



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Hakko Co. Ltd.
Daini-Tsunemi Building 1 - 13- 12 Narimasu
Itabash-Ku, Tokyo Japan

Attention: Hideo Tominaga, President

Dear Mr. Tominaga

The Bureau of Export Administration, United States Department of Commerce (BXA), has reason to believe that, as described below, Hakko Co. Ltd. ("Hakko") violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2001))(the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1991 & Supp. And Pub. L. No. 106-508, November 13, 2000))("Act")² on two occasions. Specifically, BXA charges that Hakko committed the following violations:

Charge 1: Conspiracy to Export Without Export license: EAR §764.2(d)

From in or about September 1995 through in or about July 1997, Hakko conspired and acted in concert with others to bring about acts that constituted violations of the Regulations, that is exporting goods without the exporter obtaining the required export licenses from the Department of Commerce. The purpose of the conspiracy was for Hakko and its coconspirators to obtain generation II night vision equipment and cause it to be exported to Japan without the exporter obtaining the required licenses from the Department of Commerce. BXA alleges that by conspiring and acting in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Act, or any regulation, order, or

¹ The Regulations are currently codified in the Code of Federal Regulations at Parts 15 C.F.R. 730-774 (2001). The violation charged occurred in 1997. The Regulations governing the violations are codified at 15 C.F.R. Parts 730-774 (1997). They are substantially the same as the 2001 version of the Regulations which govern the procedural aspects of this case.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations then in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (1994 & Supp. IV 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized by Public Law No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.



license issued thereunder, Hakko committed one violation of Section 764.2(d) of the Regulations.

Charge 2: Causing an Unauthorized Export to Japan: EAR Section 764.2(b)

In or about July 1997, Hakko caused to be exported to Japan 100 units of generation II night vision equipment, which were covered by Export Control Classification Number 6A002.c (Supplement 1 of Part 774 of the Regulations), without the export license required from the Department of Commerce. In doing so, BXA alleges that Hakko committed one violation of Section 764.2 (b) of the Regulations.

Accordingly, Hakko is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

A civil penalty of up to \$11,000 for each violation³;

A denial of export privileges; and

Exclusion from practice before BXA.

If Hakko fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of the letter, that failure will be treated as a default. (Regulations, Section 766.6 and 766.7). If Hakko defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to the party that defaulted. The Under Secretary for Export Administration may then impose up to the maximum penalty on each of the charges in this letter.

Hakko is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with his answer. (Regulation, Section 766.6). Hakko, is entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing BXA named below.

³ Pursuant to the Federal Civil Penalties Adjustment Act of 1990, (28 U.S.C. 2461, note (1994 & Supp. V 1999)) and 15 C.F.R. §6.4(a)(2) the maximum civil penalty for each violation committed after October 23, 1996 and before November 1, 2000 is \$11,000.

The U.S. Coast Guard provides administrative law judge service in connection with the matters set forth in this letter. Accordingly, Hakko should file an answer pursuant to the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of each answer must be served on BXA at the following address:

Chief Counsel for Export Administration
Attention: **Lairold M. Street**
Room H-3839
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Please contact **Lairold M. Street**, at (202) 482-5301, or at the mailing address above, should you have questions concerning this matter.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

Enclosure

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
Hakko Co. Ltd.)
Daini-Tsunemi Building 1 -13- 12 Narimasu)
Itabash-Ku, Tokyo Japan,)
)
)
)
Resnondent)

SETTLEMENT AGREEMENT BETWEEN HAKKO CO. LTD. AND
THE BUREAU OF EXPORT ADMINISTRATION

This Settlement Agreement (Agreement) is made by and between Hakko Co, Ltd. and the Bureau of Export Administration, United States Department of Commerce (BXA), pursuant to Section 766.18(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2001)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (Act).*

WHEREAS, BXA has notified Hakko Co. Ltd. of its intention to initiate an administrative proceeding against Hakko Co. Ltd. pursuant to the Act and the Regulations;

¹ The Regulations governing the violations at issue are found in the 1997 version of the Code of Federal Regulations. The Regulations are codified at 15 C.F.R. Parts 730-774 (1997)) and, to the degree to which they pertain to this matter, are substantially the same as the 2001 version.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 *Fed. Reg.* 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

WHEREAS, BXA has issued a proposed charging letter to Hakko Co. Ltd. that alleged that Hakko Co. Ltd. committed two violations of the Regulations by causing an exportation without the required export license and by conspiring to do so.

