

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of: )  
Pro345 Distribution (Proprietary) Limited )  
and )  
ProChem (Proprietary), Limited )  
P.O. Box 3316 )  
Houghton 2041 )  
Gauteng )  
South Africa )  
 )  
Respondent )

ORDER RELATING TO PRO 345 DISTRIBUTION (PROPRIETARY) LIMITED AND  
PROCHEM (PROPRIETARY), LIMITED

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Pro345 Distribution (Proprietary) Limited and ProChem (Proprietary), Limited (“hereinafter jointly referred to as ProChem”) of its intention to initiate an administrative proceeding against ProChem as the successor corporation to Protea Chemicals (Proprietary), Limited,<sup>1</sup> pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005)) (the “Regulations”),<sup>2</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app.

<sup>1</sup> Protea Chemicals (Proprietary), Limited sold its business to Clidet 345 (Proprietary), Limited on March 1, 2001. Clidet 345 (Proprietary), Limited was subsequently renamed Protea Chemicals, and later renamed ProChem (Proprietary), Limited. On September 1, 2003, Amenable Investments (Proprietary), Limited purchased the business of ProChem (Proprietary), Limited, and renamed the company Pro345 Distribution (Proprietary), Limited. Amenable Investments (Proprietary), Limited then changed its name to ProChem (Proprietary), Limited. The entity formerly known as Protea Chemicals (Proprietary), Limited is now a trading division of ProChem (Proprietary), Limited.

<sup>2</sup> The violations charged occurred between 1999 and 2002. The regulations governing the violations at issue are found in the 1999-2002 versions of the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (1999-2002). The 2005 Regulations govern the procedures that apply to this matter.

§§ 2401-2420 (2000)) (the “Act”),<sup>3</sup> through issuance of a proposed charging letter to ProChem that alleged that ProChem committed 220 violations of the Regulations.

Specifically, these charges are:

1. *76 Violations of 15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide and Sodium Cyanide to End-Users in South Africa in Violation of Conditions on U.S.*

*Department of Commerce Licenses:* On 76 occasions between on or about November 24, 1999 and on or about May 1, 2003, Protea (Inland Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide and sodium cyanide that was exported from the United States, chemicals subject to the Regulations (ECCN 1C350),<sup>4</sup> to end users in South Africa in violation of conditions on U.S. Department of Commerce licenses. Specifically, the U.S. Department of Commerce licenses that authorized the export of the chemicals from the United States to Protea authorized Protea to resell the chemicals only to end-users listed on each license. In each instance referenced herein, however, Protea (Inland Branch) re-sold the chemicals to end-users that did not appear on the licenses.

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<sup>3</sup> 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 in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“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 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 Fed. Reg. 45,273, Aug. 5, 2005), has continued the Regulations in effect under IEEPA.

<sup>4</sup> The term “ECCN” refers to an Export Control Classification Number. *See* 15 C.F.R. § 744, Supp. No. 1.

2. *76 Violations of 15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide and Sodium Cyanide With Knowledge a Violation of the Regulations Would Occur:* On 76 occasions between on or about November 24, 1999 and on or about December 11, 2003, Protea (Inland Branch) re-sold potassium cyanide and sodium cyanide with knowledge that violations of the Regulations would occur. Specifically, Protea (Inland Branch) re-sold the chemicals to end-users in South Africa when Protea knew or had reason to know that the conditions on the U.S. Department of Commerce licenses did not authorize re-sales to the end-users or end-users.

3. *22 Violations of 15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide and Sodium Cyanide to End-Users in South Africa in Violation of Conditions on U.S. Department of Commerce Licenses:* On 22 occasions between on or about December 1, 1999 and on or about January 24, 2002, Protea (Cape Town Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide and sodium cyanide that was exported from the United States, chemicals subject to the Regulations (ECCN 1C350), to end users in South Africa in violation of conditions on U.S. Department of Commerce licenses. Specifically, the U.S. Department of Commerce licenses that authorized the export of the chemicals from the United States to Protea (Cape Town Branch) authorized Protea to resell the chemicals only to the end-users listed on each license. In each instance referenced herein, however, Protea (Cape Town Branch) re-sold the chemicals to end-users that did not appear on the licenses.

