United States Department of State

Bureau of Political-Military Affairs
Directorate of Defense Trade Controls

Washington, D.C. 20520-0112

DRAFT-CHARGING LETTER

Mr. Douglas G. Bain
Senior Vice President &
General Counsel
The Boeing Company
100 N. Riverside Dr.
Chicago, IL 60606

Re: Investigation of Boeing Commercial Airplanes, regarding the unauthorized export of BEI QRS-11 quartz rate sensors contained in commercial standby flight instrument systems

Dear Mr. Bain:

(1) The Department of State ("Department") charges the Boeing Company, specifically Boeing Commercial Airplanes, a business unit of the Boeing Company, (hereinafter "Boeing" or "Respondent") with violations of the Arms Export Control Act ("Act") and the International Traffic in Arms Regulations ("ITAR" or "Regulations") in connection with the unauthorized exports of defense articles to foreign countries, to include proscribed countries, and other matters as set forth herein concerning the Respondent's business activities. Eighty-six (86) violations are alleged at this time. The essential facts constituting the alleged violations involved are described herein. The Department reserves the right to amend this draft charging letter (See 22 C.F.R. § 128.3(a)), including through a revision to incorporate additional charges stemming from misconduct of the Respondent relating to these matters. Please be advised that this is a draft-charging letter to impose debarment or civil penalties pursuant to 22 C.F.R. § 128.3.

PART I - RELEVANT FACTS

JURISDICTIONAL REQUIREMENTS:

(2) Respondent is a corporation organized under the laws of the State of Delaware.

(3) Respondent was, for the period during which the offenses set forth herein occurred, engaged in the manufacture and export of defense articles and defense services and so registered with the Department of State, Directorate of Defense Trade Controls ("DDTC") in accordance with Section 38 of the Act and § 122.1 of the Regulations.[1]

(4) Respondent is a U.S. person within the meaning of § 120.15 of the Regulations and, as such, is subject to the jurisdiction of the United States, in particular with regard to the Act and Regulations.

(5) Boeing Commercial Airplanes (BCA) is a business unit of the Respondent and for the period during which the offenses occurred was in the business of manufacturing commercial aircraft for domestic use and export.

(6) The defense article, the QRS-11, the subject item relating to the violations outlined below, is controlled under Category XII (d) of the ITAR. The QRS-11 is further defined as significant military equipment (SME), requiring a DSP-83 (Non Transfer and Use Certificate) for retransfers and re-exports.

PART II - BACKGROUND ON THE QRS-11:

(7) On July 30, 1993, DDTC issued a Commodity Jurisdiction (hereinafter "CJ") determination to BEI Technologies Inc., the manufacturer of the QRS-11 quartz rate sensor, ruling that the QRS-11 is a defense article controlled under the ITAR. The Department's letter noted that certain

[1] At the time Boeing originally registered with the Department of State, the Directorate of Defense Trade Controls was organized as the Office of Defense Trade Controls.

features of the QRS-11, such as the capability to operate under severe environmental conditions, make it inherently military.

(8) BEI Technologies Inc. sought to transfer jurisdictional control of the QRS-11 to the Department of Commerce through a CJ request in 1994. By letter dated June 26, 1995, the Department reiterated that the QRS-11 was designated as a defense article under Category XII(f) of the USML[2] The Department's justification for retaining jurisdictional control noted that the QRS-11 has significant military utility and its use in the Maverick Missile's guidance system.

(9) In 1998, BEI Technologies Inc. again petitioned the Department to transfer jurisdictional control of the QRS-11 to the Department of Commerce. The Department maintained its jurisdictional control of the item in a letter dated July 14, 1998, noting that the QRS-11 is designated as a defense article under Category XII(d) of the USML.

(10) Quartz Rate Sensor (QRS) gyro technology was originally developed in the early 1980's by General Precision Industries (GPI) with the primary patent issued in March 1987. GPI approached Respondent offering to sell Respondent the patent rights to quartz rate sensor technology in 1986 for use in navigation systems for Respondent's commercial aircraft. Respondent rejected the offer because it was not interested in getting involved with the detailed technology of quartz rate sensors. Systron Donner Inertial Division (SDID), now part of BEI, acquired the rights to the technology from GPI later in 1986. Respondent's engineers had a long-standing technical relationship with BEI Technologies Inc.

