

**DRAFT**



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Bureau of Industry and Security**  
Washington, D.C. 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Caliber, Inc.  
490 Main Street  
Middlefield, Connecticut 06455

*Attn: Austin Sheridan*  
*President*

Dear Mr. Sheridan:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that Caliber, Inc. ("Caliber") of Middlefield, Connecticut, has committed five violations of the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act").<sup>2</sup> Specifically, BIS charges that Caliber committed the following violations:

**Charges 1-2                    15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Exporting  
Items Without the Required Department of Commerce Licenses**

On or about November 13, 2001, and on or about May 17, 2002, Caliber exported 12 gauge shotguns with 28 inch barrel lengths, items subject to the Regulations (ECCN 0A984),<sup>3</sup> to Costa

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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 (2003). The violations charged occurred from 2001 to 2002. The Regulations governing the violations at issue are found in the 2001 to 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)). The Regulations define the violations that BIS alleges occurred and establish the procedures that apply to this matter.

<sup>2</sup> 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. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003), continues the Regulations in effect under IEEPA.

<sup>3</sup> The term "ECCN" refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. § 774.



Rica without obtaining the licenses required by Section 742.17 of the Regulations. In doing so, Caliber committed two violations of Section 764.2(a) of the Regulations.

**Charge 3                    15 C.F.R. § 764.2(c) - Solicitation and Attempt - Attempted Export of Items Without the Required Department of Commerce Licenses**

On or about December 6, 2002, Caliber attempted to export 12 gauge shotguns with 28 inch barrel lengths, items subject to the Regulations (ECCN 0A984), to Costa Rica without Department of Commerce licenses as required by 742.17 of the Regulations. In doing so, Caliber violated Section 764.2(c) of the Regulations.

**Charge 4                    15 C.F.R. § 764.2(g) - False or Misleading Representation of Fact - False Statement on Shipper's Export Declaration Concerning Authority to Export**

On or about December 6, 2002, Caliber filed or caused to be filed a Shipper's Export Declaration for the attempted export of shotguns referenced in Charge Three above that stated the shotguns qualified for export from the United States as NLR ("No License Required"). This representation was false because, as described above, a license was required to export these items. In doing so, Caliber violated Section 764.2(g) of the Regulations.

**Charge 5                    15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to Provide Required Information on Shipper's Export Declarations**

On or about December 6, 2002, Caliber filed or caused to be filed a Shipper's Export Declaration for the attempted export of shotguns referenced in Charge Three above that failed to show the ECCN as required by Section 758 of the Regulations. In failing to show information required by Section 758 of the Regulations, Caliber violated Section 764.2(a) of the Regulations.

Accordingly, Caliber 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 \$11,000 per violation;<sup>4</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

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<sup>4</sup> See 15 C.F.R. § 6.4(a)(2).

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

Caliber is further notified that it is entitled to an agency hearing on the record if Caliber files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Caliber 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 you have a proposal to settle this case, you or your representative should transmit it to me through 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, Caliber's answer must be filed in accordance with the instructions set forth 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 Caliber's answer must be served on BIS at the following address:

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

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

Sincerely,

Mark D. Menefee  
Director  
Office of Export Enforcement

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

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In the Matter of: )  
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Caliber, Inc. )  
490 Main Street )  
Middlefield, Connecticut 06455 )  
 )  
Respondent. )  
\_\_\_\_\_ )

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Caliber, Inc. (“Caliber”), and the Bureau of Industry and Security, United States 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 (2004)) (“Regulations”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup>

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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 (2004). The violations charged occurred from 2001 to 2002. The Regulations governing the violations at issue are found in the 2001 to 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)). The 2004 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 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 7, 2003 (3 C.F.R., 2003 Comp. 328 (2004)), has continued the Regulations in effect under the IEEPA.

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

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

1. *Two Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Exporting Items Without the Required Department of Commerce Licenses:* On or about November 13, 2001, and on or about May 17, 2002, Caliber exported 12 gauge shotguns with 28 inch barrel lengths, items subject to the Regulations (ECCN 0A984),<sup>3</sup> to Costa Rica without obtaining the licenses required by Section 742.17 of the Regulations.
2. *One Violation of 15 C.F.R. § 764.2(c) - Solicitation and Attempt - Attempted Export of Items Without the Required Department of Commerce License:* On or about December 6, 2002, Caliber attempted to export 12 gauge shotguns with 28 inch barrel lengths, items subject to the Regulations (ECCN 0A984), to Costa Rica without the Department of Commerce license as required by Section 742.17 of the Regulations.
3. *One Violation of 15 C.F.R. § 764.2(g) - False or Misleading Representation of Fact - False Statement on a Shipper's Export Declaration Concerning Authority to Export:* On or about December 6, 2002, Caliber filed or caused to be filed a

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<sup>3</sup> The term "ECCN" refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. § 774.

