



United States Department of State

*Bureau of Political-Military Affairs
Directorate of Defense Trade Controls*

Washington, D.C. 20520-0112

DRAFT CHARGING LETTER

Mr. Terrence G. Linnert
General Counsel
Goodrich Corporation
4 Coliseum Centre, 2730 West Tyvola Rd.
Charlotte, NC 28217

and

Mr. Christopher C. Cambria
General Counsel
L-3 Communications Corporation
600 Third Avenue
New York, NY 10016

Re: Investigation of Goodrich Corporation and L-3
Communications Corporation, regarding the submission of a
request for a Commodity Jurisdiction determination that
omitted material facts relating to BEI's QRS-11, Quartz Rate
Sensors and the unauthorized export of those defense articles.

Dear Mr. Linnert and Mr. Cambria:

(1) The Department of State ("Department") charges Goodrich
Corporation ("Goodrich") and L-3 Communications Corporation¹ ("L-3"),
including L-3's subsidiary, L-3 Communications Avionics, Inc. ("L-3

¹ With respect to violations arising prior to its acquisition of Goodrich Avionics Systems, Inc., L-3 is named as a Respondent as successor to Goodrich for the purpose of assessing civil liability and other compliance remedies. On March 28, 2003, L-3 acquired Goodrich Avionics Systems Inc., which became a subsidiary of L-3 and is currently known as L-3 Communications Avionics Systems, Inc.

Avionics”), formerly a subsidiary of Goodrich known as Goodrich Avionics Systems, Inc. (“Goodrich Avionics”), (hereinafter referred to as “Respondents”) with violations of the Arms Export Control Act (“Act”) and the International Traffic in Arms Regulations (“ITAR” or “Regulations”) in connection with the submission to the Directorate of Defense Trade Controls (“DDTC”)² of a request for a Commodity Jurisdiction (CJ) determination for a product containing defense articles (QRS-11, Quartz Rate Sensors), the unauthorized export of those articles to foreign countries and other matters as set forth herein concerning the Respondents’ business activities. A total of 26 violations are alleged at this time. The essential facts constituting the alleged provisions are described herein. The Department reserves the right to amend the charging letter (See §128.3(a)), including through a revision to incorporate additional charges stemming from the same misconduct of the Respondents in 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) Goodrich is a corporation organized under the laws of the State of New York and L-3 is a corporation organized under the laws of the State of Delaware.

(3) Respondents are and were during the period covered by the offenses set forth herein engaged in the manufacture and export of defense articles and defense services and so registered with the DDTC in accordance with Section 38 of the Act and § 122.1 of the Regulations.

(4) Respondents are U.S. persons within the meaning of § 120.15 of the ITAR and, as such, are subject to the jurisdiction of the United States, in particular with regard to the Act and Regulations.

(5) Commodity Jurisdiction (“CJ”) submissions and determinations are used in the regulation or control of a defense article, defense service or technical data for which a license or approval is required by this subchapter.

² The Office of Defense Trade Controls was “realigned and renamed” the Directorate of Defense Trade Controls in early 2003

Such documents are considered an “export or temporary import document” under Section 127.2 (a) & (b)(13) of the Regulations.

(6) The QRS-11 is a defense article and 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.

(7) Effective January 7, 2004, quartz rate sensors, such as the QRS-11, are controlled by the Department of Commerce Export Regulations when the sensors are integrated into and included as an integral part of a commercial standby instrument system for use on civil aircraft.

PART II – BACKGROUND:

Background on the QRS-11:

(8) On July 30, 1993, the Department issued a Commodity Jurisdiction determination to BEI Technologies Inc. (“BEI”), 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 features of the QRS-11, such as the capability to operate under severe environmental conditions, make it inherently military. BEI is engaged in the manufacture and export of defense articles and is registered with DDTC under Part 122 of the Regulations.

(9) BEI sought to transfer jurisdictional control of the QRS-11 to the Department of Commerce through a Commodity Jurisdiction 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 ITAR (the ITAR has since been changed so that control is now under Category XII(d)). The Department’s justification for retaining jurisdictional control noted that the QRS-11 has significant military utility and was used in the Maverick missile.

(10) In 1998, BEI 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 ITAR.

Goodrich Avionics' Knowledge that QRS-11 is Controlled on the United States Munitions List ("USML"):

(11) In early 1992, Goodrich Avionics initiated development of the Electronic Standby Instrument System GH-3000 ("ESIS" or "GH-3000"), which contains three QRS-11s. The ESIS met Federal Aviation Administration commercial aviation specifications for use in general aviation/corporate aircraft.