4. *22 Violations of 15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide and Sodium Cyanide With Knowledge a Violation of the Regulations Would Occur:* On 22 occasions between on or about December 1, 1999 and on or about January 24, 2002,

Protea (Cape Town Branch) re-sold potassium cyanide and sodium cyanide with knowledge that violations of the Regulations would occur. Specifically, Protea (Cape Town Branch) re-sold the chemicals to end-users in South Africa when Protea knew or had reason to know that the conditions on the U.S. Department of Commerce licenses did not authorize re-sales to the end-users or end-users.

5. *11 Violations of 15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide and Sodium Cyanide to End-Users in South Africa in Violation of Conditions on U.S.*

*Department of Commerce Licenses:* On 11 occasions between or about November 24, 1999 and on or about June 4, 2001, Protea (Port Elizabeth Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide and sodium cyanide that was exported from the United States, chemicals subject to the Regulations (ECCN 1C350), to end-users in South Africa in violation of conditions on U.S. Department of Commerce licenses. Specifically, the U.S. Department of Commerce licenses that authorized the export of the chemicals from the United States to Protea (Port Elizabeth) authorized ProChem to re-sell the chemicals only to the end-users listed on each license. In each instance referenced herein, however, Protea (Port Elizabeth Branch) re-sold the chemicals to end-users that did not appear on the licenses.

6. *11 Violations of 15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide and Sodium Cyanide With Knowledge a Violation of the Regulations Would Occur:* On 11 occasions between on or about November 24, 1999 and on or about June 4, 2001, Protea (Port Elizabeth Branch) re-sold potassium cyanide and sodium cyanide with knowledge that violations of the Regulations would occur. Specifically, Protea (Port Elizabeth Branch) re-sold the chemicals to end-users in South Africa when Protea knew or had

reason to know that the conditions on the U.S. Department of Commerce licenses that authorized the export of the chemicals from the United States did not authorize re-sales to the end-users or end-uses.

7. *One Violation of 15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide to End-Users in South Africa in Violation of Conditions on U.S. Department of Commerce Licenses:* On or about July 3, 2000, Protea (Durban Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide that was exported from the United States, a chemical subject to the Regulations (ECCN 1C350), to an end user in South Africa in violation of conditions on a U.S. Department of Commerce license. Specifically, the U.S. Department of Commerce license that authorized the export of the chemical from the United States to Protea (Durban Branch) authorized Protea to re-sell the chemical only to the end-users listed on the license. However, Protea (Durban Branch) re-sold the chemical to an end-user that did not appear on the license.

8. *One Violation of 15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide With Knowledge a Violation of the Regulations Would Occur:* On or about July 3, 2000, Protea (Durban Branch) re-sold potassium cyanide with knowledge that violations of the Regulations would occur. Specifically, Protea (Durban Branch) re-sold the chemical to an end-user in South Africa when Protea knew or had reason to know that the conditions on the U.S. Department of Commerce license did not authorize re-sales to the end-user.

WHEREAS, BIS and ProChem have 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 therein, and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

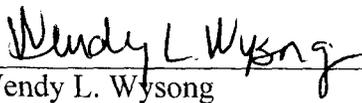
FIRST, that a civil penalty of \$1,540,000 is assessed against ProChem, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

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, ProChem 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 ProChem. Accordingly, if ProChem should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of ProChem's export privileges for a period of one year from the date of entry of this Order.

FOURTH, 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.

  
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Wendy L. Wysong  
Deputy Assistant Secretary of Commerce  
for Export Enforcement

Entered this 5th day of October 2005.

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

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Houghton 2041 )  
Gauteng )  
South Africa )  
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Respondent )  
\_\_\_\_\_

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between ProChem (Proprietary), Limited and Pro345 Distribution (Proprietary) Limited (“jointly hereinafter referred to as ProChem”) as the successor corporation to Protea Chemicals (Proprietary), Limited,<sup>1</sup> and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005))

<sup>1</sup> Protea Chemicals (Proprietary), Limited sold its business to Clidet 345 (Proprietary), Limited on March 1, 2001. Clidet 345 (Proprietary), Limited was subsequently renamed Protea Chemicals, and later renamed ProChem (Proprietary), Limited. On September 1, 2003, Amenable Investments (Proprietary), Limited purchased the business of ProChem (Proprietary), Limited, and renamed the company Pro345 Distribution (Proprietary), Limited. Amenable Investments (Proprietary), Limited then changed its name to ProChem (Proprietary), Limited. The entity formerly known as Protea Chemicals (Proprietary), Limited is now a trading division of ProChem (Proprietary), Limited.