(11) In 1997, Respondent decided to seek bids from several manufacturers for a stand-by instrument system for use in their aircraft. In May of 1997 the Department authorized BEI Technologies Inc. to export QRS-11s for integration by Sextant (now Thales Avionics) into its Commercial Stand-by Instrument System (hereinafter "CSIS"). Documents from Respondent's initial bid process for the CSIS show that Respondent was aware of the QRS-11's use in military systems.

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[2] The USML has since been changed so that control of the QRS-11 is now under Category XII(d)

--A comparison chart prepared by the Respondent noted that the CSIS manufactured by Sextant used a 3-axis accelerometer designed for military application.

--Documents from BEI Technologies Inc. on specific QRS-11 test results from the Maverick missile program were available for review by the Respondent.

(12) In 1999, Respondent contracted with Sextant (now Thales Avionics) to manufacture the CSIS for use on its commercial aircraft. The CSIS that Sextant built for Respondent contained 3 QRS-11 quartz rate sensors.

(13) In 2000, Respondent installed CSISs containing ITAR controlled QRS-11s into its commercial aircraft for domestic and foreign customers and began exporting commercial aircraft containing CSISs and spare CSISs worldwide, including to destinations prohibited by the ITAR.

(14) Respondent did not notify individuals taking control or ownership of commercial aircraft containing the CSISs that the CSISs contained a defense article controlled by the ITAR.

(15) During the time frame of the alleged violations, Respondent's export compliance personnel were familiar with the ITAR and the regulatory process for seeking a CJ decision to determine if an item is a defense article controlled on the U.S. Munitions List.

PART III – UNAUTHORIZED EXPORTS AFTER CSIS MANUFACTURER NOTIFIED RESPONDENT THAT THE QRS-11 WAS A DEFENSE ARTICLE

(16) On October 2, 2000, Sextant informed Respondent that the CSIS units contained QRS-11s, a defense article controlled by the ITAR and requested it sign a DSP-83 (Non-Transfer and Use Certificate) for 2700 QRS-11s. Respondent's export compliance office advised against signing because it did not believe that as a U.S. company importing an ITAR

controlled defense article into the United States, it should be required to sign a DSP-83.

(17) In late September and early October of 2000, Respondent questioned why Sextant was requiring a DSP-83 certificate for the CSIS. Sextant informed Respondent that the Department of State had issued a CJ determination on the QRS-11, which ruled that the QRS-11 is a defense article controlled under Category XII(d) of the USML.

(18) In October of 2000 another Sextant representative again informed Respondent's export compliance office that, based on a CJ determination, the QRS-11 was a defense article controlled under the ITAR.

(19) Respondent did not seek clarification from the Department and continued to consider the CSIS as an item controlled by the Export Administration Regulations (EAR) even though the CSIS contained ITAR controlled QRS-11s.

(20) On July 8, 10, and 16, 2003, Thales Avionics (formerly Sextant) again contacted Respondent and told it that the CSIS contained ITAR controlled QRS-11s that required Department of State export and retransfer authorizations. Thales Avionics further advised Respondent that Thales was going to make a disclosure to DDTC.

(21) Between October 2, 2000 and July 31, 2003, Respondent exported 85 commercial aircraft equipped with QRS-11 CSIS, including 17 to a §126.1 proscribed country, without authorization from the Department. During this same time period Respondent exported 16 QRS-11 CSIS spares without authorization from the Department.

PART IV – UNAUTHORIZED EXPORTS AFTER THE OFFICE OF DEFENSE TRADE CONTROLS COMPLIANCE (DTCC) NOTIFIED RESPONDENT THAT THE QRS-11 WAS A DEFENSE ARTICLE

(22) On July 29, 2003, the Department received from the Respondent a Notification of Pending Voluntary Disclosure dated July 24, 2003, regarding the unauthorized exports of the QRS-11 contained in spare CSISs.

(23) On July 31, 2003, DTCC faxed to the Respondent a letter directing a disclosure in accordance with Section 127.12 of the Regulations on all QRS-11 exports.

(24) On August 5, 2003, Respondent provided an interim response pending its full voluntary disclosure.

(25) On August 8, 2003, during a teleconference with Respondent, DTCC requested copies of invoices for purchases of the QRS-11 CSIS from Thales and the identity of all end-users. Respondent was again put on notice that the QRS-11 is on the USML.

