

SKY-HIGH PENALTY: BOEING FINED \$51M BY U.S. STATE DEPARTMENT FOR EXPORT CONTROL VIOLATIONS

On February 29, 2024, the U.S. Department of State ("Department") [announced](#) that it had entered into a [Consent Agreement](#) with The Boeing Company ("Boeing") in response to violations by Boeing of the Arms Export Control Act ("AECA") and the International Traffic in Arms Regulations ("ITAR").

At a prior undisclosed date, the Department issued a [Proposed Charging Letter](#) to Boeing, which was kept confidential until the announcement of the Consent Agreement. The Consent Agreement is a settlement agreement between Boeing and the Department in which Boeing, without admitting or denying the allegations in the Proposed Charging Letter, agrees to enter into the Consent Agreement to dispose with all potential ITAR civil charges, penalties and sanctions arising from the Proposed Charging Letter. The Department also released an [Order](#) dated February 18, 2024, which is the authorization requiring Boeing to pay the agreed-upon \$51 million penalty and to take required remedial measures, discussed further below.

PROPOSED CHARGING LETTER

The Proposed Charging Letter issued by the Department of State charges 199 violations of the AECA and ITAR for unauthorized exports of defense articles, including technical data, and failure to adhere to the terms and conditions of export authorizations. The violations were disclosed to the Department via twenty-four voluntary disclosures submitted by Boeing between December 2017 and September 2022. The violations encompass three broad categories:

- Unauthorized exports to foreign-person employees ("FPEs") and contractors, including in the People's Republic of China ("PRC");
- Unauthorized exports of defense articles; and
- Violations of terms, conditions, and provisos of authorizations provided to Boeing for exports.

The Proposed Charging Letter provides details about specific violations that occurred in each category:

- FPEs in the PRC downloaded ITAR-controlled technical data from the Boeing digital technical document repository, on twenty-five occasions. The downloaded data included multiple Department of Defense ("**DOD**") platforms, including the F-18, F-15, F-22 and E-3 Airborne Warning and Control System.
- Unauthorized access of ITAR-controlled data on eighty occasions by FPEs and contractors in eighteen other countries at Boeing and partner facilities.
- Failure to implement promised corrective actions:
 - Failure to implement a corrective action in response to the unauthorized retransfer of ITAR-controlled technical data by three subcontractors of Boeing Intelligence and Analytics ("**BI&A**") in Australia.
 - Failure to provide training to prevent a repeat incident of the unauthorized export of ITAR-controlled technical data (relating to Boeing's VC-25B Air Force One program) to Indian FPEs at wholly-owned subsidiaries in India. Initial incident and corrective action disclosed by Boeing in October 2019; repeat incident disclosed in August 2020 that ITAR-controlled technical data related to Air Force One had again been improperly exported at the same subsidiaries.
- Fabricated permanent export licenses: a trade compliance specialist at Aviall Services, Inc. (a U.S. Boeing subsidiary) fabricated five permanent export licenses which resulted in the unauthorized export of ITAR-controlled hardware to Portugal and Turkey on seven occasions.
- ITAR violations resulting from jurisdiction and classification issues, including improper reliance on Department of Commerce authorizations related to the AH-64 Apache Helicopter program.
- Violations of ITAR license provisos that demonstrated "issues with managing export authorizations," such as releasing ITAR-controlled technical data to pilots in the Lebanese Armed Forces in direct contradiction to a proviso in the applicable Technical Assistance Agreement ("**TAA**").

The Proposed Charging Letter emphasizes that several mitigating factors were considered by the Department of State, including that Boeing voluntarily disclosed all violations, the majority of which occurred before 2020; Boeing cooperated with the Department's requests for information; and Boeing entered into multiple agreements with the Department tolling the AECA and ITAR's statutory periods. Without such measures, the Department may have charged additional violations or proposed a higher penalty. Certain aggravating factors were also considered, including harm to U.S. national security; unauthorized exports to the PRC and Russia, and multiple violations across multiple subsidiaries and business units under Boeing's control.

CONSENT AGREEMENT

The Consent Agreement entered into by Boeing and the Department of State establishes several measures which Boeing must enact in order to avoid an administrative disbarment, which would make it nearly impossible for Boeing to operate. The headline number is a \$51 million penalty, \$24 million of which will be applied to defray the costs of Boeing's required remedial compliance measures. This penalty is one of the highest penalties imposed to-date by the Department for AECA and ITAR violations.

Other key provisions of the Consent Agreement include:

- Boeing must appoint a Designated Official in the form of a Special Compliance Officer ("**SCO**"), subject to the approval of the Director of the Department of State's Office of Defense Trade Controls Compliance ("**DTCC**"); the SCO will report directly to the Boeing Chief Executive Officer ("**CEO**").
- The SCO must oversee implementation of enhanced policies and procedures in Boeing's AECA and ITAR compliance program; within six months of the date of the Consent Agreement, Boeing must strengthen and widely implement its enhanced AECA and ITAR corporate compliance procedures.
- Boeing must implement a comprehensive, automated export compliance system throughout the business units and subsidiaries engaged in AECA and ITAR-regulated activities.
- Boeing must provide training to all employees to ensure that any type of electronic transmissions of ITAR-controlled technical data are compliant with Boeing's export compliance policies and procedures.
- Boeing must undertake a review and verification of the export control jurisdiction of *all* hardware and/or software within its ITAR-regulated business units and subsidiaries (however, it may certify to DTCC that certain items are previously and accurately verified and thus exclude such items from the review).
- Boeing must review, verify and complete the export control jurisdiction of each hardware item and any defense services *prior to export* and *separate* from the above classification verification process.
- Two audits must be performed during the term of the Consent Agreement by separate auditors.

WHAT DOES THIS MEAN FOR COMPANIES?

The Boeing Proposed Charging Letter and Consent Agreement serve as a cautionary tale to entities around the world that engage with hardware, software, and technical data subject to the AECA and ITAR. Boeing is a multi-billion-dollar company with hundreds of full-time trade compliance personnel, and yet there were still nearly 200 violations disclosed in the Proposed Charging Letter. Further, the pattern of violations that occurred within Boeing subsidiaries, including Insitu, Aviall, Boeing Defence Australia, and Argon indicate that parent companies should take extra care when evaluating the compliance programs and practices of

their subsidiaries. Finally, the mitigation factors enumerated by the Department, including that *all violations* had been voluntarily disclosed, should serve as further encouragement to companies that they seriously consider the prompt and voluntary disclosure of export control violations upon discovery, including at subsidiaries.

Our Clifford Chance team includes multi-disciplinary lawyers who are experienced in working with leading companies in relation to their export controls compliance strategies, including large parent companies that oversee many subsidiaries. Our team stands ready to address any questions that might arise as companies navigate through the ever-growing government oversight and enhanced export controls-related investigations and enforcement environment.

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