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(the "Regulations"),<sup>2</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the "Act"),<sup>3</sup>

WHEREAS, BIS has notified ProChem of its intention to initiate an administrative proceeding against ProChem, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to ProChem that alleged that ProChem committed 220 violations of the Regulations, specifically:

1. *76 Violations of 15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide and Sodium Cyanide to End-Users in South Africa in Violation of Conditions on U.S.*

*Department of Commerce Licenses:* On 76 occasions between on or about November 24, 1999 and on or about May 1, 2003, Protea (Inland Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide and sodium cyanide that was exported from the United States, chemicals subject to the Regulations (ECCN 1C350),<sup>4</sup> to end users in South Africa in violation of conditions on U.S. Department of Commerce licenses. Specifically, the U.S. Department of Commerce licenses that authorized the

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<sup>2</sup> The violations charged occurred between 1999 and 2002. The regulations governing the violations at issue are found in the 1999-2002 versions of the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (1999-2002). The 2005 Regulations govern the procedures that apply to this matter.

<sup>3</sup> 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 in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) ("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 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 Fed. Reg. 45,273, Aug. 5, 2005), has continued the Regulations in effect under IEEPA.

<sup>4</sup> The term "ECCN" refers to an Export Control Classification Number. See 15 C.F.R. § 744, Supp. No. 1.

*MA* *AA*

export of the chemicals from the United States to Protea authorized Protea to resell the chemicals only to end-users listed on each license. In each instance referenced herein, however, Protea (Inland Branch) re-sold the chemicals to end-users that did not appear on the licenses.

2. *76 Violations of 15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide and Sodium Cyanide With Knowledge a Violation of the Regulations Would Occur:* On 76 occasions between on or about November 24, 1999 and on or about December 11, 2003, Protea (Inland Branch) re-sold potassium cyanide and sodium cyanide with knowledge that violations of the Regulations would occur. Specifically, Protea (Inland Branch) re-sold the chemicals to end-users in South Africa when Protea knew or had reason to know that the conditions on the U.S. Department of Commerce licenses did not authorize re-sales to the end-users or end-users.

3. *22 Violations of 15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide and Sodium Cyanide to End-Users in South Africa in Violation of Conditions on U.S. Department of Commerce Licenses:* On 22 occasions between on or about December 1, 1999 and on or about January 24, 2002, Protea (Cape Town Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide and sodium cyanide that was exported from the United States, chemicals subject to the Regulations (ECCN 1C350), to end users in South Africa in violation of conditions on U.S. Department of Commerce licenses. Specifically, the U.S. Department of Commerce licenses that authorized the export of the chemicals from the United States to Protea (Cape Town Branch) authorized Protea to resell the chemicals only to the end-users listed on each

*MM* *AA*

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4. *22 Violations of 15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide and Sodium Cyanide With Knowledge a Violation of the Regulations Would Occur:* On 22 occasions between on or about December 1, 1999 and on or about January 24, 2002, Protea (Cape Town Branch) re-sold potassium cyanide and sodium cyanide with knowledge that violations of the Regulations would occur. Specifically, Protea (Cape Town Branch) re-sold the chemicals to end-users in South Africa when Protea knew or had reason to know that the conditions on the U.S. Department of Commerce licenses did not authorize re-sales to the end-users or end-users.

5. *11 Violations of 15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide and Sodium Cyanide to End-Users in South Africa in Violation of Conditions on U.S. Department of Commerce Licenses:* On 11 occasions between or about November 24, 1999 and on or about June 4, 2001, Protea (Port Elizabeth Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide and sodium cyanide that was exported from the United States, chemicals subject to the Regulations (ECCN 1C350), to end-users in South Africa in violation of conditions on U.S. Department of Commerce licenses. Specifically, the U.S. Department of Commerce licenses that authorized the export of the chemicals from the United States to Protea (Port Elizabeth) authorized ProChem to re-sell the chemicals only to the end-users listed on each license. In each instance referenced herein, however, Protea (Port Elizabeth Branch) re-sold the chemicals to end-users that did not appear on the licenses.

