



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Opto Power Corporation
3321 East Global Loop
Tucson, Arizona 85706

Attention: Alfred Feitisch
Vice President and General Manager

Dear Mr. Feitisch:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described below, Opto Power Corporation (Opto Power) has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2000)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act).²

¹ The alleged violations occurred in 1995, 1996 and 1997. The Regulations governing the violations at issue are found in the 1995, 1996 and 1997 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995) and 15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996) (hereinafter "the former Regulations"), and 15 C.F.R. Parts 768-799 (1997)). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 *Federal Register* publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BXA alleges occurred. The Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which had extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)) until November 13, 2000 when the Act was reauthorized. *See* Pub. L. No. 106-508.



Facts constituting violations:

Charges 1 - 12

As is described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, from on or about March 29, 1995 through on or about December 16, 1996, Opto Power exported diode lasers from the United States to Israel without obtaining the validated export licenses required by Sections 772.1(b) and 772A.1(b) of the former Regulations. BXA alleges that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order, or license issued thereunder, Opto Power committed seven violations of Section 787.6 and five violations of Section 787A.6 of the former Regulations for a total of 12 violations.

Charges 13 - 16

As is described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, from on or about January 6, 1997 through on or about August 15, 1997, Opto Power exported diode lasers from the United States to Israel without obtaining the export licenses required by Section 742.4(a) Regulations. BXA alleges that, by engaging in conduct prohibited by or contrary to the Act, the Regulations, or any order, license or authorization issued thereunder, Opto Power committed four violations of Section 764.2(a) of the Regulations.

BXA alleges that Opto Power committed seven violations of Section 787.6, five violations of Section 787A.6, of the former Regulations, and four violations of Section 764.2(a) of the Regulations, for a total of 16 violations.

Accordingly, Opto Power 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 \$10,000 per violation (see Section 764.3(a)(1) of the Regulations)³;

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

³ The maximum civil penalty for any violation committed after October 23, 1996 is \$11,000 per violation. See 15 C.F.R. § 6.49(a)(3) (1999).

If Opto Power fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

Opto Power is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a consent settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, Opto Power's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of Opto Power's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Mi-Yong Kim, Esq." below the address. Ms. Kim may be contacted by telephone at (202) 482-5311.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

Enclosures

SCHEDULE A

**Schedule of Violations
Opto Power Corporation**

Charge No.	Exported (On or About)	Invoice No.	AWB No.
1	3/29/95	0000873-IN	SAT-2061-6960
2	9/2/95	0001453-IN 0001477-IN	SAT-2076-6852
3	9/15/95	0001540-IN	779-0208-403 (DHL)
4	1/19/96	0002145-IN	810-3235-405 (DHL)
5	1/23/96	0002160-IN	810-3235-243 (DHL)
6	1/26/96	0002196-IN	400-5115-9813 (FED EX)
7	2/26/96	0002348-IN	877-1904-691 (DHL)
8	3/30/96	0002560-IN	400-5115-9861 (FED EX)
9	4/11/96	0002615-IN	882-3060-820 (DHL)
10	6/20/96	0003032-IN	882-3065-053 (DHL)
11	7/16/96	0003201-IN	882-3066-755 (DHL)
2	12/16/96	0004476-IN	Not Available
3	1/6/97	0004626-IN	Not Available
14	3/28/97	0005207-IN	SAT-2138-0085
5	6/6/97	2719A (Order No.)	SAT-2145-6444
6	8/15/97	RMA972B	SAT-2153-2556

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

ORIGINAL

In the Matter of:)
)
OPTOPOWER CORPORATION,)
3321 East Global Loop)
Tucson, Arizona 85706,)

Respondent

SETTLEMENT AGREEMENT

This Agreement is made by and between Opto Power Corporation (hereinafter referred to as Opto Power) and the Bureau of Export Administration, United States Department of Commerce, pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2000)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act).²

¹ The alleged violations occurred in 1995, 1996 and 1997. The Regulations governing the violations at issue are found in the 1995, 1996 and 1997 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995) and 15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996) (hereinafter “the former Regulations”), and 15 C.F.R. Parts 768-799 (1997)). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 *Federal Register* publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BXA alleges occurred. The Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which had been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)) until November 13, 2000 when the Act was reauthorized. See Pub. L. No. 106-508.

