

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

In the Matter of:)
)
Air Cargo International)
725 Dowd Avenue)
Newark, New Jersey 07105)
)
Respondent)

ORDER RELATING TO AIR CARGO INTERNATIONAL

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Air Cargo International (“ACI”), of its intention to initiate an administrative proceeding against ACI pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005)) (“Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),² by issuing a proposed charging letter to ACI that alleged that ACI, committed two violations of the Regulations. Specifically, the charges are:

¹ The violations charged occurred in 2004. The regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The 2005 Regulations govern the procedures that apply to this matter.

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 (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.* 45273, August 5, 2005), has continued the Regulations in effect under IEEPA.

1. *One Violation of 15 C.F.R. § 764.2(b) - Causing, Aiding, or Abetting a Violation:* On or about June 9, 2004, ACI aided and abetted the doing of an act prohibited by the Regulations. On that day, ACI aided and abetted the attempted unlicensed export of two thermal imaging cameras, classified under Export Control Classification Number (“ECCN”) 6A003.b.4, from the United States to an entity in the United Arab Emirates (the “UAE”) by completing a Shipper’s Export Declaration (the “SED”) for the cameras, and by signing the U.S. exporter’s name on the signature line of the SED without receiving the necessary information from the exporter.
2. *One Violation of 15 C.F.R. § 764.2(g) - False Statement:* On or about June 9, 2004, ACI filed or caused to be filed a Shipper’s Export Declaration (“SED”) with the U.S. Government that contained false statements of fact. Specifically, ACI filed or caused to be filed an SED that stated that the thermal imaging cameras qualified for export under NLR. This representation was false, as the thermal imaging cameras, classified under ECCN 6A003.b.4, required licenses for export to the UAE pursuant to Sections 742.4 and 742.6 of the Regulations.

WHEREAS, BIS and ACI 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:

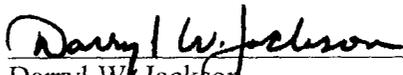
FIRST, that a civil penalty of \$11,000 is assessed against ACI, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

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, ACI 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 ACI. Accordingly, if ACI should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of ACI'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.


Darryl W. Jackson
Assistant Secretary of Commerce
for Export Enforcement

Entered this 30th day of November 2005.

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

In the Matter of:)
)
Air Cargo International)
725 Dowd Avenue)
Newark, New Jersey 07105)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Air Cargo International (“ACI”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005)) (“Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),²

¹ The violations charged occurred in 2004. The regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The 2005 Regulations govern the procedures that apply to this matter.

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 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.* 45273, August 5, 2005), has continued the Regulations in effect under IEEPA.

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

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

1. *One Violation of 15 C.F.R. § 764.2(b) - Causing, Aiding, or Abetting a Violation:*
On or about June 9, 2004, ACI aided and abetted the doing of an act prohibited by the Regulations. On that day, ACI aided and abetted the attempted unlicensed export of two thermal imaging cameras, classified under Export Control Classification Number (“ECCN”) 6A003.b.4, from the United States to an entity in the United Arab Emirates (the “UAE”) by completing a Shipper’s Export Declaration (the “SED”) for the cameras, and by signing the U.S. exporter’s name on the signature line of the SED without receiving the necessary information from the exporter.
2. *One Violation of 15 C.F.R. § 764.2(g) - False Statement:* On or about June 9, 2004, ACI filed or caused to be filed a Shipper’s Export Declaration (“SED”) with the U.S. Government that contained false statements of fact. Specifically, ACI filed or caused to be filed an SED that stated that the thermal imaging cameras qualified for export under NLR. This representation was false, as the thermal imaging cameras, classified under ECCN 6A003.b.4, required licenses for export to the UAE pursuant to Sections 742.4 and 742.6 of the Regulations.

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

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

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

- a. ACI shall be assessed a civil penalty in the amount of \$11,000 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 ACI. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of ACI'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, ACI 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 the proposed 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.

4. Upon entry of the Order and timely payment of the \$11,000 civil penalty, BIS will not initiate any further administrative proceeding against ACI 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 United States 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

AIR CARGO INTERNATIONAL



Michael D. Turner
Director
Office of Export Enforcement

Date: 11/2/05


~~Frank Della Pelle~~ DAVID PFEIL
President Vice President

Date: 10-19-05

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Air Cargo International
725 Dowd Avenue
Newark, New Jersey 07105

*Attention: Frank Della Pelle
President*

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Air Cargo International ("ACI") committed two violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that ACI committed the following violations:

Charge 1 15 C.F.R. § 764.2(b) - Causing, Aiding, or Abetting a Violation

On or about June 9, 2004, ACI aided and abetted the doing of an act prohibited by the Regulations. On that day, ACI aided and abetted the attempted unlicensed export of two thermal imaging cameras, classified under Export Control Classification Number ("ECCN") 6A003.b.4, from the United States to an entity in the United Arab Emirates (the "UAE") by completing a Shipper's Export Declaration (the "SED") for the cameras, and by signing the U.S. exporter's name on the signature line of the SED without receiving the necessary information from the exporter. In so doing, ACI committed one violation of Section 764.2(b) of the Regulations.

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The 2004 Regulations govern the violations at issue and set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401- 2420 (2000). 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., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 Fed. Reg. 48763 (August 10, 2004)), continues the Regulations in effect under IEEPA.

Charge 2 15 C.F.R. § 764.2(g) - False Statement

Charge 1 is incorporated herein by reference. On or about June 9, 2004, ACI filed or caused to be filed a Shipper's Export Declaration ("SED") with the U.S. Government that contained false statements of fact. Specifically, ACI filed or caused to be filed an SED that stated that the thermal imaging cameras qualifies for export under NLR. This representation was false, as the thermal imaging cameras, classified under ECCN 6A003.b.4, required licenses for export to the UAE pursuant to Sections 742.4 and 742.6 of the Regulations. In so doing, ACI committed one violation of Section 764.2(g) of the Regulations.

Accordingly, ACI is hereby notified that an administrative proceeding is instituted against it pursuant to 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 up \$11,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If ACI 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 ACI defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to ACI. *See id.* The Under Secretary for Industry and Security may then impose up to the maximum penalty on the charges in this letter. *See id.*

ACI 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. ACI 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 ACI have a proposal to settle this case, ACI 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, ACI's answer must be filed in accordance with the instructions set forth in Section 766.5(a) of the Regulations with:

³ *See* 15 C.F.R. § 6.4(a)(2).

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

In addition, a copy of ACI's answer must be served on BIS at the following address:

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

David Wolitz is the attorney representing BIS in this case. Any communications that ACI may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Acting Director
Office of Export Enforcement