(26) Notwithstanding formal notice to voluntarily disclose all unauthorized exports of QRS-11 products, Respondent continued exporting CSIS-equipped aircraft containing the QRS-11 without DDTC authorization or knowledge. Between July 31, 2003 and August 22, 2003, Respondent exported without authorization two aircraft containing CSIS with controlled QRS11s integrated, including one to a § 126.1 proscribed country. On each export Respondent included a statement on the Shippers Export Declaration (hereinafter "SED") that no export license was required, such statement being false.

PART V – UNAUTHORIZED EXPORTS AFTER THE MANAGING DIRECTOR, DDTC, NOTIFIED RESPONDENT IN WRITING THAT THE QRS-11 WAS CONTROLLED UNDER ITAR

(27) By letter to the Department dated August 20, 2003, Respondent, after repeatedly being told by the Department that the QRS-11 contained in the CSIS was controlled under the ITAR, stated that the Department did not have jurisdiction over the CSIS containing QRS-11s. In its August 20th letter, the Respondent stated that it had re-reviewed the classification of the CSIS and based upon legal analysis by Respondent's in-house and outside expert counsel it had determined that such CSISs were not under ITAR control, and therefore the Respondent would not be disclosing export activity involving these items. Respondent contended that the CSIS was

covered by the early 1990s regulatory transfer of jurisdiction for commercial aircraft navigation systems from State Department to the Commerce Department and, while acknowledging that the QRS-11 itself was controlled by ITAR, maintained in its August 20th letter that CSISs were governed by the EAR "even if they contained individual parts or components that might otherwise be subject to ITAR control." It further advised that it would, without Department authorization, resume exports of the CSISs with integrated QRS-11, as incorporated into commercial aircraft and as spares.

(28) In response to Respondent's letter, on August 22, 2003, the Managing Director, DDTC, notified Respondent in writing that the QRS-11 contained in CSIS is a defense article controlled by the ITAR. Specifically this letter stated that "the QRS-11 is covered by the U.S. Munitions List" and "did not cease to be controlled by the ITAR simply by virtue of its inclusion into a flight instrument."

(29) Also on August 22, 2003, the Managing Director, DDTC, had a telephone conversation with Boeing's VP, International Operations and Policy to reiterate the Department's position that the QRS-11 integrated into CSIS was a defense article controlled by the ITAR.

(30) On August 26, 2003, a meeting was held, chaired by the Managing Director, DDTC, between the Department and the Respondent, its in-house and outside counsel to discuss Respondent's legal analysis and exports of QRS-11integrated CSIS contained in aircraft and CSIS spares. Also present at the meeting were representatives from Defense Technology Security Administration and the Department of Commerce. During the meeting, the Department informed the Respondent that its legal analysis was incorrect and again advised that the QRS-11s contained in the CSIS are controlled by the Regulations and a complete disclosure of violations was required.

(31) However, instead of complying with the clear directions the Department provided, Respondent showed a blatant disregard for the Department's authority when it decided to challenge that direction and follow the legal guidance of its in-house and outside counsel by continuing

exports of CSIS-equipped aircraft containing the QRS-11 without notifying the Department and without Department knowledge or authorizations.[3]

(32) Between August 22, 2003 and November 26, 2003, Respondent exported 7 aircraft, 10 spare CSIS units and one flight simulator containing QRS-11s without DDTC authorization. This included two exports to a section 126.1 proscribed country. For each export Respondent either included a statement on the Shippers Export Declaration that no export license was required, such statement being false, or failed to file the Shippers Export Declaration.

(33) Respondent also exported or caused to be exported additional QRS-11 equipped articles without authorization:

> --Respondent sold four QRS-11 equipped aircraft without properly notifying the domestic buyers that export would require DDTC authorization.
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> --On August 28, 2003, Respondent shipped domestically one CSIS unit containing QRS-11 knowing this unit would be exported to a section 126.1 proscribed country without authorization.
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> --Between May 2002 and May 2003, Respondent's pilots exported without DDTC authorization 17 QRS-11 equipped aircraft, sold by Respondent to a U.S. leasing company for foreign use, including 4 aircraft to a § 126.1 proscribed country.

(34) Beginning on September 4, 2003, Respondent submitted numerous documents in response to DTCC's requests for a directed disclosure. On September 15, 2003 Respondent provided a copy of its expert outside counsel's legal analysis to substantiate its independent claim that the CSIS was controlled under the EAR, in spite of the controlled QRS-11 integrated into the CSIS.

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[3] Respondent's outside counsel also advised exporting CSIS equipped aircraft without DOS licenses could lead to an enforcement action.

