

UNITED STATES DEPARTMENT OF STATE
BUREAU OF POLITICAL MILITARY AFFAIRS
WASHINGTON, D.C. 20520

_____)
)
In the Matter of:)
)
THE BOEING COMPANY)
Delaware)
)
Respondent)
)
_____)

CONSENT AGREEMENT

WHEREAS, the Office of Defense Trade Controls, Bureau of Political Military Affairs, U.S. Department of State (the "Department"), has notified The Boeing Company of its intent to institute an administrative proceeding pursuant to the Arms Export Control Act ("Act") (22 U.S.C. § 2778(e)) and its implementing regulations, the International Traffic in Arms Regulations ("Regulations") (22 C.F.R. Parts 120-130), based on allegations that Boeing violated Section 38 of the Act and § 127 of the Regulations in connection with its involvement in the Wedgetail project and other international AEW&C programs as set forth in a draft Charging Letter attached hereto and incorporated by reference herein, by violating the express terms and conditions of Department of State munitions licenses and other authorizations, by exporting defense articles and defense services without a munitions license or other authorization, and by omitting material facts from its applications for munitions licenses or other authorizations.

WHEREAS, Boeing has reviewed the draft Charging Letter and fully understands it and this Agreement, and enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Boeing wishes to settle and dispose of all civil charges pursuant to Section 38 identified in the draft Charging Letter by entering into this Consent Agreement; and

WHEREAS, the Department and Boeing agree to be bound by this Agreement and a related administrative order ("Order") (attached) to be entered by the Assistant Secretary of State for Political Military Affairs;

Now, WHEREFORE, the Department and Boeing agree as follows:

Parties

(1) The Parties to this Agreement are the Department and The Boeing Company. The term "Boeing" includes The Boeing Company, its wholly owned subsidiaries, including in particular its business units engaged in the manufacture and export of Airborne Early Warning & Control ("AEW&C") aircraft and systems controlled on the U.S. Munitions List, its operating divisions, subsidiaries, assignees and successors.

Jurisdiction

(2) The Department has jurisdiction over Boeing under the Act and the Regulations in connection with the matters identified in the draft Charging Letter.

Penalty

(3) Boeing agrees that it shall pay the Department a civil penalty of \$3,800,000 (three million eight hundred thousand dollars) in complete settlement of alleged civil violations pursuant to Section 38 of the Act as set forth in the Department's draft Charging Letter. Boeing shall pay to the Department of State \$1,000,000 (one million dollars) within ten (10) days of the signing of the Order, and \$1,000,000 (one million dollars) in annual installments for two years and \$800,000 (eight hundred thousand dollars) in year three, due each year on the anniversary of the signing of the Order. Boeing agrees that the effect of any statutory limitation to the collection of the civil penalty imposed by this Agreement shall be tolled until the last payment is made.

(4) An additional civil penalty of \$400,000 (four hundred thousand dollars) is hereby assessed, but its payment shall be suspended on the condition that Boeing will apply this amount over a three year period to pay costs associated with the Special Officer (described in paragraph (5) below) and the compliance and monitoring measures specified in this Consent Agreement. Boeing will provide annually to the Department on the anniversary of the date of the Order written accounting(s)

of the expenditures associated with this additional penalty in accordance with paragraph (5), and failure to use these funds appropriately for this purpose or to provide a satisfactory accounting shall result in a lifting of the suspension, in which case Boeing shall be required to pay this amount to the Department of State.

