

1
2
3 PROPOSED CHARGING LETTER
4
5
6

7 Suzanne Wright, Esq.
8 Chair of Board/President
9 Microwave Engineering Corporation
10 1551 Osgood St.
11 North Andover, MA 01845
12

13 Re: Alleged Violation of the Arms Export Control Act and the
14 International Traffic in Arms Regulations by Microwave
15 Engineering Corporation
16

17 Dear Ms. Wright:
18

19 The Department of State (“the Department”) charges Microwave
20 Engineering Corporation (“Respondent” or “the company”) with violation of
21 the Arms Export Control Act (AECA), 22 U.S.C. 2751 *et seq.*, and the
22 International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130, in
23 connection with the unauthorized export of a defense article, specifically
24 controlled technical data, to a foreign person (as defined by ITAR §120.16)
25 from a proscribed destination. The foreign person was employed by
26 Respondent as a Research Scientist and the export occurred as a
27 consequence of employment. One (1) violation is alleged at this time.
28

29 The essential facts constituting the alleged violation are described
30 herein. The Department reserves the right to amend this proposed charging
31 letter, including through a revision to incorporate additional charges
32 stemming from the same misconduct of Respondent.
33

34 The Department considered a number of mitigating factors when
35 determining whether to bring charges in this matter. These included:
36 Respondent’s submission of a voluntary disclosure under ITAR § 127.12
37 acknowledging both the charged violation and other potential violations; the
38 exceptional cooperation of the company during the Department’s review of
39 the disclosed conduct; and the reduced likelihood of future violations due to
40 demonstrated improvements in Respondent’s internal compliance program.

41 The Department also considered countervailing factors. Most notably:
42 deficiencies in Respondent's export compliance program prior to the
43 charged violation; the involvement of a foreign person from the People's
44 Republic of China, a proscribed destination under ITAR § 126.1 and by
45 statute (Suspension of Certain Programs and Activities, Pub. L. No. 101-
46 246, title IX, § 902,104 Stat. 83 (1990) (amended 1992)); the amount of time
47 between discovery of the issues and notification of the Department; and the
48 potential harm to national security. Had the Department not taken into
49 consideration Respondent's cooperation and the remedial measures taken to
50 date, additional charges and more severe penalties could have been pursued.

51 JURISDICTION

52
53
54 Respondent is a corporation organized under the laws of the
55 Commonwealth of Massachusetts and a U.S. person within the meaning of
56 ITAR § 120.15. Respondent is subject to the jurisdiction of the United
57 States.

58
59 Respondent was engaged in the manufacture and export of defense
60 articles and was registered as a manufacturer and exporter with the
61 Department of State, Directorate of Defense Trade Controls (DDTC), in
62 accordance with 22 U.S.C. 2778(b) and ITAR § 122.1 during the period
63 described herein.

64
65 The described violation relates to technical data associated with an
66 antenna controlled under Category XI(b) of the U.S. Munitions List
67 (USML), ITAR § 121.1, at the time of the violation. The related technical
68 data was controlled under USML Category XI(d).

69 BACKGROUND AND VIOLATIONS

70
71
72 1. Respondent, located at 1551 Osgood Street, North Andover,
73 Massachusetts 01845, designs and manufactures high-power, broadband
74 passive components, antennas, and waveguides for radio frequency
75 microwave and communication systems. The majority of Respondent's
76 business derives from orders for custom-designed parts and providing
77 research and development services in response to customer-furnished
78 requirements. Respondent's products are used in both military and
79 commercial applications and are commonly integrated into other systems.
80

81 2. Respondent has been registered with DDTC since July 31, 2006,
82 pursuant to ITAR § 122.1(a). Respondent has submitted over 120
83 authorization requests to DDTC since February 2007.

84
85 3. From September 2009 through September 2011, Respondent
86 employed a foreign person as a Research Scientist (“Employee”). A citizen
87 of the People’s Republic of China (PRC), Employee had previously interned
88 with the company in the summer of 2009. With Respondent’s assistance,
89 Employee obtained an H-1B visa in conjunction with the employment.

90
91 4. Respondent maintained a Technology Control Plan (TCP), approved
92 by the Defense Security Service, which stated, in pertinent part: “[n]o
93 foreign person will be given access to classified material or unclassified
94 information on any project or program that involves the disclosure of
95 technical data as defined in ITAR paragraph 120.10 until that individual’s
96 license authority has been approved[.]” Employee signed the TCP on May
97 11, 2009, and again on September 21, 2009. In addition to maintaining a
98 TCP, Respondent disclosed that its Export Compliance Officer briefed
99 Employee’s supervisor that Employee “could only work on general research
100 concepts and could not work on anything related to specific product design
101 or production.” After April 28, 2010, Employee was also moved to a
102 segregated work space.

103
104 5. Despite these steps, Respondent’s then-President, Dr. Rudolf Cheung,
105 and another engineer repeatedly provided Employee with ITAR-controlled
106 technical data without first obtaining a license or other authorization.
107 Controlled technical data was transferred between December 2009 and June
108 2010 and was provided in relation to five discrete research and
109 manufacturing projects. In its January 20, 2012, voluntary disclosure
110 regarding these matters, Respondent acknowledged that relevant staff did
111 not understand either the ITAR definition of “foreign person” or that the
112 ITAR § 120.10 definition of “technical data” did not except technical data
113 related to a product in its preliminary evaluation phase. The company
114 attributed these issues to deficiencies in its ITAR compliance program.