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6. *11 Violations of 15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide and Sodium Cyanide With Knowledge a Violation of the Regulations Would Occur:* On 11 occasions between on or about November 24, 1999 and on or about June 4, 2001, Protea (Port Elizabeth Branch) re-sold potassium cyanide and sodium cyanide with knowledge that violations of the Regulations would occur. Specifically, Protea (Port Elizabeth Branch) re-sold the chemicals to end-users in South Africa when Protea knew or had reason to know that the conditions on the U.S. Department of Commerce licenses that authorized the export of the chemicals from the United States did not authorize re-sales to the end-users or end-uses.

7. *One Violation of 15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide to End-Users in South Africa in Violation of Conditions on U.S. Department of Commerce Licenses:* On or about July 3, 2000, Protea (Durban Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide that was exported from the United States, a chemical subject to the Regulations (ECCN 1C350), to an end user in South Africa in violation of conditions on a U.S. Department of Commerce license. Specifically, the U.S. Department of Commerce license that authorized the export of the chemical from the United States to Protea (Durban Branch) authorized Protea to re-sell the chemical only to the end-users listed on the license. However, Protea (Durban Branch) re-sold the chemical to an end-user that did not appear on the license.

8. *One Violation of 15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide With Knowledge a Violation of the Regulations Would Occur:* On or about July 3, 2000, Protea (Durban Branch) re-sold potassium cyanide with knowledge that violations of the Regulations would occur. Specifically, Protea (Durban Branch) re-sold the chemical to

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an end-user in South Africa when Protea knew or had reason to know that the conditions on the U.S. Department of Commerce license did not authorize re-sales to the end-user.

WHEREAS, ProChem 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, ProChem fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if she approves this Agreement as the final resolution of this matter;

WHEREAS, ProChem enters into this Agreement voluntarily and with full knowledge of its rights;

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

WHEREAS, ProChem neither admits nor denies the allegations contained in the proposed charging letter;

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

WHEREAS, ProChem agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

*TM* *M*

1. BIS has jurisdiction over ProChem, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against ProChem in complete settlement of the violations of the Regulations relating to the transactions specifically detailed in the proposed charging letter:

a. ProChem shall be assessed a civil penalty in the amount of \$1,540,000, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.

b. The timely payment of the civil penalty agreed to in paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to ProChem. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of ProChem's export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, ProChem hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

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4. Upon entry of the Order and timely payment of the \$1,540,000 civil penalty, BIS will not initiate any further administrative proceeding against ProChem in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. 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, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

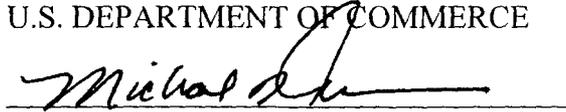
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department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

8. This Agreement shall become binding on BIS only if 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 INDUSTRY AND SECURITY  
U.S. DEPARTMENT OF COMMERCE



Michael D. Turner  
Director  
Office of Export Enforcement

Date: 10/4/05

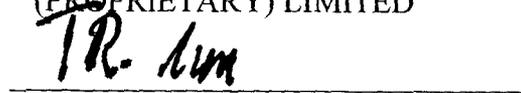
PROCHEM (PROPRIETARY) LIMITED



Edu Cloete  
Joint Managing Director

Date: 29<sup>th</sup> SEPTEMBER 2005

PRO345 DISTRIBUTION  
(PROPRIETARY) LIMITED



Thomas Roderick Scott  
Director

Date: 29 SEPTEMBER 2005

REGISTERED MAIL - RETURN RECEIPT REQUESTED

ProChem (Proprietary), Ltd.  
P.O. Box 3316  
Houghton  
2041  
Gauteng  
South Africa

*Attn: Gavin Brimacombe & Edu Cloete  
Joint Managing Directors*

Dear Messrs. Brimacombe and Cloete:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that ProChem (Proprietary), Ltd. of Houghton, South Africa (“ProChem”), as successor corporation to Protea Chemicals (Proprietary), Limited (“Protea”) of South Africa, is liable for 220 violations of the Export Administration Regulations (the “Regulations”)<sup>1</sup> committed by Protea. The Regulations are issued under the authority of the Export Administration Act of 1979 (the “Act”).<sup>2</sup> Specifically, BIS charges that Protea<sup>3</sup> committed the following violations:

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2005). The charged violations occurred in 1999-2003. The Regulations governing the violations at issue are found in the 1999-2003 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2003)). The 2005 Regulations establish the procedures that apply to this matter.

