



United States Department of State

*Bureau of Political-Military Affairs
Office of Defense Trade Controls*

Washington, D.C. 20520-0602

April 4, 2000

Richard G. Kirkland
Vice President
Washington International Operations
Lockheed Martin Corporation
1725 Jefferson Davis Highway
Crystal Square 2, Suite 300
Arlington, Virginia 22202-4127

Re: LOCKHEED MARTIN CORPORATION AND ASIASAT-2

Dear Mr. Kirkland:

The Department of State charges that LOCKHEED MARTIN CORPORATION, formerly MARTIN MARIETTA ASTRO SPACE, has violated the Arms Export Control Act and the International Traffic in Arms Regulations, as described below. Thirty (30) violations are alleged at this time.

SUMMARY

In 1994, LOCKHEED MARTIN CORPORATION engaged U.S. specialists in solid rocket motor (SRM) technologies to conduct an assessment of Chinese-manufactured, satellite perigee kick motors (EPKM) for use on the People's Republic of China (PRC) Long March 2E launch vehicle. LOCKHEED MARTIN CORPORATION's customer, Asia Satellite Telecommunications Company Limited (ASIASAT) was planning to use the HEXI Chemical & Machinery Company's EPKM SRM to boost its ASIASAT-2 telecommunications satellite into final orbit in 1995. LOCKHEED MARTIN CORPORATION had similarly contracted with ECHOSTAR (Denver, Colorado) to provide a satellite, which was also to be launched at a later date on a Long March 2E launch vehicle that would utilize the EPKM Solid Rocket Motor.

The EPKM designated for the planned launches had suffered multiple failures during static tests. LOCKHEED MARTIN CORPORATION offered to provide whatever assistance it could to China Great Wall Industries Company (CGWIC) in evaluating the EPKM Solid Rocket Motor (SRM). However, LOCKHEED MARTIN CORPORATION had no contractual obligation

to be involved in any fashion with the EPKM SRM except for the interface of the motor with the satellite.

The analysis performed by the U.S. specialists was conducted following a tour of HEXI manufacturing facilities and discussions at HEXI Offices in Hohhot, China in August 1994, during which they were provided access to Chinese test data, analysis, and hardware. (Previously, employees of LOCKHEED MARTIN CORPORATION had traveled to Hohhot, China in January 1994 where they observed EPKM test firings and held discussions with CGWIC.) The analysis and recommendations of the specialists were set forth in a detailed assessment prepared for LOCKHEED MARTIN CORPORATION in September 1994. The assessment provided analysis and comparison of US-designed SRMs to the EPKM; identified errors in test and evaluation practices and recommendations for improvement; affirmed anomaly analysis methods and techniques; and recommended hardware design.

On September 26, 1994, LOCKHEED MARTIN CORPORATION exported five (5) copies of this assessment to ASIASAT. Two days later, on September 28, 1994, LOCKHEED MARTIN CORPORATION exported five (5) additional copies of the same assessment to ASIASAT. Prior to these actions, LOCKHEED MARTIN CORPORATION had furnished a copy of the assessment to Department of Defense (DOD) monitors assigned to the ASIASAT-2 project for their review. The DOD review resulted in extensive redaction of the assessment, such that the overall document would have been reduced from nearly 50 pages to about five pages. In the event, LOCKHEED MARTIN CORPORATION had already exported the unexpurgated assessment in multiple copies to ASIASAT. Thereafter, LOCKHEED MARTIN CORPORATION made no effort to retrieve the ten unexpurgated assessments from ASIASAT or seek to learn the ultimate disposition of these assessments. Similarly, LOCKHEED MARTIN CORPORATION did not at any time inform the U.S. Government of these exports prior to the recent disclosure of these facts through an investigation conducted by the U.S. Customs Service.

RELEVANT FACTS

- (1) LOCKHEED MARTIN CORPORATION is a domestic concern incorporated in the State of Maryland under the laws of the United States and the State of Maryland.
- (2) LOCKHEED MARTIN CORPORATION is a U.S. person engaged in the business of manufacturing and exporting defense articles and defense services and is so registered with the Department of State (the "Department") pursuant to Section 38 of the Arms Export Control Act (the "Act") and 22 C.F.R. § 122.1, International Traffic in Arms Regulations (the "Regulations").