(35) Respondent had numerous contacts and meetings with the Department and other agencies regarding this legal analysis and the QRS-11 issue. At none of these meetings did the respondent notify the Government that it was ignoring the Department's directives and exporting QRS-11 equipped aircraft without authorizations. The Department repeatedly informed the Respondent that its legal analysis was flawed and that the QRS-11 integrated into the CSIS was ITAR controlled and all exports of CSIS required Department authorization. These contacts included:

-- 9/15/03 Respondent's Vice President, International Operations & Policy called Department's Deputy Secretary of State.

--9/17/03 Respondent's Chief Executive Officer & Chairman called the Secretary of Commerce.

--9/17/03 Respondent's outside counsel called Department's Assistant Secretary for Political-Military Affairs.

--10/07/03 Meeting between Respondent's outside counsel and Department of Commerce, Bureau of Industrial Security.

--10/08/03 Meeting between Respondent's Senior Vice President & General Counsel, Senior Vice President BCA, Vice President International Operations & Policy and Department's Assistant Secretary Political-Military Affairs.

--10/08/03 Meeting between Respondent's Vice President International Operations & Policy and the Defense Technology Security Administration.

(36) In September 2003 Respondent's Chief Executive Officer & Chairman directed BCA to apply for Department authorizations for QRS-11 CSIS equipped aircraft scheduled for delivery to the People's Republic of China (hereinafter "PRC"). Respondent inquired with the Department on how it could obtain export authorizations for the PRC, a § 126.1 proscribed country.

(37) Unaware of the Respondent's disregard for the Department's directives and the continued exports of QRS-11 equipped aircraft without export authorizations, the Department took extraordinary measures to provide Respondent with export approvals, when requested, to address safety of flight issues and claims of urgent needs.

(38) In the wake of the 1989 Tiananmen Square human rights crackdown by the Chinese government, the United States Government enacted sanctions against the PRC. Section 902(a)(3) of Public Law 101-246 (the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991) suspended the issuance of licenses for the export of defense articles on the USML to the PRC. Section 902(b) of the Act authorizes a Presidential waiver, provided it is in the national interest of the United States to terminate a suspension. The Department, in furtherance of the Respondent's request for export licenses for QRS-11 CSIS aircraft, sought a termination of the suspension. A Presidential waiver was granted on September 20, 2003, for QRS-11 integrated in two CSIS-equipped Boeing aircraft and these aircraft were exported to the PRC on September 20, 2003 and on September 24, 2003, respectively.

(39) On October 3, 2003, Respondent's Sr. VP & General Counsel directed BCA to apply for Department authorizations for QRS-11 CSIS equipped aircraft and spares to be exported to all destinations.

(40) Between October 3, 2003 and February 9, 2004, Respondent received and used 31 Department export licenses for QRS-11s integrated into 37 CSIS that were installed into commercial aircraft and spare units. These licenses contained provisos that Respondent would notify customers regarding upgrades/modifications, notify customers regarding provisos, obtain end-user acknowledgement, and submit to DDTC completed DSP-83s. Respondent failed to follow provisos on a total of 22 export licenses.[4]

PART VI - OMISSIONS MADE IN RESPONDENT'S SUBMISSIONS TO DTCC REGARDING THE QRS-11

[4] On 21 licenses Respondent failed to notify customers of license provisos. On 22 licenses Respondent failed to obtain a completed DSP-83 from end-user. On 21 licenses Respondent failed to notify customer about prohibitions on performing CSIS modifications.

(41) On February 9, 2004, the US Government published in the Federal Register the agreed upon procedures for transferring jurisdiction from the State Department to the Commerce Department of the QRS-11 when integrated into a CSIS for use in commercial aircraft. Pursuant to that publication, items exported or re-exported without a license from DDTC prior to a change in jurisdiction from the State Department to the Commerce Department must be disclosed to DDTC pursuant to § 127.12 of the Regulations prior to requesting Commerce authorizations.

(42) On March 5, 2004, as a requirement of transferring jurisdiction, Respondent submitted a request to transfer jurisdiction to the Commerce Department for the QRS-11s contained in commercial aircraft exported by Respondent.