(12) In March 1994, Goodrich Avionics requested from BEI product information on the QRS-11. BEI responded by fax dated March 9 noting that BEI had recently completed a contract of 12,000 Quartz Rate Sensors for a military application.

(13) On March 18, 1994, BEI sent a fax to Goodrich Avionics providing product, pricing and delivery information which included the statement, "ALL EXPORT order lead times will begin after the receipt of the Customer Approved export papers (DSP-83) if applicable." BEI's invoice dated August 21, 1995 issued to Goodrich Avionics for the purchase of QRS-11s did not reference the export control status of the QRS-11.

(14) By June 1996, the Vice President for Engineering at Goodrich Avionics was aware of export control issues relating to the QRS-11. He wrote a letter dated June 20, 1996 to BEI, providing information to be used by BEI in their efforts to have the QRS-11 removed from the USML.

(15) The Vice President for Engineering wrote another letter to BEI on May 2, 1997 requesting that BEI keep him advised of any further developments that may occur with the Department of State. The letter referenced the GH-3000 and advised that Goodrich Avionics was "in the process of our first aircraft approvals since the first production units have been delivered to customers."

(16) On or about August 6, 1998, in response to an inquiry from Goodrich Avionics, BEI informed Goodrich Avionics that the QRS-11

remained under the licensing jurisdiction of Department of State and that BEI was seeking reconsideration of the determination that the QRS-11 is a defense article.

(17) Goodrich Avionics became concerned about exports they were making without State Department authorization and on or about August, 6, 1998, a senior Goodrich Avionics contracts administrator issued an e-mail to their Sales/Marketing Department advising that he should be contacted “PRIOR to sending any ESIS GH-3000 out of the country. We need to make sure the proper export license is in place before we export any GH-3000 units.”

(18) On August 6, 1998, a senior Goodrich Avionics engineering official responded to the e-mail advising that the “QRS-11 is used in all ESIS units and to his knowledge no unit has been shipped out of the country on a sales order, and as such all units belong to us that have been outside the US.”³ Handwritten notes were recorded on this e-mail to contact BEI and obtain in writing the State Department status of the QRS-11. Handwritten notes on this e-mail mention Switzerland, France, and England.

(19) On August 12, 1998, a Senior Customer Service Administrator for BEI confirmed telephonically and by fax to Goodrich Avionics’ Purchasing Manager and principal procurement contact with BEI that the QRS-11 is controlled on the USML under Category XII (d) and was subject to the Department of State licensing jurisdiction.

(20) After receiving the August 12, 1998 fax from BEI, Goodrich Avionics’ Senior Contracts Manager drafted a voluntary disclosure on Goodrich Avionics letterhead for the signature of the Director, Sales and Marketing. The draft voluntary disclosure, dated August 20, 1998, advised that the ESIS has been exported to customers for display and flight-testing in Switzerland, France and England, as well as being hand-carried on Carnets (an apparent reference to additional temporary exports) to various countries for display purposes for the past two years. This disclosure was not signed or submitted to DDTC.

³ A State Department License would be required for the export of the GH-3000 unit if exported by Respondent with or without a sales order (i.e. temporary exports for demonstrations in foreign countries would require license authorization).

(21) On December 3, 2003 and January 30, 2004, L-3 made submissions to DTCC asserting that on or about August 20, 1998, during a teleconference, Goodrich Avionics had received verbal advice from BEI that the variant of the QRS-11 units used by Respondent in the ESIS was predominantly commercial in nature and based on the non-military nature of the product in which the QRS-11 was incorporated (i.e., ESIS), no DDTC license would be necessary. Consequently, according to L-3 no further action was taken by Goodrich Avionics concerning the draft voluntary disclosure referenced in Paragraph 20 above.

(22) Respondents could not provide any contemporaneous emails to support the assertion that BEI verbally advised Goodrich Avionics that a State Department license was not required. L-3 did provide emails dated March 2000 (two years later) that made reference to this phone conversation. However, BEI has no record of any employee giving such verbal advice and noted BEI's August 12, 1998 written advice to the contrary. Respondents did not explain their apparent decision to rely on an undocumented phone conversation rather than formal correspondence from the manufacturer on this issue.

(23) From August 1998 to March 2000, Goodrich Avionics incorporated the QRS-11 into the ESIS and exported it in several instances without applying for or obtaining a license from DDTC.