(3) LOCKHEED MARTIN CORPORATION is subject to the jurisdiction of the United States, in particular, with respect to the Act and the Regulations.

(4) Asia Satellite Telecommunications Company Limited (ASIASAT) Hong Kong, is a foreign person within the meaning of 22 C.F.R. § 120.16. At the time of the violations alleged herein, the majority shareholder of ASIASAT was China International Trust and Investment Corporation, (CITIC), a state-owned corporation of the Government of the People's Republic of China (PRC).

(5) China HEXI Chemical and Machinery Company and China Great Wall Industries Corporation (CGWIC) are foreign persons within the meaning of 22 C.F.R. § 120.16.

(6) On March 24, 1992, General Electric Company's Astro-Space Division (later to become MMAS and thereafter, LOCKHEED MARTIN CORPORATION) requested State Department approval through submission to the Office of Defense Trade Controls (ODTC) of a license application to export technical data and drawings and conduct discussions with CGWIC regarding compatibility of the ASIASAT 2 communications satellite with the PRC's Long March 2E space launch vehicle. That license application did not request authorization for LOCKHEED MARTIN CORPORATION to send a fact-finding team to the PRC to discuss the EPKM failures with HEXI or CGWIC, nor was such an evaluation or the subsequent preparation of an assessment concerning the EPKM a matter of any contractual obligation between ASIASAT and LOCKHEED MARTIN CORPORATION, or included within the scope of the LM-2E/EPKM-ASIASAT 2 SPACECRAFT Interface Control Document (ICD) dated June 1994, which ICD set forth the responsibilities of each company involved in the launch of ASIASAT-2.

(7) On September 17, 1992, the Department approved the March 24th submission through issuance of munitions license no. 528254. That license specified certain terms and conditions including, inter alia, strict conformance to the terms of the Memorandum of Agreement between the United States and the People's Republic of China concerning satellite technology safeguards¹ and a prohibition, in particular, on the provision of any technical assistance which might assist in the design, development or enhancement in performance of any contemplated or existing PRC space launch vehicles, missiles or facilities.

(8) On September 1, 1993, LOCKHEED MARTIN CORPORATION (formerly MMAS), having assumed responsibility for munitions license no. 528254,

¹ Memorandum of Agreement on Satellite Technology Safeguards Between the Governments of the United States and the People's Republic of China, done at Washington, D.C. January 26, 1989, later superseded by the Memorandum of Agreement, done at Beijing, February 11, 1993.

submitted to the Defense Technology Security Administration (DTSA) of the Department of Defense a technology transfer control plan (TTCP) as required by the terms and conditions of that license.

(9) During the period covered by the charges, LOCKHEED MARTIN CORPORATION conspired to export unlawfully, exported unlawfully, or caused the unlawful export of, defense articles (i.e., technical data designated on the United States Munitions List at 22 C.F.R. § 121) and defenses services (i.e., technical assistance related to the design development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a defense article, specifically a Chinese solid rocket motor).

THE CHARGES

CHARGES 1 - 4

On January 29 and, again, on January 30, 1994, LOCKHEED MARTIN CORPORATION violated the express terms and conditions of its munitions license no. 528254 (specifically, Proviso No. 3 of the license concerning the TTCP), in traveling to Hohhot, China for test firings of the EPKM and discussions with CGWIC by failing: (1) to advise the U.S. Government of these events not less than 30 days prior to the proposed meeting as required by the TTCP associated with the license, and (2) to ensure the presence of a qualified Department of Defense monitor, as required by Proviso No. 1B of the license.

CHARGES 5 - 6

In offering assistance to CGWIC in the evaluation of its SRM, LOCKHEED MARTIN CORPORATION violated: (1) the terms and conditions of its munitions license no. 528254, which expressly precluded any technical assistance that might enhance PRC space launch vehicles; and (2) the provisions of 22 C.F.R. § 126.1, which precluded any proposal for defense services involving a country proscribed pursuant to those provisions unless an exception was first granted in writing by the Office of Defense Trade Controls.

