

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

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In the Matter of)
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Alaris Medical Systems, Inc.)
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Case No. 97-17

ORDER

The Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce ("Department"), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 1998)) (the "Act")¹ and the Export Administration Regulations (currently codified at 15 C.F.R Parts 730-774 (1998))(the "Regulations"), against Alaris Medical Systems, Inc. ("Alaris"), a domestic concern resident in the State of California, based on allegations set forth in the Proposed Charging Letter, dated February 8, 1999, attached hereto and incorporated herein by this reference;

¹The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)) and August 13, 1998 (63 Fed. Reg. 44121, August 17, 1998), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

The Department and Alaris having entered into a Settlement Agreement, incorporated herein by this reference, whereby the parties have agreed to settle this matter; and

I, the Assistant Secretary for Export Enforcement, having approved the terms of the Settlement Agreement:

IT IS ORDERED THAT,

FIRST, a civil penalty of \$35,000 is assessed against Alaris;

SECOND, Alaris shall pay to the Department in complete settlement of this matter the sum of \$35,000 within thirty days of service upon it of this Order, as specified in the attached instructions.

THIRD, pursuant to the Debt Collections Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1998)), 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, Alaris will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

FOURTH, as authorized by Section 11(d) of the Act, the timely payment of the sum of \$35,000 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 Alaris. Accordingly, if Alaris should fail to pay the sum of \$35,000 in the manner prescribed by this Order, I will enter an Order under the authority of Section 11(d) of the Act denying all of Alaris' export privileges for a period of one year from the date of the entry of this Order; and

FIFTH, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public, and a copy of this Order shall be served upon Alaris.

This Order is effective immediately.



F. Amanda DeBusk
Assistant Secretary for Export Enforcement
Bureau of Export Administration

Entered this 14th day of June, 1999

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The checks should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The checks should be mailed to:

U.S. Department of Commerce
Bureau of Export Administration
Room 6881
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: Ms Zoraida Vazquez

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty and the rights, if any, that Alaris may have to seek review, both within the U.S. Department of Commerce and the courts. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1998)) and the Federal Claims Collection Standards (4 C.F.R. Parts 101-105 (1998)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed Alaris is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and Alaris will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The foregoing constitutes the initial written notice and demand to Alaris in accordance with Section 102.2(b) of the Federal Claims Collection Standards (4 C.F.R. § 102.2(b)).

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

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SETTLEMENT AGREEMENT

This agreement is made by and between Alaris Medical Systems, Inc. ("Alaris"), a domestic concern resident in the State of California, and the Office of Antiboycott Compliance, Bureau of Export Administration, United States Department of Commerce ("Department"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)) (the "Regulations"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 1998)) (the "Act").¹

¹The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)) and August 13, 1998 (63 Fed. Reg. 44121, August 17, 1998), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

WHEREAS, the Department has notified Alaris of its intention to initiate an administrative proceeding against Alaris pursuant to Section 11(c) of the Act by issuing the Proposed Charging Letter dated February 8, 1999, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, Alaris has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; Alaris fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and Alaris states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, Alaris neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Alaris agrees to be bound by the appropriate Order ("Order") when entered;

NOW, THEREFORE, Alaris and the Department agree as follows:

1. Under the Act and the Regulations, the Department has jurisdiction over Alaris with respect to the matters alleged in the Proposed Charging Letter.

2. The Department will impose a civil penalty on Alaris in the amount of \$35,000.
Alaris will pay to the Department, within 30 days of service upon it of the Order, when entered, the amount of \$35,000 in complete settlement of all matters set forth in the Proposed Charging Letter.
3. As authorized by Section 11(d) of the Act, timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Alaris. Failure to make payment of this amount shall result in the denial of all of Alaris' export privileges for a period of one year from the date of entry of the Order.
4. Subject to the approval of this Settlement Agreement, pursuant to paragraph 9 hereof, Alaris hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the Order, when entered) including, without limitation, any right to:
 - A. An administrative hearing regarding the allegations in the Proposed Charging Letter;
 - B. Request a refund of the funds paid by Alaris pursuant to this Settlement Agreement and the Order, when entered; or
 - C. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.