WHEREAS, the Office of Export Enforcement, Bureau of Export Administration (BXA), has notified Opto Power of its intention to initiate an administrative proceeding against Opto Power pursuant to the Act and the Regulations, based on allegations that, from on or about March 29, 1995 through on or about December 16, 1996, Opto Power exported diode lasers from the United States to Israel without obtaining the validated export licenses required by Sections 772.1(b) and Section 772A. 1(b) of the former Regulations, in violation of Sections 787.6 and 787A.6 of the former Regulations; and that, from on or about January 6, 1997 through August 15, 1997, Opto Power exported diode lasers from the United States to Israel without obtaining the export licenses required by Section 742.4(a) of the Regulations in violation of Section 764.2(a) of the Regulations;

WHEREAS, Opto Power 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; Opto Power fully understands the terms of this Settlement Agreement and the Order; Opto Power enters into this Settlement Agreement voluntarily and with full knowledge of its rights, and Opto Power states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Opto Power neither admits nor denies the allegations contained in the proposed Charging Letter;

WHEREAS, Opto Power wishes to settle and dispose of all matters alleged in the proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Opto Power agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (appropriate Order);

NOW THEREFORE, Opto Power and BXA agree as follows:

1. BXA has jurisdiction over Opto Power, under the Act and the Regulations, in connection with the matters alleged in the proposed Charging Letter.

2. BXA and Opto Power agree that the following sanctions shall be imposed against Opto Power in complete settlement of all alleged violations of the Act and the former Regulations arising out of the transactions set forth in the proposed Charging Letter:

- (a) Opto Power shall be assessed a civil penalty of \$80,000, \$40,000 of which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the appropriate Order. Payment of the remaining \$40,000 shall be suspended for a period of one year from the date of entry of the appropriate Order and thereafter shall be waived, provided that during the period of suspension, Opto Power has committed no violation of the Act, or any regulation, order or license issued thereunder; and provided further that Opto Power has made timely payment of \$40,000 of the civil penalty.
- (b) As authorized by Section 1 l(d) of the Act, the timely payment of the civil penalty agreed to in paragraph 2a. 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 Opto Power. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of Opto Power's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.

3. Opto Power agrees that, subject to the approval of this Settlement 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 Settlement Agreement or the appropriate Order, when entered), including, without limitation, any right: (a) to an administrative hearing regarding the allegations in the proposed Charging Letter; (b) to request a refund of any civil penalty paid pursuant to this Settlement Agreement and the appropriate Order, when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

4. BXA agrees that, upon entry of an appropriate Order, it will not initiate any administrative proceeding against Opto Power in connection with any violation of the Act or the former Regulations arising out the transactions identified in the proposed Charging Letter.

5. Opto Power understands that BXA will make the proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered, available to the public.

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

7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement 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 Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

OPTOPOWER

BY: Mark D. Menefee
Mark D. Menefee
Director
Office of Export Enforcement

BY: Alfred Feitisch
Alfred Feitisch
Vice President and General Manager

Date: 5/11/07

Date: MAY 7 2007

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

In the Matter of:)
)
OPTOPOWER CORPORATION,)
3321 East Global Loop)
Tucson, Arizona 85706,)
)
)
Resnondent)

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Opto Power Corporation (hereinafter referred to as Opto Power) of its intention to initiate an administrative proceeding against Opto Power pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2000)) (the Regulations),² based

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which had been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)) until November 13, 2000 when the Act was reauthorized. See Pub. L. No. 106-508.

² The alleged violations occurred in 1995, 1996 and 1997. The Regulations governing the violations at issue are found in the 1995, 1996 and 1997 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995) and 15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996) (hereinafter "the former Regulations"), and 15 C.F.R. Parts 768-799 (1997)). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 *Federal Register* publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations and the Regulations define the various

on allegations that, from on or about March 29, 1995 through on or about December 16, 1996, Opto Power exported diode lasers from the United States to Israel without obtaining the validated export licenses required by Sections 772.1(b) and Section 772A.1(b) of the former Regulations, in violation of Sections 787.6 and 787A.6 of the former Regulations; and that, from on or about January 6, 1997 through August 15, 1997, Opto Power exported diode lasers from the United States to Israel without obtaining the export licenses required by Section 742.4(a) of the Regulations in violation of Section 764.2(a) of the Regulations; and

BXA and Opto Power 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 therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, a civil penalty of \$80,000 is assessed against Opto Power, \$40,000 of which shall be paid to the U.S. Department of Commerce within thirty days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions. Payment of the remaining \$40,000 shall be suspended for one year from the date of entry of this Order and shall thereafter be waived, provided that, during the period of suspension, Opto Power has committed no violation of the Act, or any regulation, license or order issued thereunder; and provided further that Opto Power has made timely payment of \$40,000 of the civil penalty.

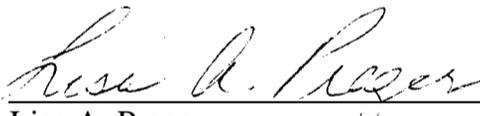
violations that BXA alleges occurred. The Regulations establish the procedures that apply to this matter.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 & Supp. 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, Opto Power will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that, as authorized by Section 1 l(d) of the Act, 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 Opto Power. Accordingly, if Opto Power should fail to pay the civil penalty in a timely manner, the undersigned will enter an Order under the authority of Section 11 (d) of the Act denying all of Opto Power' 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.


Lisa A. Prager
Acting Assistant Secretary
for Export Enforcement

Entered this 22 day of May, 2001.