CHARGES 7-12

When exporting on September 26, 1994, five copies of the HEXI SRM assessment to ASIASAT, which assessment was not included within the scope of munitions license no. 528254, LOCKHEED MARTIN CORPORATION violated section 38 of the Act and section 127.1(a)(1) of the Regulations (22

C.F.R. § 127.1(a)(1)), by unlawfully exporting five (5) documents containing technical data for which a license or written approval was required (Charges 7-11), and also violated section 127.1 (a)(3) of the Regulations (22 C.F.R. §.127.1(a)(3)) by conspiring to export these same five (5) documents without a license or written approval (Charge 12).

CHARGES 13-18

When exporting on September 28, 1994, an additional five copies of the HEXI SRM assessment to ASIASAT, LOCKHEED MARTIN CORPORATION repeated the violations set forth above with respect to Charges 7-12.

CHARGES 19-21

In the area of defense services associated with testing and evaluation, when exporting to ASIASAT multiple, unexpurgated copies of the HEXI SRM assessment, LOCKHEED MARTIN CORPORATION violated the terms and conditions of munitions license no. 528254, which expressly required strict conformance to the terms of the U.S.-PRC Memorandum of Agreement and the general prohibition contained therein on technical assistance related to Chinese space launch vehicles, when it identified several flaws in Chinese testing practices and methods (Charge 19); made recommendations to improve procedures and standards (Charge 20); and identified weaknesses and limitations in the instrumentation used in the EPKM during engine tests (Charge 21).

CHARGES 22-24

In the area of defense services associated with hardware design and manufacturing, LOCKHEED MARTIN CORPORATION similarly (as in Charges 19-21) violated the terms and conditions of munitions license no. 528254 through the HEXI SRM Assessment's reaffirmation of Chinese conclusions in hardware and design changes for the EPKM (Charge 22); reliance on comparisons to U.S. Solid Rocket Motor systems (Charge 23); and, identification of U.S. limitations and problems with SRM technologies (Charge 24).

CHARGES 25-27

In the area of defense services associated with anomaly analysis LOCKHEED MARTIN CORPORATION additionally (as in Charge 19-24) violated the terms and conditions of munitions license no. 528254 through the HEXI SRM Assessment's confirmation of results of Chinese anomaly analysis related to inadequate insulation in the head end of the EPKN (Charge 25); questioning of the limited depth of the HEXI analysis (Charge

26); and finding of fault with Chinese standardized anomaly analysis practices (Charge 27).

CHARGES 28-30

LOCKHEED MARTIN CORPORATION violated the provisions of 22 C.F.R. 127.2(a) in May 1993, in June 1994, and again, in June 1996 when it omitted material facts (specifically, its actions with respect to unauthorized exports described in this letter) in separate applications to ODTIC (no. 569472, 608380, and 084944, respectively) for exports to China related to the ECHOSTAR and CHINASTAR-1 satellites, which facts related directly to the U.S. Government's consideration in those matters of whether to approve licenses for LOCKHEED MARTIN CORPORATION.

ADMINISTRATIVE PROCEDURES

In accordance with 22 CFR 128, administrative proceedings are instituted against Lockheed Martin for the purpose of obtaining an Order imposing civil administrative sanctions that may include the imposition of debarment or civil penalties. The Assistant Secretary for Political Military Affairs shall determine the appropriate period of debarment, which shall generally be for a period of three years in accordance with 22 C.F.R. 127.7. Civil penalties, not to exceed \$500,000 per violation, may be imposed in accordance with 22 C.F.R. 127.10.

A respondent has certain rights in such proceedings as described in Part 128, a copy of which I am enclosing. Furthermore, pursuant to 22 C.F.R. 128.11, cases may be settled through consent agreements, including prior to service of a charging letter.

Please be advised that the U.S. Government is free to pursue civil, administrative, and/or criminal enforcement for violations of the Arms Export Control Act and the International Traffic in Arms 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,



William J. Lowell
Director

Enclosure