Appointment of Special Officer

(5) James A. Bell, Vice President for Finance and Corporate Controller, is hereby appointed as Special Officer to ensure that Respondent performs its responsibilities in a timely and fully satisfactory manner as required by this Agreement and the accompanying Order. The Boeing Company, through its Executive Council, shall consent to the following terms and conditions regarding the power, duties, authorities, and responsibilities of the Special Officer:

- a) The Special Officer shall have the power and authority to monitor The Boeing Company's compliance with the terms of this Consent Agreement and accompanying Order and shall exercise such power and authority and carry out the duties and responsibilities of the Special Officer as set forth herein in a manner consistent with the purposes of this Consent Agreement, the accompanying Order, the specific terms and conditions of munitions license authorizations approved by the Department of State, and in consultation with the Office of Defense Trade Controls.
- b) Within forty five (45) days of the signing of this Consent Agreement and accompanying Order, Boeing shall confer on the Special Officer all the rights and powers necessary to permit the Special Officer to monitor and to ensure and promote Boeing's compliance with the terms of this Consent Agreement in a manner consistent with the purposes of the Agreement and the Order, and the specific terms and conditions of munitions license authorizations relating to international AEW&C programs. Such rights and powers shall be conferred in writing; shall be made known throughout The Boeing Company; and a certified copy shall be deposited by the forty-sixth (46) day of the signing of the Consent Agreement with the Office of Defense Trade Controls.
- c) The Special Officer shall serve for a three (3) year period from the date of the signing of the Order. If

for any reason after the first year's anniversary of the signing of the Order, Mr. Bell is unable to serve the full period of his appointment as Special Officer, Boeing may recommend a successor not unacceptable to the Office of Defense Trade Controls. Such a recommendation shall be made in writing to the Director, Office of Defense Trade Controls at least thirty (30) days in advance of a new appointment. If the Special Officer is for any reason unable to carry out the responsibilities described herein on a temporary basis (i.e., not to exceed thirty (30) days), then the Respondent's General Counsel shall assume the power and authority of Special Officer in the interim. The conferring of rights and powers described in paragraph b), above, shall make provision for this event.

- d) The Special Officer shall have full and complete access to Boeing's personnel, books, records, documents, facilities and technical information relating to compliance with this Consent Agreement, Order and munitions authorizations, licenses, guidance and the like relating to the export of defense articles and defense services associated with AEW&C programs.
- e) Boeing shall cooperate with any reasonable request of the Special Officer, including any request for assistance to obtain any necessary security clearances, and shall take no action to interfere with or impede the Special Officer's ability to monitor Boeing's compliance with this Consent Agreement and Order.
- f) The Special Officer shall have authority to employ, at the expense of Boeing, such consultants, auditors, accountants, attorneys and other assistants as are reasonably necessary to carry out the Special Officer's duties and responsibilities. For this purpose, the Department agrees to suspend the additional penalty of \$400,000 described in ¶ four. The Special Officer shall account for all expenses incurred that are offset by the suspended penalty through a written report to the Office of Defense Trade Controls every sixty (60) days.
- g) The Office of Defense Trade Controls may on its own initiative or at the request of the Special Officer issue such additional guidance or directions as may be necessary or appropriate to ensure compliance with the

Regulations and the terms and conditions of authorizations it (ODTC) has provided to Boeing.

h) The Special Officer shall report to Boeing's Executive Council and to the Office of Defense Trade Controls concerning Boeing's compliance with this Consent Agreement and Order, as well as with such other U.S. Government munitions authorizations, licenses, guidance and the like then in force pertaining to AEW&C programs. This report shall include conclusions and any recommendations necessary to ensure strict compliance; state whether the Special Officer has encountered any difficulties in executing duties and responsibilities assigned herein; describe any and all instances of non-compliance; and advise on progress in implementing previous recommendations advanced by the Special Officer:

- o Every sixty (60) days for a period of six months from the date of the signing of the Order; and
- o Semi-annually thereafter during the remainder of the Special Officer's period of appointment.

Miscellaneous

(6) Boeing acknowledges and accepts that the definition of "defense services" in the Regulations is well established and clearly understood by Boeing as setting out responsibilities and requirements which are binding as a matter of law and regulation on it; the furnishing of "defense services" to foreign persons is appropriately subjected to control under the Regulations by the Department even when no technical data is involved (e.g., all the information relied upon in furnishing defense services to a foreign government or foreign person is in the public domain); and, the law and regulations governing "defense services" and proposals to foreign persons are sufficiently clear and specific as to be enforceable by the U.S. Government on criminal and civil grounds and that it, Boeing, is responsible and obligated as a matter of law and regulation to comply with the requirements of such laws and regulations as they pertain to "defense services" and related matters.

