PROPOSED CHARGING LETTER

Mr. Daniel A. Farber
President
Bright Lights USA, Inc.
145 Shreve Ave.
Barrington, NJ 08007

Re: Alleged Violations of the Arms Export Control Act and the International Traffic in Arms Regulations by Bright Lights USA, Inc.

Dear Mr. Farber:

The Department of State ("Department") proposes to charge Bright Lights USA, Inc. ("Respondent" or "company") with violations of the Arms Export Control Act (AECA), 22 U.S.C. 2751 *et seq*., and the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130, in connection with the unauthorized export of defense articles and failure to maintain records pursuant to 22 CFR § 122.5. The alleged unauthorized exports included the transfer of technical data, as defined by 22 CFR § 120.10, to foreign persons from the People's Republic of China ("China"), a proscribed destination under 22 CFR § 126.1.[1] The alleged unauthorized exports also include parts misclassified by Respondent following Export Control Reform. Eleven (11) violations are alleged at this time.

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

[1] The United States restricts the issuance of export licenses for defense articles to China, as required by a statute commonly referred to as the Tiananmen sanctions (Suspension of Certain Programs and Activities, Pub. L. No. 101-246, title IX, § 902,104 Stat. 83 (1990) (amended 1992)).

The Department considered a number of mitigating factors when determining whether to propose charges in this matter. Most notably, the Respondent: (a) submitted two voluntary disclosures pursuant to 22 CFR § 127.12 that acknowledged the charged conduct and other potential ITAR violations; (b) cooperated with the Department's review of the disclosed events and signed multiple agreements tolling the statutory period; (c) provided information suggesting that the violations were not willful in nature; and (d) has made significant improvements to its export compliance program that reduce the likelihood of future violations, including conducting internal and independent audits, conducting staff training on the ITAR (including more extensive training for personnel directly involved in export compliance), creating a fully documented compliance program (with formal procedures, checklists, and a compliance manual), and significantly increasing staff resources devoted to day-to-day compliance (including retaining an outside consultant to provide expert advice where needed). The Department also considered countervailing factors, including: (a) the central role of an individual with a prior AECA conviction; (b) significant ITAR training and compliance program deficiencies that directly contributed to the violations; and (c) the unauthorized export of technical data to a proscribed destination. Had the Department not taken into consideration the above mitigating factors, additional charges and more severe penalties could have been pursued.

JURISDICTION

Respondent is a corporation organized under the laws of the State of New Jersey and a U.S. person within the meaning of 22 CFR § 120.15. Respondent is subject to the jurisdiction of the United States.

Respondent is, and was during the period described herein, registered as a manufacturer and exporter with the Department of State, Directorate of Defense Trade Controls (DDTC), in accordance with 22 U.S.C. 2778(b) and 22 CFR § 122.1.

The described violations relate to defense articles, including technical data, controlled under Categories II, IV, VII, VIII, and XI, of the U.S. Munitions List (USML), 22 CFR § 121.1, at the time the disclosed violations occurred.

BACKGROUND AND VIOLATIONS

1. Respondent, located at 145 Shreve Avenue, Barrington, New Jersey, 08007, was founded by Daniel Farber in December 1990 and began selling military spare parts in the spring of 1991. Respondent has been registered with DDTC since 1992, and has received more than 530 DDTC licenses since 2010. The company's business primarily consists of manufacturing minor spare parts (including rubber stoppers, seal assemblies, and grommets) for both private- and public-sector customers. Many of these parts transitioned off of the USML, beginning in October 2013, as a result of Export Control Reform (ECR).

2. The founder's father, Jacobo Farber, served as Chief Engineer for Respondent, in charge of bidding and purchasing, until 2013.[2] Farber pleaded guilty in 1988 to violating the AECA as a result of his activities while President of Forway Industries, Inc., specifically, for both failing to register his company with DDTC and exporting parts for fighter aircraft and the Nike-Hercules missile without authorization. Farber was never formally debarred.

3. On April 3, 2013, Respondent notified the Office of Defense Trade Controls Compliance (DTCC) that it may have exported ITAR-controlled technical data without authorization. Respondent explained the potential issue was discovered while the company was providing documents subpoenaed in another matter. DDTC assigned the disclosure, and subsequent related submissions under 22 CFR § 127.12, case number 13-0001229.

4. Respondent disclosed that its business practice prior to February 19, 2013, was to create "redacted" versions of technical drawings for products it intended to outsource. When the company received an order, it would first obtain a copy of the original drawing. Then, as explained in Respondent's July 30, 2014 submission: "Jacobo Farber would determine if any items would be purchased from an outside vendor to complete the order…. If he determined that items would be purchased from a vendor, then either he or one of the purchasers that he supervised would prepare a redacted drawing for the vendor." The drawing was prepared by removing any export control language and transferring the remainder of the drawing, in whole or part, from the original "mat" (the labeled and formatted page) onto a company

[2] Jacobo Farber died in September 2013.

labeled mat. The part number remained the same on both versions. Once complete, Respondent would send the modified version for manufacture or post it online to solicit quotations.

