapore. ITT was concerned that its violations would eventually be discovered if it continued exporting without authorizations.

(47) Subsequently, ITT-NV decided to pressure Thales Electro-Optics Singapore into assuming responsibility for exporting the ITT ENVG technical data. At first Thales Electro-Optics Singapore was reluctant to take on this responsibility but acquiesced after the procurement manager at ITT-NV sent e-mails suggesting that non-cooperation in this effort might compromise their business relationship. At the time ITT-NV was Thales Electro-Optics Singapore’s primary customer and the loss of ITT’s business would have had devastating financial consequences.

(48) In the early part of 2004, ITT-NV conspired with Thales Electro-Optics Singapore to use a United States sister company, Thales Optem, Inc. in Fairport, New York (“Thales Optem”), to conceal the exports of ITT-NV ENVG technical data to Singapore. ITT-NV informed Thales Electro-

Optics Singapore of the need to hire an engineer who was a “U. S. Person,” to work at the Thales Optem Fairport, NY facility. As part of this agreement, on May 14, 2004 Thales Optem applied for a TAA between itself and Thales Electro-Optics Singapore. The stated purpose of the agreement was to authorize disclosure of technical data and provision of defense services on military optics between Thales Optem and Thales Electro-Optics Singapore. ITT-NV was not a party to this agreement. That same month, Thales Optem hired the U.S. engineer.

(49) On June 29, 2004, the Department approved the agreement for Thales Optem in New York to share optical designs with Thales Electro Optic in Singapore. That agreement went into effect on January 5, 2005.

(50) After the agreement went into effect, the U.S engineer working at Thales Optem in New York, sent a copy of the agreement documents to an ITT-NV manager for review. On February 2, 2005, the ITT-NV manager sent an e-mail informing others at ITT-NV and the U.S engineer working at Thales Optem in New York that the TAA appeared to satisfy ITT-NV’s requirement to establish a U S. sourced lens design operation to interface with Thales Electro Optics in Singapore. In reliance on ITT-NV management’s notification of the established U.S. lens design operation, ITT-NV engineers began providing ENVG technical data to the U.S. engineer at Thales Optem in New York.

(51) Despite the fact that the Thales Optem, Fairport New York - Thales Electro Optics Singapore agreement was limited to the export of Thales Optem designs, ITT-NV asked the Thales Optem U.S. engineer to export ITT-NV specifications and a drawing for an ENVG beam combiner. The ITT-NV engineers made it clear to the Thales Optem U.S. engineer that he was not to work on any of the designs or drawings for the beam combiner. ITT NV merely wanted him to act as a conduit for exporting the data.

(52) ITT-NV provided Thales Optem New York with ITT-NV ENVG technical data knowing that the data would be exported as data claimed to be covered under the Thales Optem New York – Thales Electro Optics Singapore TAA. ITT-NV removed any reference to ENVG from the first set of data to be exported to Singapore and replaced it with the fictitious name

“Special Night Vision Goggle” or “SNVG” prior to providing it for export. ITT-NV also initially directed the U.S. engineer to remove all ITT markings from ITT documents being exported to Thales Electro-Optics Singapore, although ITT-NV later retracted this request.

(53) Before exporting the first shipment of data and for every subsequent shipment of data, the Thales Optem U.S. engineer contacted ITT-NV for assurance that ITT wanted him to export the technical data. The U.S. engineer needed to confer with ITT-NV since he had absolutely no export experience and had only two days of ITAR training. After being directed by ITT to export the first shipment of “SNVG” data to Singapore, the engineer included in his faxed transmittal letter to Singapore that he believed “SNVG” was a label being used as a “decoy” for ENVG.

(54) By September of 2005, ITT-NV and Thales Optem in New York had illegally exported technical data for the entire ENVG optical train without obtaining authorization from the Department.

PART VII – ADDITIONAL UNAUTHORIZED EXPORTS OF NIGHT VISION TECHNICAL DATA

(55) On April 21 2006 ITT-NV voluntarily disclosed to DDTC that between September 2003 and December 2005, it worked collaboratively with a Japanese company to modify a commercial switch for military use in the ENVG prototype. ITT-NV was aware at the time of the transactions that the technical data it was providing to the Japanese company’s U.S. sales agent was being exported to Japan without DDTC authorizations. ITT-NV also engaged in technical discussions with the company’s engineers in Japan. ITT further provided technical data and defense services without DDTC authorization to the Japanese company knowing that the data would be provided to a sister company in China.

(56) ITT further voluntarily disclosed to DDTC that on January 18, 2005 and on June 6, 2005, for the purpose of locating new suppliers, ITT-NV posted two night vision and ENVG drawings on an e-commerce website. The two technical drawings were accessed by companies in Hong Kong, Canada, and two companies located in China.