(43) In its submission to transfer jurisdiction, Respondent provided a list of QRS-11/CSIS equipped-aircraft and QRS-11/CSIS spares exported. Outward appearances from errors in this additional information led DTTC to believe material facts had been omitted from previous disclosures, correspondence, and license applications. The transfer request contained the following questionable information:

> -- Two QRS-11/CSIS- spares exported to an airline located in a section 126.1 proscribed country after the Department's written notification that an export license was required. [5]
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> -- One QRS-11/CSIS spare was exported prior to obtaining authorization from the Department.[6]

(44) When confronted by DTCC about the discrepancies, Respondent's corporate Legal and Global Trade Controls offices took the lead from BCA and provided the necessary support and guidance that resulted in a March 30, 2004 new submission of the Respondent's activities with respect to the CSIS/QRS-11. This new submission was to "clarify"

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[5] The two spares were incorrectly listed as going to a PRC airline in a different country than was listed in a prior submission.

[6] On November 24, 2003, Respondent exported one spare CSIS under DSP-05 908738; this license was issued on December 2, 2003. Respondent stated on the Shipper Export Declaration that "No License Required", which statement was false in that the Respondent knew it had a license application pending.

previous submissions and acknowledged and apologized for the confusion and wasted efforts the errors and discrepancies in prior submissions caused to DDTC. A supplemental submission was provided on May 10, 2004. These two submissions included the following material facts omitted from prior submissions:

-- An updated listing of all QRS-11/CSIS exports. Respondent's December 15, 2003 list and its March 5, 2004 list of QRS-11 equipped aircraft omitted 5 QRS-11 equipped aircraft and 2 spares that were exported without authorization.

-- A corrected list of dates for exports of QRS-11/CSIS equipped aircraft. Prior lists had 21 discrepancies relating to export dates for QRS-11 equipped aircraft.

PART VII – LICENSE & REPORTING REQUIREMENTS

(45) § 120.17 (a) (4) of the Regulations defines an export as including disclosing or transferring technical data to a foreign person, whether in the United States or abroad.

(46) § 121.1 of the Regulations identifies the articles, services and related technical data designated as defense articles and defense services pursuant to § 38 and § 47(7) of the Act.

(47) § 120.3 of the Regulations provides the policy on designating and determining defense articles and defense services. § 120.4 of the Regulations provides the procedure implemented to designate those articles and services that are controlled on the USML as defense articles and defense services.

(48) § 123.22 (b) of the Regulations provides that before shipping any defense article the exporter must file a Shippers Export Declaration (SED) with U.S. Customs and Border Protection.

(49) § 126.1 (a) of the Regulations provides that it is the policy of the United States to deny licenses and other approvals, for export and import of defense articles and defense services, destined for or originating in certain countries, including the PRC. Section 902 of the Foreign Relations Authorization Act for FY 1990 and 1991 (P.L. 101-246) provides that licenses to the PRC of any defense article on the USML are suspended unless the President waives these sanctions.

(50) § 126.1 (e) of the Regulations provides that no sale or transfer and no proposal to sell or transfer any defense article, defense service or technical data subject to the ITAR may be made to any country referred to in that section and any person who knows or has reason to know of any proposed or actual sale or transfer of such article, services, or data must immediately inform DDTC.

(51) § 127.1 (a) (1) of the Regulations provides 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 the ITAR without first obtaining the required license or written approval from DDTC.

(52) § 127.2 (a) of the Regulations provides 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 furnishing of any defense service for which a license or approval is required by the Regulations.

(53) § 127.2 (b) of the Regulations provides that a SED is an export or temporary import control document to which § 127.2(a) applies.

PART VIII - THE CHARGES

UNAUTHORIZED EXPORTS AFTER MANUFACTURER NOTIFIED RESPONDENT THAT THE QRS-11 WAS A DEFENSE ARTICLE

Charges 1-17

(54) Between October 2, 2000 and July 30, 2003, Respondent violated 22 C.F.R. § § 127.1 (a) (1), 126.1 (a), and 126.1 (e) of the Regulations when it exported to the People's Republic of China, a proscribed § 126.1 country, without appropriate authorization from the Department, ITAR controlled QRS-11s integrated in CSIS contained in 17 aircraft.

UNAUTHORIZED EXPORTS AFTER DTCC NOTIFIED RESPONDENT THAT THE QRS-11 WAS A DEFENSE ARTICLE

Charges 18-19

(55) Respondent violated 22 C.F.R. § § 127.1 (a) (1), 126.1 (a), and 126.1 (e) of the Regulations when on August 2, 2003, it exported to the People's Republic of China, a § 126.1 proscribed country, without appropriate authorization from the Department, ITAR controlled QRS-11s integrated in CSIS contained in one aircraft.