5. Respondent did not seek, or obtain, licenses or other authorizations from DDTC for exports of such "redacted" technical data. The company, in its July 15, 2013 submission attributed this failure to "a good faith misunderstanding of the ITAR requirements" by Jacobo Farber. Respondent's December 6, 2013, submission further explained that Jacobo Farber believed foreign vendors would not understand the end-use of the technical data and that unfinished products were not controlled. Respondent stated in the same submission that "[o]thers at Bright Lights relied on Jacobo Farber's direction and guidance."

6. After identifying the practice as problematic, Respondent commissioned an outside audit of exports made between April 15, 2008, and April 15, 2013. The audit, completed July 15, 2013, identified more than 270 instances where Respondent sourced, or sought to source, potentially ITAR-controlled parts from foreign vendors. In most cases, Respondent directly provided potentially controlled technical data to foreign person manufacturers. For some orders, however, Respondent posted technical data to a manufacturer sourcing website where it was accessed by foreign persons.

7. The Department reviewed a subset of the potential violations identified by Respondent's audit. That review identified five instances between August 2010 and November 2012 where the Respondent exported ITAR-controlled technical data, under USML Categories II(k), IV(i), and VII(h) without authorization. Four of the unauthorized exports were to manufacturers in China, a proscribed destination, and the fifth was to a manufacturer in India. The Department's review also determined that the Respondent failed to maintain records for the five-year period required by 22 CFR § 122.5. Specifically, on January 7, 2016, the Department requested Respondent provide documentation related to various outsourced manufacturing jobs, including a January 12, 2011 order placed with a Chinese manufacturer for a USML Category IV(i) defense article. Respondent provided the Department with technical data, payment, and shipping information for the finished items, but did not provide documentation of the associated technical data export.

8. On June 8, 2016, Respondent submitted a second voluntary disclosure to the Department. This submission, assigned DTCC case number 16-0000811, disclosed that "parts and components of the [Phalanx] anti-missile system had been mistakenly classified in response to ECR as pertaining to a shipborne missile system rather than a weapon system under USML Category II(j)." The company identified the issue when its application to the Department of Commerce for an authorization to replace an expiring, pre-ECR, DDTC license was returned without action. A subsequent internal review of Respondent's self-classification decisions post-ECR concluded the root cause was confusion between parts and components for vehicles (which were largely moved off the USML) and parts and components for systems mounted on the vehicles (particularly weapon systems which remain on the USML).

9. Respondent's June 2016 disclosure reported that three groups of potential violations were identified during its internal review: (1) instances where parts of the Phalanx system were misclassified as controlled under the Export Administration Regulations (EAR) and exported without a license; (2) instances where parts for the same system were misclassified as being EAR-controlled but were shipped against a valid DDTC authorization issued pre-ECR; and (3) instances where parts for systems other than the Phalanx, controlled post-ECR under USML Categories VIII(h)(6), XI(c), or XII(e), were misclassified and exported without Department authorization. A Department review of a subset of the relevant transactions identified instances where defense articles were exported without proper DDTC authorization to non-prohibited destinations as a result of Respondent's disclosed misclassifications.[3] These included five instances of unauthorized exports to entities in the United Kingdom, the United Arab Emirates, Turkey, Spain, and Portugal.

RELEVANT ITAR REQUIREMENTS

The relevant period for the activities described in paragraphs (3) through (7), above, is August 24, 2010, through December 5, 2012; the relevant period for the activities described in paragraphs (8) through (9) is November 7, 2014, through October 14, 2015.

[3] In two additional instances, items misclassified post-ECR as non-USML items were shipped against a preexisting DDTC authorization.

The USML, 22 CFR § 121.1, identifies defense articles, technical data, and defense services pursuant to 22 U.S.C. 2778(a). The defense articles described above were enumerated in the following USML sections: Category II, Guns and Armament, subcategories (j) and (k); Category IV, Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines, subcategory (i); Category VII, Tanks and Military Vehicles, subcategory (h); Category VIII, Aircraft and Related Articles, subcategory (h)(6); and Category XI, Military Electronics, subcategory (c), during the relevant period.