(24) In January 2000, after receiving an order to sell an ESIS GH-3000 unit for installation on a Romanian MiG-29, Goodrich Avionics' Senior Contracts Manager contacted BEI to confirm the export control status of the GH-3000 containing the QRS-11. On February 23, 2000, BEI faxed a copy of BEI's August 12, 1998 fax described in paragraph 19 above and stated that the export status had not changed since 1998 and that the QRS-11 being supplied to Goodrich Avionics remained subject to Department of State licensing requirements.

(25) On March 6, 2000, Goodrich Avionics halted exports of the GH-3000 and advised its employees that if any ESIS GH-3000 units are exported that it may be in violation of export laws.

(26) An undated internal e-mail from Goodrich Avionics' Senior Contracts Manager stated that "BEI has confirmed that all QRS-11 Sensors, regardless of whether or not they are used predominately for commercial

applications, are on the Munitions List.⁴ This would mean that if we can't get a commodity jurisdiction from the Dept. of State, which determines the GH-3000 to be a commercial unit, we will need to have a validated license each time we export it, as well as having to submit a voluntary self-disclosure for previously exporting it without a license. Obviously, we don't want that to happen."

(27) Another undated internal e-mail from Goodrich Avionics' Senior Contracts Manager stated "we need to submit a self-disclosure to the State Department to tell them that we have violated the regulations by exporting the ESIS GH-3000. Even though there may be a future determination that the sensor and/or our unit is commercial and does not require a license, we exported the units while the sensor was on the Munitions list, thereby, violating the regulations."

(28) Notwithstanding the notice from BEI in 1998 and 2000 and internal recognition of the export violations that had taken place, Goodrich Avionics did not file a voluntary disclosure.

PART III - OMISSION OF MATERIAL FACTS IN COMMODITY JURISDICTION

(29) On March 8, 2000, Goodrich Avionics contacted the Goodrich staff attorney assigned to support Goodrich Avionics for guidance in connection with the QRS-11 being a defense article. His guidance was to contact Christopher Wall, Esq. (Partner) and Thomas deButts, Esq. (Senior Associate) of the law firm of Winthrop, Stimson, Putman & Roberts (now Pillsbury, Winthrop, Shaw and Pittman LLP) ("PWSP") and to rely on the advice to be given by PWSP.

(30) On March 8, 2000, Goodrich Avionics telephonically contacted Wall and/or deButts of the law firm of PWSP for representation and legal advice with regard to the QRS-11 being controlled on the USML and incorporated into the ESIS. Both telephonically and in writing, Goodrich Avionics' Senior Contracts Manager provided the relevant background of the matter to PWSP, including the fact that the ESIS incorporated the QRS-

⁴ The same e-mail states that these export requirements are "contrary to what we have previously been told" by BEI. See above paragraph #21.

11, that the QRS-11 was on the USML and that the ESIS containing the QRS-11 had been exported without licenses issued by DDTC. During the call Wall and/or deButts discussed submitting a CJ request to the Department and advised that if the ESIS was ultimately determined to be subject to the jurisdiction of the Department of Commerce, any prior exports of ESIS units would not have required an export license. Wall and/or deButts further advised Goodrich Avionics that there was no present requirement to make any disclosure to the State Department and Goodrich Avionics should wait for the CJ determination to be filed on the ESIS, before notifying its domestic customers that the ESIS was subject to such jurisdiction.

(31) On March 9, 2000, another Senior Contracts Administrator sent an e-mail to Wall and deButts with a copy to Goodrich's counsel summarizing the situation, noting that one of its products contained components categorized as defense items under the ITAR. The e-mail further stated that two "mistakes" were made. "First, that we designed a product without knowledge that the components may be licensable under the ITAR (a significant disadvantage in marketing a commercial item). Secondly, in August 1998, after being advised that the QRS-11 Sensor from BEI was listed on the Munitions List, we relied on a verbal statement from a person at BEI that the variety of QRS-11 that we were buying, and based on our application, did not need an export license. We learned within the past week that we were given bad advice and that this may not be the case (See paragraph #21). A shipment hold has been put in place for all exports of affected products."

(32) Over the next two weeks, Goodrich Avionics furnished PWSP with information concerning the design, function and other supplementary information concerning the ESIS GH-3000 for the purpose of having PWSP draft a CJ request for the ESIS GH-3000. The information provided included the fact that the ESIS incorporates three QRS-11 sensors that are categorized as defense articles on the USML.

