

DRAFT CHARGING LETTER

U.S. Department of State
Office of Defense Trade Controls
Bureau of Political Military Affairs
Washington, D.C. 20520-0602

Neal E Minahan
Senior Vice President & General Counsel
Raytheon Company
141 Spring Street
Lexington, Massachusetts 02421

Dear Mr. Minehan:

The Department of State ("Department") charges that Raytheon Company ("Raytheon") violated the Arms Export Control Act ("Act") and the International Traffic in Arms Regulations ("Regulations"), in connection with the unauthorized export of defense articles and defense services to Canada and to Pakistan and with the unauthorized retransfer of defense articles through Canada to Pakistan, all concerning the AN/TRC-170 troposcatter system. Twenty-six charges are alleged at this time.

RELEVANT FACTS:

Jurisdictional Requirements

(1) Raytheon Company is organized under the laws of the United States and incorporated in the State of Delaware.

(2) Raytheon 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, Office of Defense Trade Controls in accordance with section 38 of the Act and § 122.1 of the Regulations.

(3) Raytheon is a U.S. person within the meaning of 22 C.F.R. § 120.15 and, as such, is subject to the jurisdiction of the United States, in particular with regard to the Act and the Regulations.

(4) Raytheon Canada Ltd., the Pakistan National Logistics Cell, and the Army of Pakistan all are foreign persons within the meaning of 22 C.F.R. § 120.16 of the Regulations.

Background

(5) The inability of the Executive Branch to certify to Congress on October 1, 1990, that Pakistan did not possess a nuclear device triggered suspension of all economic and military assistance to that country pursuant to section 620(e) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. § 2375(e)(1)), otherwise known as the "Pressler Amendment." This suspension extended to all U.S. Government sales and transfers of military equipment.

(6) Concurrently, the Executive Branch adopted a highly restricted policy governing commercial arms sales and transfers of military equipment in order to prevent the use of commercial channels to circumvent the restrictions imposed by "Pressler." This restricted policy generally permitted only those commercial exports of munitions and spare parts necessary to support functioning of Pakistan's military with its existing (i.e., 1990) equipment, but precluded the acquisition of new military capabilities or the upgrade of existing ones.

(7) On January 4, 1993, the Department received from Raytheon a munitions license application (no. 555545), requesting approval to export to Pakistan technical data on the AN/TRC-170 troposcatter systems used by the United States Air Force, Army and Marines and to hold associated technical discussions with Pakistan.

(8) By letter dated March 18, 1993, after having determined that the AN/TRC-170 troposcatter systems would provide Pakistan with a new, upgraded command and control military capability inconsistent with Pressler and U.S. Government policy at that time, the Department notified Raytheon that its munitions license application no. 555545 had been denied on foreign policy grounds, explaining that "(i)n light of, and in conjunction with, the Pressler Amendment which suspended all economic and military assistance to Pakistan, the Department of State has adopted a more restrictive policy on licenses for commercial arms sales to that country. The proposed export falls under the present restrictions."

(9) Notwithstanding the Department's unambiguous denial of this proposed export and a subsequent denial of funding by the U.S. Export-Import (EXIM) Bank in October 1993, and as set forth more fully in a complaint filed by the United States Attorney in U.S. District Court, District of Massachusetts, Raytheon and its employees conspired and arranged to have the AN/TRC-170 troposcatter systems illegally assembled in Canada and exported to Pakistan from Raytheon's Canadian subsidiary (Raytheon Canada Ltd.) under the guise of a civil commercial system purportedly for disaster relief. An element of this conspiracy involved a change in the nomenclature of the troposcatter system for Pakistan from the "AN/TRC-170" to the "RCT-44" in order to disguise its true military nature. Pakistani Army personnel were also provided with technical data relating to those systems, and were trained at Raytheon Canada Ltd. on the completed equipment. Technical data and specifically designed components and parts, as well as technical personnel essential to the manufacture of the troposcatter systems intended for Pakistan, were exported and/or shipped by Raytheon from the United States to Canada without the munitions licenses,

manufacturing license agreements, technical assistance agreements or other authorizations required by the Act and the Regulations (22 C.F.R. §§ 120-130). This conspiracy and associated overt acts in violation of the Act and the Regulations continued until at least May 1997.