115
116 6. One of the five projects for which technical data was transferred
117 resulted in a purchase order. Specifically, a defense contractor based in
118 Sunnyvale, California (“Customer”) requested Respondent provide a
119 quotation for an antenna-related project and provided ITAR-controlled
120 design data on, or around, April 14, 2010. On, or before, April 20, 2010,

121 ITAR-controlled design and test data related to the project was provided to
122 Employee. On May 11, 2010, Respondent and Customer signed a non-
123 disclosure agreement specifying that “the receiving party shall presume that
124 all technical information . . . provided under this Agreement is subject to the
125 export control laws of the [U.S.]” Subsequently, and continuing through at
126 least June 17, 2010, Dr. Cheung discussed with and provided to Employee
127 ITAR-controlled design and test data related to the project. On or around
128 November 14, 2011, Customer placed an order for the component developed
129 by Respondent.

130

131 7. Respondent did not seek or obtain from DDTC a license or other
132 written authorization to transfer ITAR-controlled technical data to Employee
133 in relation to Customer’s project either before or after May 11, 2010.

134

135 8. Respondent’s Export Compliance Officer became aware that specific
136 projects were being discussed with Employee in or around May 2010, and
137 took steps to limit such conversations. Respondent did not, however, submit
138 a disclosure to DDTC reporting the unauthorized transfer of ITAR-
139 controlled information to Employee until January 20, 2012. The disclosure
140 was submitted by the company on the same day that Dr. Cheung pleaded
141 guilty to an unrelated criminal violation of the AECA.

142

143 RELEVANT ITAR REQUIREMENTS

144

145 The relevant period is April 14, 2010, through June 17, 2010, as
146 described in paragraph (6), above.

147

148 ITAR § 121.1 identifies defense articles, technical data, and defense
149 services pursuant to 22 U.S.C. 2778(a). The defense article and related
150 technical data described above were covered under Category XI, Military
151 Electronics, subcategories (b) and (d) during the relevant period.

152

153 ITAR § 123.1(a) provided, during the relevant period, that any person
154 intending to export or import temporarily a defense article must obtain
155 DDTC approval before the export or temporary import, unless the export or
156 temporary import qualifies for an exemption under the provisions of the
157 subchapter.

158

159 ITAR § 127.1(a)(1) stated, during the relevant period, that it is
160 unlawful to export or attempt to export from the United States any defense

161 article or technical data or to furnish any defense service for which the ITAR
162 requires a license or written approval without first obtaining the required
163 license or written approval from DDTC.

164

165 ITAR § 126.1(a) stated, during the relevant period, that it is the policy
166 of the United States to deny, among other things, licenses and other
167 approvals, destined for or originating in certain countries, including the
168 PRC. The PRC has been explicitly listed as a proscribed destination under
169 ITAR § 126.1(a) for over twenty years.

170

171 ITAR §126.1(e) stated, during the relevant period, that “any person
172 who knows or has reason to know” of a proposed or actual sale, or transfer,
173 of a defense article, defense service or technical data to a proscribed country,
174 such as the PRC, must immediately inform DDTC.

175

176

CHARGES

177

Charge 1 – Unauthorized Export of Defense Articles

178

179
180 Respondent violated ITAR § 127.1(a)(1) when it provided technical
181 data controlled under USML Category XI(b) to a foreign person between
182 May 11, 2010 and June 17, 2010, as described in paragraph (6), without first
183 obtaining the required license or other written approval from the
184 Department.

185

186

ADMINISTRATIVE PROCEEDINGS

187

188 Pursuant to ITAR § 128.3(a), administrative proceedings against a
189 respondent are instituted by means of a charging letter for the purpose of
190 obtaining an Order imposing civil administrative sanctions. The Order
191 issued may include an appropriate period of debarment, which shall
192 generally be for a period of three (3) years, but in any event will continue
193 until an application for reinstatement is submitted and approved. Civil
194 penalties, not to exceed \$500,000 per violation, may be imposed as well, in
195 accordance with 22 U.S.C. 2778(e) and ITAR §127.10.

196

197 A respondent has certain rights in such proceedings as described in
198 ITAR Part 128. This is a proposed charging letter. In the event, however,
199 that the Department serves Respondent with a charging letter, the company
200 is advised of the following:

201
202 You are required to answer the charging letter within 30 days after
203 service. If you fail to answer the charging letter, your failure to
204 answer will be taken as an admission of the truth of the charges and
205 you may be held in default. You are entitled to an oral hearing, if a
206 written demand for one is filed with the answer, or within seven (7)
207 days after service of the answer. You may, if so desired, be
208 represented by counsel of your choosing.
209

210 Additionally, in the event that the company is served with a charging
211 letter, its answer, written demand for oral hearing (if any) and supporting
212 evidence required by ITAR § 128.5(b), shall be in duplicate and mailed to
213 the administrative law judge designated by the Department to hear the case
214 at the following address:

215
216 USCG, Office of Administrative Law Judges G-CJ,
217 2100 Second Street, SW
218 Room 6302
219 Washington, DC 20593.
220

221 A copy shall be simultaneously mailed to the Deputy Assistant Secretary for
222 Defense Trade Controls:

223
224 Deputy Assistant Secretary Nilsson
225 US Department of State
226 PM/DDTC
227 SA-1, 12th Floor,
228 Washington, DC 20522-0112.
229

230 If a respondent does not demand an oral hearing, it must transmit within
231 seven (7) days after the service of its answer, the original or photocopies of
232 all correspondence, papers, records, affidavits, and other documentary or
233 written evidence having any bearing upon or connection with the matters in
234 issue.
235

236 Please be advised also that charging letters may be amended, upon
237 reasonable notice. Furthermore, pursuant to ITAR § 128.11, cases may be
238 settled through consent agreements, including after service of a proposed
239 charging letter.
240

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

246

247

Sincerely,

248

249

250

251

Sue Gainor

252

Director

253

254