WHEREAS, Hakko Co. Ltd. has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Hakko Co. Ltd. fully understands the terms of this Agreement and the Order that will be issued to give effect to this Settlement Agreement (Order);

WHEREAS, Hakko Co. Ltd. enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Hakko Co. Ltd. states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Hakko Co. Ltd. neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Hakko Co. Ltd. wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Hakko Co. Ltd. agrees to be bound by the Order, when entered;

NOW THEREFORE, Hakko Co. Ltd. and BXA agree as follows:

1. BXA has jurisdiction over Hakko Co. Ltd., under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. BXA and Hakko Co. Ltd. agree that the following sanction shall be imposed against Hakko Co. Ltd. in complete settlement of the alleged violations of the Regulations set forth in the proposed charging letter:

- a. Hakko Co. Ltd. shall be assessed a civil penalty of \$20,000 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order.
 - b. Hakko Co. Ltd shall have its export privileges denied for a period of five years from the date of the order.
 - c. As authorized by Section 766.18(c) of the Regulations, this denial of export privileges shall be suspended for a period of five years from the date of entry of an appropriate Order, and shall thereafter be waived, provided that, during period of suspension, Hakko Co. Ltd. has committed no violation of the Act, or any regulation, order or license issued thereunder, including failure to make timely payments of the civil penalty as set forth in paragraph 2(a) above.
3. Hakko Co. Ltd. agrees that, subject to the approval of this Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, when entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, when entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, when entered.

4. BXA agrees that, upon entry of the Order, it will not initiate any administrative proceeding against Hakko Co. Ltd. in connection with any violation of the Act, or the Regulations arising out the transactions identified in the proposed charging letter.

5. Hakko Co. Ltd. understands that BXA will make the proposed charging letter, this Agreement, and the Order, when entered, available to the public,

6. BXA and Hakko Co. Ltd. agree that this Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and Hakko Co. Ltd. agree that they may not use this Agreement in any administrative or judicial proceeding and that the parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, when entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BXA only when the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

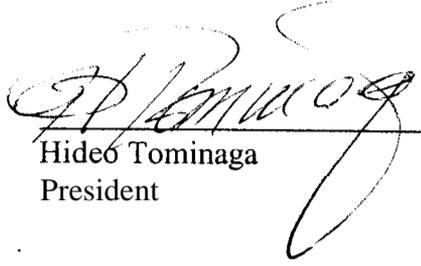
BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

HAKKO CO. LTD.



Mark D. Menefee
Director
Office of Export Enforcement

Date: 5/2/02



Hideo Tominaga
President

Date: 04/05/02

1. *One Violation of 15 C.F.R. § 764.2(d) - Conspiracy to Export Night Vision Scopes Without the Required Export Licenses:* From in or about September 1995 through in or about July 1997, Hakko conspired and acted in concert with others to bring about acts that constituted violations of the Regulations; that is, exporting goods without the required export licenses from the Department of Commerce. The purpose of the conspiracy was for Hakko and its co-conspirators to obtain generation II night vision equipment and cause it to be exported to Japan without the exporter obtaining the required licenses from the Department of Commerce.
2. *One Violation of 15 C.F.R. §764.2(b): Causing an Unauthorized Export of Night Vision Scopes to Japan:* In or about July 1997, Hakko caused to be exported to Japan 100 units of generation II night vision equipment, which were covered by Export Control Classification Number 6A002.c of the Regulations, without the required export licenses from the Department of Commerce.

BIS and Hakko having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth herein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$20,000 is assessed against Hakko, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein on, Hakko will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Hakko. Accordingly, if Hakko should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Hakko's export privileges for a period of one year from the date of entry of this Order.

FOURTH, for a period of five years from the date of this Order, Hakko Co. Ltd., Daini-Tsunemi Building 1-1 3-12 Narimasu, Itabash-Ku, Tokyo Japan, its successors or assigns and, when acting for or on behalf of Hakko, its officers, representatives, agents or employees ("denied person"), may not, participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to

be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FIFTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is

owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing includes but is not limited to installation, maintenance, repair, modification and testing.

SIXTH, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Hakko Co. Ltd. by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

SEVENTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

EIGHTH, that, as authorized by Section 766.18(c) of the Regulations, the denial period set forth above shall be suspended in its entirety for a period of five years from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Hakko Co. Ltd., has committed no violation of the Act, or any regulation, order, or license issued thereunder, including failure to make timely payment of the civil penalty set forth above.

NINTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.


for Lisa A. Prager
Acting Assistant Secretary of Commerce
for Export Enforcement

Entered this 6th day of August 2003.