(33) On July 19, 2004, PWSP acknowledged that Goodrich Avionics contacted them with regard to a matter involving the possible export of items on the USML without a license. Goodrich Avionics advised Wall and deButts that a component part (QRS-11) soldered into one of its products, the ESIS GH-3000, was controlled for export by the Department of State under the ITAR. Based on this information Wall and/or deButts

advised Goodrich that the determination as to whether the ESIS GH-3000 was subject to the ITAR would be made according to the criteria set forth in ITAR § 120.3 and § 120.4.

(34) On March 27, 2000, deButts e-mailed to Goodrich Avionics PWSP's draft of the CJ request. As drafted by Wall and/or deButts, the draft CJ indicated that the ESIS GH-3000 was designed and used for commercial purposes, but did not identify the three QRS-11 units as individual component parts incorporated into the ESIS. Furthermore, the draft CJ did not disclose the export regulatory classification of the QRS-11, that the QRS-11 was on the USML or that the QRS-11 had been formally determined to be so by DDTC. Although, the draft CJ disclosed the technical characteristics of the ESIS GH-3000, it did not disclose technical characteristics of the QRS-11. These were material facts to the CJ review. Moreover, the presence of the QRS-11s in the ESIS was the only reason Goodrich Avionics was seeking the CJ decision.

(35) By not including this information in the CJ, Goodrich Avionics enhanced its prospects of obtaining a determination that the ESIS would neither be controlled on the USML nor require a State Department license for export.

(36) On March 27, 2000, the draft CJ prepared by PWSP was reviewed and adopted by Goodrich Avionics (with only minor changes to reflect that Goodrich Avionics rather than PWSP was submitting the request), the cover page was put on its Goodrich Avionics letterhead and Goodrich Avionics' Contracts' Manager signed the CJ request. Then Goodrich Avionics forwarded the signed CJ request to PWSP, which filed it with DDTC on or about March 27, 2000.

(37) On July 10, 2000, relying on the incomplete information provided by Goodrich Avionics, the Department issued a CJ determination that the ESIS Model GH-3000 is not subject to the licensing jurisdiction of the Department of State.

(38) L-3 has stated that it "would have provided additional information in the CJ regarding the inclusion of the QRS-11 Sensors in the GH-3000 and their USML status" had it been affiliated with Goodrich during the period in question. However, throughout the Department's investigation into the matters discussed herein, L-3 maintained that the "responsible

Goodrich employees disclosed all relevant” information to PWSP, relied on PWSP’s preparation of the CJ request and thus had “no reason to believe that it was necessary to specifically identify the QRS-11 sensor (or any other component of the GH-3000) by name or to provide any further information and contend that the CJ submission complied in all respects with applicable law, rules, and regulations.”

(39) Goodrich acknowledges that the commodity jurisdiction submission should have specifically identified the QRS-11 and noted its control under the USML.

PART IV – UNAUTHORIZED EXPORTS AFTER NOTIFICATION TO
GOODRICH AVIONICS THAT THE QRS-11
WAS A DEFENSE ARTICLE

(40) Between the period from August 1998 to February 23, 2000, Goodrich Avionics exported ESISs without authorization from the Department.

(41) For the period from March 2000 to July 2000, Goodrich Avionics submitted four licenses for the export of ESIS, containing the QRS-11 units, while waiting for the CJ determination for the ESIS. DSP 5s 793797, 793799 and 794229 were approved and DSP 5 790734 was approved with provisos.

(42) After receipt of DDTC’s CJ determination, Goodrich Avionics resumed exporting the QRS-11s incorporated in the ESISs without obtaining licenses from DDTC. L-3 Avionics continued to make such exports after March 28, 2003 until August 2003 when DDTC notified L-3 to cease exports of the QRS-11 contained in the ESIS unless there was license approval from DDTC.

(43) Between the period from August 1998 to August 2003, Respondents exported or caused to be exported without DDTC authorization QRS-11s to 25 different foreign countries. Respondents exported over 500 QRS-11s contained in about 200 ESISs for demonstrations and sales to foreign end users in, including but not limited to Saudi Arabia, Canada, France, Switzerland, Germany, Czechoslovakia, Indonesia, Italy, Netherlands, Denmark, United Kingdom, and Israel. It is

possible that an unknown number of these ESISs contained in commercial aircraft were also re-transferred to or flown to and from proscribed countries identified under §126.1 of the ITAR.