(56) Respondent violated 22 C.F.R. § 127.1(a) (1) of the Regulations when on August 21, 2003, it exported ITAR controlled QRS-11s integrated into CSIS contained in one aircraft without authorization from the Department of State.

UNAUTHORIZED EXPORTS AFTER THE MANAGING DIRECTOR, DDTC, NOTIFIED RESPONDENT IN WRITING THAT THE QRS-11 WAS A DEFENSE ARTICLE

Charges 20-59

(57) Respondent violated 22 C.F.R. § § 127.1 (a) (1), 126.1 (a), and 126.1 (e) of the Regulations when it exported on September 5, and October 27, 2003[7], to the People's Republic of China, a § 126.1 proscribed country, without appropriate authorization from the Department, ITAR controlled QRS-11s integrated into CSIS contained in one aircraft and one QRS-11 equipped CSIS spare unit.

[7] This spare unit was from a PRC owned aircraft sent for repair and subsequently returned to the PRC.

(58) Respondent violated 22 C.F.R. § 127.1(a) (1) of the Regulations when it exported ITAR controlled QRS-11s integrated into the CSIS contained in six aircraft on August 25, 29; September 25; October 3(x2), 4, 2003; 9 CSIS spare units on September 4, 6, 10; October 2, 9, 27(x3), November 24, 2003, and one flight simulator on August 27 2003, without authorization from the Department of State.

(59) Respondent violated 22 C.F.R. § 127.1 (a) (4) of the Regulations after being issued 31 licenses to export QRS-11s integrated in 37 CSIS-equipped aircraft and spares. Subject licenses contained provisos requiring the Respondent to notify customers regarding upgrades, notify customers regarding provisos, obtain end-user acknowledgement, and submit to DDTC completed DSP-83s. Respondent failed to comply with these provisos on 22 licenses.

MISREPRESENTATION AND OMISSION OF FACTS

Charges 60-67

(60) Respondent violated 22 C.F.R. § 127.2(a) of the Regulations seven times when it omitted material facts in response to numerous requests from DDTC for a disclosure of all exports of QRS-11s integrated in CSIS equipped aircraft and CSIS spares.

(61) Respondent violated 22 C.F.R. § 127.2(a) of the Regulations one time when it failed to inform the Department that the information on a pending DSP-5 application for a QRS-11 equipped CSIS spare contained misrepresentations and omissions. Respondent was aware that the CSIS spare was exported three weeks prior to the DSP-5 being approved.

FALSE STATEMENTS

Charges 68-82

(62) Between July 31, 2003 and November 25, 2003, Respondent violated 22 C.F.R. § 127.2(a) of the Regulations 15 times when it declared

on Shippers Export Declarations that no export license was required for QRS-11 CSIS equipped aircraft and spares being exported, such statement being false. Respondent was advised that a Department export license was required but chose to export without authorization and made statements that were false on documents used in the Regulations for control of a defense article.

FAILURE TO FILE A SHIPPERS EXPORT DECLARATION

Charges 83-85

(63) Between August 25, 2003 and September 25, 2003, Respondent violated 22 C.F.R. § 123.22 (b) of the Regulations three times when it failed to file the required Shippers Export Declarations for QRS-11 CSIS equipped aircraft and a spare being exported.

FAILURE TO REPORT A PROHIBITED EXPORT

Charge 86

(64) On August 28, 2003, Respondent shipped a QRS-11 CSIS spare knowing that the end-user was in a § 126.1 proscribed country. Respondent violated 22 C.F.R § 126.1(e) of the Regulations when it failed to immediately inform DDTC of the sale.

PART IX - ADMINISTRATIVE PROCEEDINGS:

(65) Pursuant to 22 C.F.R. § 128 administrative proceedings are instituted against the Respondent for the purpose of obtaining an Order imposing civil administrative sanctions that may include the imposition of debarment or civil penalties. The Assistant Secretary of State for Political Military Affairs shall determine the appropriate period of debarment, which generally shall be for a period of three years in accordance with § 127.7 of the Regulations, but in any event will continue until an application for

reinstatement is submitted and approved. Civil penalties, not to exceed $500,000 per violation, may be imposed in accordance with § 127.10 of the Regulations.

(66) A Respondent has certain rights in such proceedings as described in §128, a copy of which is enclosed. Furthermore, pursuant to § 128.11 cases may be settled through consent agreements, including after service of a Draft Charging Letter. 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 from pursuing another type of enforcement action.

Sincerely,

David C. Trimble
Director
Office of Defense Trade Control
Compliance