<sup>2</sup> 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 in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2005, (70 Fed. Reg. 45,273 (Aug. 5, 2005)), continues the Regulations in effect under the IEEPA.

<sup>3</sup> Protea Industrial Chemicals was the corporate entity that was listed as the end-user on all U.S. Department of Commerce export licenses issued for the exports of the chemicals from the United States. Through a series of mergers and acquisition transactions, Protea is now a trading division of ProChem.

**Charges 1-76            15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide and Sodium Cyanide to End-Users in South Africa in Violation of Conditions on U.S. Department of Commerce Licenses**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on 76 occasions between on or about November 24, 1999 and on or about May 1, 2003, Protea (Inland Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide and sodium cyanide that was exported from the United States, chemicals subject to the Regulations (ECCN 1C350),<sup>4</sup> to end users in South Africa in violation of conditions on U.S. Department of Commerce licenses. Specifically, the U.S. Department of Commerce licenses that authorized the export of the chemicals from the United States to Protea authorized Protea to resell the chemicals only to end-users listed on each license. In each instance referenced herein, however, Protea (Inland Branch) re-sold the chemicals to end-users that did not appear on the licenses. In so doing, Protea committed 76 violations of Section 764.2(a) of the Regulations.

**Charges 77-152        15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide and Sodium Cyanide With Knowledge a Violation of the Regulations Would Occur**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on 76 occasions between on or about November 24, 1999 and on or about December 11, 2003, Protea (Inland Branch) re-sold the chemicals referenced in Charges 1-76, above, with knowledge that violations of the Regulations would occur. Specifically, Protea (Inland Branch) re-sold the chemicals to end-users in South Africa when Protea knew or had reason to know that the conditions on the U.S. Department of Commerce licenses did not authorize re-sales to the end-users or end-users. In so doing, Protea committed 76 violations of Section 764.2(e) of the Regulations.

**Charges 153-174      15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide and Sodium Cyanide to End-Users in South Africa in Violation of Conditions on U.S. Department of Commerce Licenses**

As described in greater detail in Schedule B, which is enclosed herewith and incorporated herein by reference, on 22 occasions between on or about December 1, 1999 and on or about January 24, 2002, Protea (Cape Town Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide and sodium cyanide that was exported from the United States, chemicals subject to the Regulations (ECCN 1C350), to end users in South Africa in violation of conditions on U.S. Department of Commerce licenses. Specifically, the U.S. Department of

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<sup>4</sup> The term "ECCN" refers to an Export Control Classification Number. *See* 15 C.F.R. § 744, Supp. No. 1.

Commerce licenses that authorized the export of the chemicals from the United States to Protea (Cape Town Branch) authorized Protea to resell the chemicals only to the end-users listed on each license. In each instance referenced herein, however, Protea (Cape Town Branch) re-sold the chemicals to end-users that did not appear on the licenses. In so doing, Protea committed 22 violations of Section 764.2(a) of the Regulations.

**Charges 175-196      15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide and Sodium Cyanide With Knowledge a Violation of the Regulations Would Occur**

As described in greater detail in Schedule B, which is enclosed herewith and incorporated herein by reference, on 22 occasions between on or about December 1, 1999 and on or about January 24, 2002, Protea (Cape Town Branch) re-sold the chemicals referenced in Charges 153-174, above, with knowledge that violations of the Regulations would occur. Specifically, Protea (Cape Town Branch) re-sold the chemicals to end-users in South Africa when Protea knew or had reason to know that the conditions on the U.S. Department of Commerce licenses did not authorize re-sales to the end-users or end-users. In so doing, Protea committed 22 violations of Section 764.2(e) of the Regulations.