(57) In December of 2005, ITT-NV voluntarily disclosed to DDTC that technical data provided by ITT-NV to a U.S. company, for a request for a price quote, was exported by that company to Israel without authorization or ITT-NV's knowledge. Further inquiries by the DDTC determined that the ITT-NV disclosure contained false and misleading information in that ITT-NV knowingly sent its original request directly to the Israeli company. Based on this information ITT engaged an independent party to investigate the disclosure's inaccuracies. The investigation determined that ITT-NV did send the original request directly to Israel and the ITT-NV engineer responsible for the violation misled ITT's compliance investigators. ITT terminated the employment of this engineer.

(58) For every unauthorized export of technical data set forth in paragraphs 19 - 57 above, ITT either included a statement on the Shippers Export Declaration that no export license was required, such statement being false, or failed to file the Shippers Export Declaration when required.

PART VIII – ADDITIONAL UNAUTHORIZED EXPORTS OF TECHNICAL DATA BY ITT-AEROSPACE/COMUNICATIONS (ITT-A/C)

(59) On December 21, 2006, ITT -A/C disclosed that between July 2005 and October 2006, it provided a U.S. distributor not registered with DDTC, technical data for transformers and coils used in the U.S. Army Single Channel and Airborne Radio Systems (SINGARS) for the purpose of export and sourcing parts from the distributor's foreign manufacturer.

(60) The documents provided by ITT-A/C to the distributor were clearly marked as ITAR-controlled and moreover on December 6, 2000, under Commodity Jurisdiction 088-00 (CJ), ITT-AC had been advised by the Department that transformers and inductors modified for military use are controlled under Category XI(c) and related technical data is controlled under Category XI(d) of the United States Munitions List.

(61) Between July 2005 and July 2006, the distributor exported 9 derivative drawings it made for ITAR-controlled SINGARS' components

to India without authorization. During this same time period the distributor provided defense services related to several of the drawings to assist the foreign manufacturer in the manufacturing process.

(62) Between July 2006 and August 2006, the distributor exported 5 more derivative drawings of ITAR-controlled SINGCARS' components to India, two of which were retransferred without authorization by the Indian manufacturer to Hong Kong

(63) In its December 21 disclosure, ITT A/C stated that it had provided ITAR-controlled drawings and technical specifications to 6 U.S. vendors who exported that data to Australia, Mexico, India, South Korea, Hong Kong and Taiwan.

(64) In the section of its disclosure addressing the unregistered U.S distributor for the foreign manufacturer, ITT-A/C stated that in June of 2006 it provided the distributor with 2 ITAR-controlled drawings and that between September and October of 2006 it provided additional drawings to produce 8 other SINGCARS parts.

(65) ITT-A/C stated in its disclosure it knew the manufacturing would occur in India but it believed all but two of the drawings were approved for public release and that possibly another Commodity Jurisdiction⁴ would be needed to determine if the 2 other SINGCARS parts were ITAR-controlled.

(66) On January 8, 2007, the unregistered U.S. distributor made an initial notification of a voluntary disclosure to the Department after ITT-A/C informed it that the derivative drawings were ITAR-controlled. The disclosure stated that 16 derivative drawings had been exported and that defense services were provided regarding several of the drawings. The distributor stated it was not registered with the Department, it was unfamiliar with the ITAR and it had depended on the guidance it received from ITT-A/C to be export compliant.

⁴ ITT stated it was aware of its April 2000 CJ making similar parts ITAR-controlled but made an independent decision that these parts were not ITAR-controlled request.

(67) The distributor further claimed that ITT-A/C advised it that if it made derivative drawings from the ITAR-controlled drawings, and removed all references to ITAR, military end-use or part numbers and only provided the data that was needed to manufacture the components, the derivative drawings could be exported without authorization to the distributor's overseas manufacturers in India or China⁵.

(68) Documents provided by the distributor substantiate that ITT-A/C directed it to sanitize the documents and remove part numbers and references to ITAR and military end-use and export only that data that was needed to manufacture the parts. Inquiries by the Department also determined that the subject technical data had not been approved for public release.

PART IX– LEGAL REQUIREMENTS

(69) Part 121 of the Regulations identifies the items that are defense articles and defense services pursuant to Section 38 of the Act.

(70) Section 123.10(a) of the Regulations provides that a nontransfer and use certificate (Form DSP-83) is required for the export of significant military equipment (SME) and classified technical data

(71) Section 123.22(b) of the Regulations provides that before shipping any defense article the exporter must file export information with U.S. Customs and Border Protection

(72) Section 125.3 of the Regulations establishes the requirements with respect to the export of classified defense articles, including technical data

(73) Section 126.1(a) of the Regulations 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 the People's Republic of China. Section 902 of the Foreign Relations

⁵ The facility is actually in Hong Kong

Authorization Act, Fiscal Years 1990 and 1991 (P.L. 101-246) prohibits the issuance of a license for the export of any defense articles and defense services to the PRC unless the President makes a determination. No Presidential determination has been made with respect to exports of technical data from ITT to the PRC.