During the relevant period, 22 CFR § 122.5(a) specified that a person who is required to register with the Department must maintain records concerning the manufacture, acquisition, and disposition (to include copies of all documentation on exports using exemptions and applications and licenses and their related documentation) of: defense articles; technical data; the provision of defense services; brokering activities; and information on political contributions, fees, or commissions furnished or obtained, as required by 22 CFR Part 130. All records must be maintained for a period of five (5) years from the expiration of the authorization or from the date of the transaction. During the relevant period, 22 CFR § 122.5(b) required that records maintained under 22 CFR § 122.5(a) be available at all times for inspection and copying by DDTC or a person designated by DDTC (e.g., the Diplomatic Security Service) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection.

During the relevant period, 22 CFR § 123.1(a) provided that any person intending to export or temporarily import a defense article must obtain DDTC approval before the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of the subchapter.

During the relevant period, 22 CFR § 126.1(a) stated that it is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services destined for or originating in certain countries, including China. China has been explicitly listed as a proscribed destination under 22 CFR § 126.1(a) for over twenty years.

During the relevant period, 22 CFR § 127.1(a)(1) stated that it is unlawful to export or attempt to export from the United States any defense

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

During the relevant period, 22 CFR § 127.1(b)(1) stated that it is unlawful to violate any of the terms or conditions of a license or approval granted pursuant to the ITAR, any exemption contained in the ITAR, or any rule or regulation contained in the ITAR.

PROPOSED CHARGES

Charges 1-4: Unauthorized Export of Defense Articles (Technical Data) to a Proscribed Destination

Respondent violated 22 CFR § 127.1(a)(1) four (4) times, on or around August 24, 2010, November 11, 2011, February 15, 2012, and December 5, 2012, when it provided technical data controlled at the time of export under USML Categories II(k), VII(h), IV(i), and II(k), respectively, to foreign persons located in China, a proscribed destination under 22 CFR § 126.1, without first obtaining the required license or other written approval from the Department or properly utilizing an applicable license exemption.

Charge 5: Unauthorized Export of Defense Article (Technical Data)

Respondent violated 22 CFR § 127.1(a)(1) one (1) time when it provided, on or around January 7, 2011, technical data controlled under USML Category IV(i) to a foreign person located in India without first obtaining the required license or other written approval from the Department or properly utilizing an applicable license exemption.

Charge 6: Failure to Maintain and Provide Required Records

Respondent violated 22 CFR § 127.1(b)(1) one (1) time when it failed to maintain, and make available to DDTC upon request, records required pursuant to 22 CFR § 122.5(a) regarding the transfer of technical data controlled under USML Category IV(i) in connection with its January 12, 2011, manufacturing order for a defense article placed with one or more foreign persons in China, a proscribed destination under 22 CFR § 126.1.

Charges 7-11: Unauthorized Export of Defense Articles (Parts and Components)

Respondent violated 22 CFR § 127.1(a)(1) five (5) times when it provided defense articles controlled at the time of export under USML Categories II(j), VIII(h)(6), or XI(c), to foreign persons located in the United Kingdom (one (1) time, on or around November 7, 2014), Turkey (one (1) time, on or around November 7, 2014), Spain (one (1) time, on or around April 22, 2015), United Arab Emirates (one (1) time, on or around February 23, 2015), or Portugal (one (1) time, on or around October 14, 2015), as described in paragraphs 8 and 9, above, without first obtaining the required license or other written approval from the Department or properly utilizing an applicable license exemption.

ADMINISTRATIVE PROCEEDINGS

Pursuant to 22 CFR § 128.3(a), administrative proceedings against a respondent are instituted by means of a charging letter for the purpose of obtaining an Order imposing civil administrative sanctions. The Order issued may include an appropriate period of debarment, which shall generally be for a period of three (3) years, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed $1,111,908, per violation, may be imposed as well, in accordance with 22 U.S.C. 2778(e) and 22 CFR § 127.10.

A respondent has certain rights in such proceedings as described in 22 CFR Part 128. This is a proposed charging letter. In the event, however, that the Department serves Respondent with a charging letter, the company is advised of the following:

> You are required to answer a charging letter within 30 days after service. If you fail to answer the charging letter, your failure to answer will be taken as an admission of the truth of the charges and you may be held in default. 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.

Additionally, in the event that the company is served with a charging letter, its answer, written demand for oral hearing (if any) and supporting

evidence required by 22 CFR § 128.5(b), shall be in duplicate and mailed to the administrative law judge designated by the Department to hear the case at the following address:

USCG, Office of Administrative Law Judges G-CJ,
2100 Second Street, SW
Room 6302
Washington, DC 20593.

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

Deputy Assistant Secretary Nilsson
US Department of State
PM/DDTC
SA-1, 12th Floor,
Washington, DC 20522-0112.

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

Please be advised also that charging letters may be amended upon reasonable notice. Furthermore, pursuant to 22 CFR § 128.11, cases may be settled through consent agreements, including after service of a proposed charging letter.

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

Sincerely,

Arthur Shulman
Acting Director