**Charges 197-207      15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide and Sodium Cyanide to End-Users in South Africa in Violation of Conditions on U.S. Department of Commerce Licenses**

As described in greater detail in Schedule C, which is enclosed herewith and incorporated herein by reference, on 11 occasions between or about November 24, 1999 and on or about June 4, 2001, Protea (Port Elizabeth Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide and sodium cyanide that was exported from the United States, chemicals subject to the Regulations (ECCN 1C350), to end-users in South Africa in violation of conditions on U.S. Department of Commerce licenses. Specifically, the U.S. Department of Commerce licenses that authorized the export of the chemicals from the United States to Protea (Port Elizabeth) authorized ProChem to re-sell the chemicals only to the end-users listed on each license. In each instance referenced herein, however, Protea (Port Elizabeth Branch) re-sold the chemicals to end-users that did not appear on the licenses. In so doing, Protea committed 11 violations of Section 764.2(a) of the Regulations.

**Charges 208-218      15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide and Sodium Cyanide With Knowledge a Violation of the Regulations Would Occur**

As described in greater detail in Schedule C, which is enclosed herewith and incorporated herein by reference, on 11 occasions between on or about November 24, 1999 and on or about June 4, 2001, Protea (Port Elizabeth Branch) re-sold the chemicals referenced in Charges 197-207, above, with knowledge that violations of the Regulations would occur. Specifically, Protea (Port Elizabeth Branch) re-sold the chemicals to end-users in South Africa when Protea knew or had

reason to know that the conditions on the U.S. Department of Commerce licenses that authorized the export of the chemicals from the United States did not authorize re-sales to the end-users or end-users. In so doing, Protea committed 11 violations of Section 764.2(e) of the Regulations.

**Charge 219                    15 C.F.R. § 764.2(a) - Re-Selling Potassium Cyanide to End-Users in South Africa in Violation of Conditions on U.S. Department of Commerce Licenses**

As described in greater detail in Schedule D, which is enclosed herewith and incorporated herein by reference, on or about July 3, 2000, Protea (Durban Branch) engaged in conduct prohibited by the Regulations by re-selling potassium cyanide that was exported from the United States, a chemical subject to the Regulations (ECCN 1C350), to an end user in South Africa in violation of conditions on a U.S. Department of Commerce license. Specifically, the U.S. Department of Commerce license that authorized the export of the chemical from the United States to Protea (Durban Branch) authorized Protea to re-sell the chemical only to the end-users listed on the license. However, Protea (Durban Branch) re-sold the chemical to an end-user that did not appear on the license. In so doing, Protea committed one violation of Section 764.2(a) of the Regulations.

**Charge 220                    15 C.F.R. § 764.2(e) - Re-Selling Potassium Cyanide With Knowledge a Violation of the Regulations Would Occur**

As described in greater detail in Schedule D, which is enclosed herewith and incorporated herein by reference, on or about July 3, 2000, Protea (Durban Branch) re-sold the chemical referenced in Charge 219, above, with knowledge that violations of the Regulations would occur. Specifically, Protea (Durban Branch) re-sold the chemical to an end-user in South Africa when Protea knew or had reason to know that the conditions on the U.S. Department of Commerce license did not authorize re-sales to the end-user. In so doing, Protea committed one violation of Section 764.2(e) of the Regulations.

\*       \*       \*       \*       \*

Accordingly, ProChem 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:

- The maximum civil penalty allowed by law of \$11,000 per violation;<sup>5</sup>
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If ProChem fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If ProChem defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to ProChem. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

ProChem is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. ProChem is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should ProChem have a proposal to settle this case, ProChem or its representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, ProChem's answer must be filed in accordance with 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 ProChem's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Thea D. R. Kendler, Esq.  
Room H-3839  
United States Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

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<sup>5</sup> *See* 15 C.F.R. § 6.4(a)(4).

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Thea D. R. Kendler is the attorney representing BIS in this case; any communications that ProChem may wish to have concerning this matter should occur through her. Ms. Kendler may be contacted by telephone at (202) 482-5301.

Sincerely,

Michael D. Turner  
Director  
Office of Export Enforcement