(74) Section 126.1(e) of the Regulations 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.

(75) Section 38(b)(2) of the Act and Section 127.1(a)(1) of the Regulations provides that it is unlawful to export or attempt to export from the United States 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.

(76) Section 127.1(a)(3) of the Regulations provides that it is unlawful to conspire to export any defense article 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.

(77) Section 127.1(d) of the Regulations provides that it is unlawful to knowingly or willfully cause, or aid, abet, counsel, demand, procure or permit the commission of any act prohibited by, or omission of any act prohibited by, or the omission of any act required by Sections 38 and 39 of the Act or any regulation, license, approval or order issued thereunder.

(78) Section 127.2(a) of the Regulations 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 Regulations.

(79) Section 127.2 (b) of the Regulations provides that Section 127.2(a) applies with respect to, in addition to other documents, an SED and

any application for a permanent export license is an export or temporary import control document.

PART X - THE CHARGES

Charge 1

Misrepresentation and Omission of Facts

(80) Respondent violated Section 38(c) of the Act and Section 127.12(a) of the Regulations when it willfully omitted material facts in the April 13, 2000 notification, and in subsequent correspondence, to the DDTC on DSP -73 temporary export violations.

Charges 2- 163

Unauthorized Exports

(81) Respondent violated Section 38(b)(2) of the Act and Section 127.1(a)(1) of the Regulations when 162 times it exported to Singapore, Hong Kong, and Canada, USML Category XII SME technical data without appropriate authorization from the DDTC.

Charges 164-165

Unauthorized Exports to a Proscribed Country

(82) Respondent violated Section 38(b)(2) of the Act and Sections 127.1(a)(1), and 126.1(a) of the Regulations when it twice exported USML Category XII SME technical data to the PRC without appropriate authorization from the Department.

Charges 166-202

Caused or Conspired to Make Unauthorized Exports

(83) Respondent violated Section 127.1(a)(3) of the Regulations when 36 times it conspired to export and/or caused to be exported USML Category XII technical data to Singapore, Israel, India and Hong Kong without appropriate authorization from the Department.

Charge 203

Caused or Conspired to Make Unauthorized Exports to a Proscribed Country

(84) Respondent violated Sections 127.1(d) of the Regulations when it caused technical data to be exported to China.

Charge 204

Failure to Notify of an Export to a Proscribed Country

(85) Respondent violated Section 126.1(e) of the Regulations when it failed to immediately notify the Department that it was aware that USML Category XII technical data it exported was being transferred to China.

Charge 205

Misrepresentation and Omission of Facts

(86) Respondent violated Section 127.2(a) of the Regulations when on June 12, 2001 it made misrepresentations and omissions of facts in its DSP 05-825751 application for a permanent export.

Charge 206

Failure to Obtain Non-Transfer Assurance

(87) Respondent violated Section 123.10(a) of the Regulations when it failed to obtain a non-transfer and use certificate (Form DSP-83) for the export of SME and classified technical data.

Charge 207

Unauthorized Export of Classified Technical Data

(88) Respondent violated Section 38(b)(2) of the Act and Sections 127.1(a)(1) and 125.3 of the Regulations when it exported Classified USML Category XII technical data to the UK without appropriate authorization from the Department

Charge 208

Failure to File a Shippers Export Declaration

(89) Respondent violated Section 123.22(b) of the Regulations when it failed to file a Shippers Export Declaration for USML Category XII technical data it exported without Department authorization.

PART XI - ADMINISTRATIVE PROCEEDINGS:

(90) Pursuant to Part 128 of the Regulations, administrative proceedings are instituted against Respondent for the purpose of obtaining an Order imposing civil administrative sanctions that may include the imposition of disbarment and/or civil penalties. The Assistant Secretary for Political-Military Affairs has determined the appropriate period of debarment, shall be for a period of three years in accordance with Section 127.7 of the Regulations, but in any event will continue until application for reinstatement is submitted and approved. Civil penalties, not to exceed \$500,000 per violation, may be imposed in accordance with Section 38(e) of the Act and Section 127.10 of the Regulations.

(91) A Respondent has certain rights in such proceedings as described in Part 128 of the Regulations. Currently, this is a draft charging letter; however, in the event 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. A failure to answer will be taken as an admission of 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. The answer, written demand for oral hearing (if any) and supporting evidence required by Section 128.5(b) shall be in duplicate and mailed or delivered to the Administrative Law Judge designated by the Department to hear this case. 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 E Street, N.W., 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 matters in issue. Please be advised also that charging letters may be amended from time to time, upon reasonable notice. Furthermore, in accordance with Section 128.11 of the Regulations, cases may be settled through consent agreements, including after service of a Draft Charging Letter.

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

Sincerely,

David C. Trimble
Director
Office of Defense Trade Control
Compliance