License Requirements

(10) The ITAR provides at 22 C.F.R. § 127.1(a)(1) 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 this subchapter without first obtaining the required license or written approval from the Office of Defense Trade Controls.

(11) The ITAR provides at 22 C.F.R. § 127(a)(3) 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 the Office of Defense Trade Controls.

(12) The ITAR provides at 22 C.F.R. § 127(d) that no person may willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C. § 2778, 22 U.S.C. § 2779, or any regulation, license, approval, or order issued thereunder.

(13) The ITAR provides at 22 C.F.R. § 127.2(a) 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 the furnishing of any defense service for which a license or approval is required by this subchapter.

(14) Defense articles include those articles so designated pursuant to sections 38 and 47(7) of the Act that comprise the U.S. Munitions List. AN/TRC-170 technical manuals, AN/TRC-170 aperture cards, AN/TRC-170 mil-stripped circuit card assemblies, AN/TRC-170 test stations, klystron amplifier tubes, "RCT-44" technical and training manuals derived from AN/TRC-170 manuals, Eurocom Interface Units, and Site Analysis Tool ("SAT") computer programs all are defense articles within the meaning of 22 C.F.R. § 120.3 and included within the coverage of the U.S. Munitions List.

(15) Defense services means "(t)he furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles (22 C.F.R. § 120.9). The ITAR at § 124.1 requires that the approval of the Office of Defense Trade Controls must be obtained before defense services may be furnished. This requirement applies whether or not technical data is to be disclosed or used in the performance of a defense service (e.g., all the information relied upon by the U.S. person

in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter (See § 124.1)).

THE CHARGES:

CHARGE 1

Raytheon violated the provisions of 22 C.F.R. § 127(a)(1) when, in or about December 1992, prior to submitting an export license application to the Department of State for the export to Pakistan of TRC-170 technical data, Raytheon personnel presented technical data concerning the TRC-170 system at the Pakistan Army General Headquarters in Rawalpindi, Pakistan.

CHARGE 2

Raytheon violated the provisions of 22 C.F.R. § 127.2 when it omitted the fact of this technical data presentation in or about December 1992 from its export license application to the Department of State, which fact was material to the U.S. Government's consideration of that application.

CHARGE 3

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(3) when, following the denial by the Department of its export license application for the TRC-170 systems to Pakistan, it conspired to export defense articles (specifically designed components and parts and technical data) and defense services (e.g., assembly, manufacture, training and the like) to Canada for the assembly of six AN/TRC-170 troposcatter systems and to reexport the six systems and related defense articles to Pakistan without first obtaining a license or written approval.

CHARGE 4

Raytheon violated the provisions of 22 C.F.R. § 127(1)(d) when, on or about August 24, 1993, following the Department's denial of its export license application, it willfully induced, aided and abetted the manufacture of TRC-170 troposcatter systems by Raytheon Canada Ltd. for reexport to Pakistan.

CHARGE 5

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(3) when, on or about October 4, 1993, it conspired to export, import, reexport or cause to be exported a shipment of AN/TRC-170 aperture cards to Raytheon Canada Ltd. for use in the manufacture of systems for Pakistan without the required license or other approval.

CHARGE 6

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(1) when, on or about March 16, 1995, it provided technical data related to the military superiority and history of the TRC-170 system to Pakistan during a meeting held in Rawalpindi without the required license or other approval.

CHARGE 7

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(3) when, from October 1995 through May 1997, Raytheon expert personnel traveled to Raytheon Canada Ltd. and provided defense services, specifically assistance in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance and use of AN/TRC-170 troposcatter systems, without first obtaining a license or written approval.

CHARGE 8

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(1) when, on or about November 5, 1995, Raytheon provided a presentation that included technical data on the AN/TRC-170 system to Pakistan army officers at the Raytheon facility in Marlboro, Massachusetts without first obtaining a license or written approval.