(44) Respondents also caused to be exported an unknown number of ESISs by domestic U.S. purchasers without State Department authorization by failing to inform said purchasers that the ESIS incorporated a defense article, namely, the QRS-11, for which a license would be required. For example, without knowing that the ESIS contained a defense article controlled on the USML, the following unauthorized exports of the QRS-11 incorporated in the ESISs were made by domestic customers, Cessna and Boeing:

- Cessna: During the period between 2002 and 2003, Cessna exported without obtaining license approval from DDTC, at least 35 ESISs containing QRS-11s and used in commercial aircraft. Exports of ESISs were made by Cessna to the following foreign countries, including but not limited to: Brazil, Turkey, Portugal, Bahrain, Canada, Guatemala, Mexico, Australia, Switzerland, Austria, Ireland, and South Africa.
- Boeing: From August 2000 to February 2004, Boeing exported without obtaining license approval from DDTC, at least 23 ESISs containing QRS-11s and used in commercial aircraft. Exports of ESISs were made by Boeing to the following foreign countries, including but not limited to: Saudi Arabia, United Kingdom, South Korea, Switzerland, Germany, Ireland, Netherlands, United Arab Emirates, Guinea, and Australia.

(45) During the time frame of the alleged violations, Respondents' export compliance personnel were familiar with the requirements of the ITAR and the regulatory process for seeking a Commodity Jurisdiction decision to determine if an item is a defense article on the USML.

(46) In July 2003, following a voluntary disclosure made by another manufacturer of standby flight instruments; the Department conducted an extensive investigation and review of the QRS-11. During this review, the activities discussed in this draft charging letter were identified and L-3 was directed to disclose all relevant facts, circumstances and documentation.

Goodrich was contacted in June 2005 and requested to participate in the investigation and review.

(47) On February 9, 2004, the U.S. 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 commercial standby instrument system for use on civil aircraft.

PART V- LICENSING & REPORTING REQUIREMENTS

(48) § 123.1 of the Regulations provides that any person who intends to export or import temporarily a defense article must obtain the approval of the DDTC prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of the Regulations.

(49) § 127.1 (a) (1) of the Regulations provides 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 Regulations without first obtaining the required license or written approval from the Directorate of Defense Trade Controls.

(50) § 127.1 (a) (3) of the Regulations provides 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 Directorate of Defense Trade Controls.

(51) § 127.1 (d) of the Regulations provides 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 Section 38 of the Act or any regulation, license, approval, or order issued thereunder.

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

PART VI – THE CHARGES

The following violations, which are described more fully in paragraphs 1-47, are charged to Respondents:

Omissions of Material Facts in Export Control Documents

Charge 1

(53) Respondents violated Section 38 of the Act and Section 127.2 of the Regulations in that, from on or about March 2000, Respondents, aided and abetted by its attorneys, submitted to the Department a request for CJ determination on the ESIS, that omitted material facts, including that the ESIS incorporated defense articles, namely QRS-11 sensors, and that the QRS-11 had been determined by the Department to be controlled on the USML.

Unauthorized Exports of Defense Articles

Charges 2 – 26

(54) Respondents violated Section 38 of the Act and Section 127.1 (a) (1) and 127.1(a)(3) of the Regulations in that from 1998 to 2003 Respondents exported or caused to be exported without the required license or prior written approval from the Directorate of Defense Trade Controls QRS-11s contained in ESISs to 25 foreign countries.

PART VII - ADMINISTRATIVE PROCEEDINGS

(55) Pursuant to 22 C.F.R. § 128 administrative proceedings are instituted against Respondents Goodrich and L-3 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 generally shall be for a period of three years in accordance with Section 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.

(56) A Respondent has certain rights in such proceedings as described in Section 128 of the Regulations. Currently, this is a draft-charging letter; however, in the event you are served with a charging letter you are advised of the following matters. You are required to answer the charging letter within 30 days after service. A failure to answer will be taken as an admission of the truth of the charges. 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. The answer, written demand for oral hearing (if any) and supporting evidence required by §128.5 (b) shall be in duplicate and mailed to ALJ designated by the Department to hear this case. A copy shall be simultaneously mailed to the Director, Office of Defense Trade Controls, Compliance, Department of State, 2401 E. Street, NW, Washington, D.C. 20037. If you do not demand an oral hearing, you must transmit within seven (7) days after the service of your 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 from time to time, upon reasonable notice. Furthermore, pursuant to §128.11 cases may be settled through consent agreements, including after service of a Draft Charging Letter.

(57) 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 Defense Trade Controls Compliance