(7) For the purpose of assessing compliance with the provisions of the Act, the Regulations and future munitions licenses and other authorizations, Boeing agrees to arrange and facilitate, with minimum advance notice, on-site audits of its

AEW&C business units, wherever situated, by the Department during the three year period commencing on the signing of the Order or until Boeing has made all payments to the Department required under this Agreement, whichever is later.

(8) The Department and Boeing agree that this Consent Agreement is for settlement purposes only. Boeing neither admits nor denies the allegations in the draft Charging Letter. If this Consent Agreement is not approved pursuant to an Order entered into by the Assistant Secretary for Political Military Affairs, the Department and Boeing agree that they may not use this Consent Agreement in any administrative or judicial proceeding and that neither party shall be bound by the settlement terms contained in this Consent Agreement in any subsequent administrative or judicial proceeding.

(9) No agreement, understanding, representation or interpretation not contained in this Consent Agreement may be used to vary or otherwise affect the terms of this Consent Agreement or the Order, when entered, nor shall this Consent Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

(10) Boeing acknowledges and accepts the following conditions of this Consent Agreement: (a) notwithstanding this settlement and Boeing's payment of the civil penalties specified herein, the United States is free to pursue criminal investigations and/or prosecutions based on the same conduct that gave rise to those penalties; (b) the Department may at its sole discretion refer this matter and any information or evidence it has regarding this matter to any person or entity having criminal jurisdiction; and (c) Boeing waives any claim that this settlement, or Boeing's payment of the civil penalties specified herein, bars or precludes any criminal enforcement on the ground of double jeopardy or otherwise.

(11) The Department agrees that, upon entry into force of the Order, this Agreement resolves any civil penalties with respect to possible violations of Section 38 of the Act or the Regulations which Boeing has disclosed in writing to the Department with respect to the matters addressed herein or which are set forth in the draft Charging Letter.

(12) The Department has determined, taking into account Boeing's cooperation to date in helping to establish the

underlying facts and circumstances and in addressing the matters contained herein through significant remedial measures, that debarment is not appropriate at this time, but reserves the right to consider imposing additional sanctions, including debarment, in the event that Boeing for any reason does not fulfill the provisions of this Consent Agreement or is responsible for other compliance or law enforcement concerns under the Act or other statutes specified in 22 C.F.R. § 120.27.

(13) Boeing agrees that, upon entry into force of the Order, it waives all rights to further procedural steps in the matter, including an administrative hearing pursuant to § 128 of the Regulations (except with respect to any alleged violations of this Agreement). Boeing also waives all rights to seek administrative or judicial review or to otherwise contest the validity of this Consent Agreement or the Order, including any action that may be brought for the enforcement of any civil fine, penalty or forfeiture in connection with this Consent Agreement or Order.

(14) Boeing understands that the Department will make the draft Charging Letter, this Consent Agreement, and the relevant Order, when entered, available to the public.

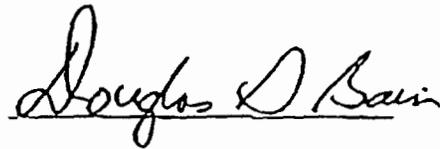
(15) This Consent Agreement shall become binding on the Department only when the Assistant Secretary for Political Military Affairs approves it by entering the Order, which will have the same force and effect as a decision and Order after a full administrative hearing on the record.

U.S. DEPARTMENT OF STATE



Gregory M. Suchan, Acting
Assistant Secretary for
Political Military Affairs

THE BOEING COMPANY



Douglas G. Bain
Senior Vice President &
General Counsel
The Boeing Company

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