Shipper's Export Declaration for the attempted export of shotguns referenced in Paragraph Two above that stated the shotguns qualified for export from the United States as NLR ("No License Required"). This representation was false because, as described above, a license was required to export these items.

4. *One Violation of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to Provide Required Information on a Shipper's Export Declaration:* On or about December 6, 2002, Caliber filed or caused to be filed a Shipper's Export Declaration for the attempted export of shotguns referenced in Paragraph Two above that failed to show the ECCN as required by Section 758 of the Regulations.

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Caliber, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against Caliber in complete settlement of the violations of the Regulations set forth in the proposed charging letter:
  - a. Caliber shall be assessed a civil penalty in the amount of \$20,700, of which \$10,350 shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order; and the remaining \$10,350 shall be paid to the U.S. Department of Commerce within 180 days from 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, License Exception, permission, or privilege granted, or to be granted, to Caliber. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of Caliber'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, Caliber 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 \$20,700 civil penalty, BIS will not initiate any further administrative proceeding against Caliber 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.

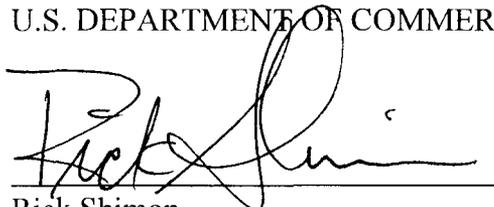
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any

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

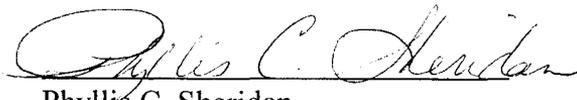


Rick Shimon  
Acting Director  
Office of Export Enforcement

**JUN 7 2004**

Date: \_\_\_\_\_

CALIBER, INC.



Phyllis C. Sheridan  
Secretary and Treasurer

Date: June 4, 2004

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

In the Matter of: )  
)  
Caliber, Inc. )  
490 Main Street )  
Middlefield, Connecticut 06455 )  
)  
Respondent. )  
)

ORDER RELATING TO CALIBER, INC.

The Bureau of Industry and Security, United States Department of Commerce (“BIS”) having notified Caliber, Inc. (“Caliber”) of its intention to initiate an administrative proceeding against Caliber pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2004)) (“Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup> based on the proposed charging letter issued to Caliber that alleged that Caliber committed five violations of the Regulations. Specifically, the charges are:

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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 (2004). The violations charged occurred from 2001 to 2002. The Regulations governing the violations at issue are found in the 2001 to 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)). The 2004 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 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 7, 2003 (3 C.F.R., 2003 Comp. 328 (2004)), has continued the Regulations in effect under the IEEPA.

1. *Two Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Exporting Items Without the Required Department of Commerce Licenses:* On or about November 13, 2001, and on or about May 17, 2002, Caliber exported 12 gauge shotguns with 28 inch barrel lengths, items subject to the Regulations (ECCN 0A984),<sup>3</sup> to Costa Rica without obtaining the licenses required by Section 742.17 of the Regulations.
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<sup>3</sup> The term "ECCN" refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. § 774.

4. *One Violation of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to Provide Required Information on a Shipper's Export Declaration:* On or about December 6, 2002, Caliber filed or caused to be filed a Shipper's Export Declaration for the attempted export of shotguns referenced in Paragraph Two above that failed to show the ECCN as required by Section 758 of the Regulations.

BIS and Caliber 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, that a civil penalty of \$20,700 is assessed against Caliber, of which \$10,350 shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order; and the remaining \$10,350 shall be paid to the U.S. Department of Commerce within 180 days from the entry of this Order. Payment shall be made in the manner specified in the attached instructions.

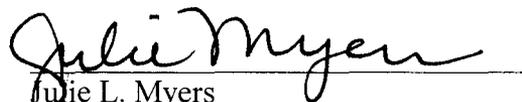
SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Caliber will be assessed, in addition 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 Caliber. Accordingly, if Caliber should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Caliber'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.

  
Julie L. Myers  
Assistant Secretary of Commerce  
for Export Enforcement

Entered this 24<sup>th</sup> day of June 2004.