CHARGE 9

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(1) when, on or about November 8, 1995, Raytheon provided a presentation that included technical data on the AN/TRC-170 system to Pakistan Army officers at the Raytheon Canada facility in Waterloo, Ontario without first obtaining a license or written approval.

CHARGE 10

Raytheon violated the provisions of 22 C.F.R. § 127.1 (a)(3) when, in or about October and November 1996, it exported and caused to be exported defense articles (technical data and training manuals for the AN/TRC-170 system) to Canada for reexport to Pakistan without first obtaining a license or written approval.

CHARGE 11

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(1) when, in or about May 1996, it provided a presentation containing technical data for the AN/TRC-170 systems to Pakistan military officers in Karachi without first obtaining a license or written approval.

CHARGE 12

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(1) when, on or about January 26, 1996, it exported from its facility at Waltham, Massachusetts six AN/TRC-170

test stations to Raytheon Canada Ltd. to be used with the AN/TRC-170 troposcatter systems being reexported to Pakistan without first obtaining a license or written approval.

CHARGES 13 and 14

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(1) when, on or about September 20, 1996, and again on April 23, 1997, it exported from its facility at Waltham, Massachusetts four Klystron amplifier tubes to Raytheon Canada Ltd. for use with the AN/TRC-170 systems being reexported to Pakistan without first obtaining a license or written approval.

CHARGES 15 AND 16

Raytheon violated the provisions of 22 C.F.R. § 127.1 (a)(1) when, on or about February 12, 1996 and April 12, 1996, it exported or caused the export from its facility at Waltham, Massachusetts USAF "mil-stripped" circuit assemblies to Raytheon Canada Ltd. for incorporation into the AN/TRC-170 systems being assembled for reexport to Pakistan without first obtaining a license or written approval.

CHARGE 17

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(3) when, on or about August 22, 1996, it caused the export of AN/TRC-170 test stations to Raytheon Canada Ltd. for utilization with the AN/TRC-170 systems being assembled for reexport to Pakistan without first obtaining a license or written approval.

CHARGES 18-20

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(1) when, on or about January 22, 1996, February 24, 1996 and March 26, 1996, it exported from its facility in New Hampshire Eurocom Interface Units to Raytheon Canada Ltd. for incorporation into the AN/TRC-170 systems being assembled for reexport to Pakistan without first obtaining a license or written approval.

CHARGE 21

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(1) when, in or about March of 1997, it exported a Site Analysis Tool computer program to Raytheon Canada Ltd. for utilization with the AN/TRC-170 troposcatter systems being assembled for reexport from Canada to Pakistan without first obtaining a license or written approval.

CHARGE 22

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(3) when, on or about May 16, 1997, it directed the export of AN/TRC-170 parts to Raytheon Canada Ltd. for

incorporation into AN/TRC-170 systems being assembled for reexport from Canada to Pakistan without first obtaining a license or written approval.

CHARGES 23-25

Raytheon violated the provisions of 22 C.F.R. § 127.2(a) when, on or about January 22, February 24 and March 26, 1997, it exported Eurocom Interface Units from its facility in New Hampshire to Raytheon Canada Ltd. and falsely stated that the end use was in Canada, rather than Pakistan.

CHARGE 26

Raytheon violated the provisions of 22 C.F.R. § 127.1(a)(3) when, in or about May 1997, it conspired to reexport to Pakistan the completed troposcatter systems from Canada to Pakistan.

ADMINISTRATIVE PROCEEDINGS:

Pursuant to 22 C.F.R. § 128 administrative proceedings are being instituted against Raytheon Company 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 § 127.7. Civil penalties, not to exceed \$500,000 per violation, may be imposed in accordance with § 127.10.

A respondent has certain rights in such proceedings as described in 22 C.F.R. § 128, a copy of which I am enclosing. Furthermore, pursuant to § 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 Lowell
Director

Enclosures

22 C.F.R. § 127
22 C.F.R. § 128