5. The Department, upon entry of the Order, will not subsequently initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against Alaris, with respect to any violation of Section 8 of the Act or Part 769 or redesignated Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by the Department in the course of its investigation.
6. Alaris understands that the Department will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the Order, when entered.
7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by Alaris that it has violated the Regulations or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary for Export Enforcement, the Department may not use this Settlement Agreement against Alaris in any administrative or judicial proceeding.
8. 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 Order, when entered, nor shall this Settlement Agreement 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 herein addressed.

9. This Settlement Agreement will become binding on the Department only when approved by the Assistant Secretary for Export Enforcement by entering the Order.

ALARIS MEDICAL SYSTEMS, INC.



Vice President

DATE: April 29, 1999

U.S. DEPARTMENT OF COMMERCE



Dexter M. Price
Director
Office of Antiboycott Compliance

DATE: May 7, 1999



PROPOSED CHARGING LETTER

February 8, 1999

Alaris Medical Systems, Inc.
10221 Wateridge Circle
San Diego, CA 92121

Attention: Mr. Grantland E. Bryce
Assistant General Counsel

Case No. 97-17

Gentlemen:

We have reason to believe and charge that you, Alaris Medical Systems, Inc., have committed sixteen violations of the Export Administration Regulations, currently codified at 15 C.F.R. Parts 730-774 (1998), (the "Regulations")¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998))(the "Act").²

We charge that you, on ten occasions, in violation of Section 769.6 of the former Regulations, failed to report to the Department your receipt of requests to engage in restrictive trade practices or boycotts.

We also charge that you, on six occasions, failed to maintain records containing information relating to reportable boycott requests for a three-year period after your

¹ The alleged violations occurred in 1993, 1994 and 1995. The Regulations governing the violations at issue are found in the 1993-1995 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993-1995)). Those Regulations define the violations that the Bureau of Export Administration alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations established the procedures that apply to the matters in this letter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (62 Fed. Reg. 43629 (August 15, 1997)) and August 13, 1998 (63 Fed. Reg. 44121, August 17, 1998), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).



receipt of the requests, as directed by Sections 769.6(b)(8) and 787.13(e) of the former Regulations.

We allege that:

1. You are a domestic concern incorporated in the State of Delaware and resident in the State of California and, as such, you are a United States person as defined in Section 760.1(b) of the Regulations.

2. You are the successor corporation to IMED Corporation, which, during the period December 1993 through December 1995, engaged in transactions involving the sale of goods from the United States to Kuwait, an activity in the interstate or foreign commerce of the United States as defined in Section 769.1(d) of the former Regulations.

3. In connection with the activities described in paragraph 2 above, IMED Corporation received requests to engage in restrictive trade practices or boycotts, described in Table A, which is attached and incorporated by this reference, which IMED failed to report to the Department as directed by Section 769.6 of the former Regulations. We therefore charge you with ten violations of Section 769.6.

4. On April 30, 1997, an official of the Department's Bureau of Export Administration's (BXA) Office of Antiboycott Compliance visited you and requested that you produce and make available for inspection the documents described in Table B, which is attached and incorporated by this reference. You failed to produce these six documents. Sections 769.(b) and 787.13 of the former Regulations required you to maintain these documents for a three year period after you received them. Accordingly, we charge you with six violations of Sections 769.6(b) and 787.13 of the former Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions.³

³ /Administrative sanctions may include any or all the following:

- a. A civil penalty of \$10,000 per violation (see § 764.3(a)(1) of the Regulations);
- b. Denial of export privileges (see § 764.3(a)(2) of the Regulations); and/or
- c. Exclusion from practice (see § 764.3(a)(3) of the Regulations).

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. You are entitled to be represented by counsel, and under Section 766.18 of the Regulations, to seek a settlement agreement.

If you fail to answer the allegations contained in this letter within thirty (30) days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

As provided in Section 766.3, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between The Bureau of Export Administration 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 matter set forth in this letter. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

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

Attention: Administrative Law Judge

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer should also be served on the Bureau of Export Administration at:

Office of the Chief Counsel for Export Administration
U.S. Department of Commerce
Room H-3839
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Sincerely,

Dexter M. Price, Director
Office of Antiboycott Compliance

TABLE A

Schedule of Alleged Violations of Section 769.6
Failure to Report Receipts of Boycott Requests

Alaris Medical Systems Case No. 97-17

Item Number	Letter of Credit or Purchase order Number	Date of Receipt [on or about]	Boycotting Country	Boycott Request [see Key]
No.1	13/1063	12/93	Kuwait	A
No.2	MS/I-B1159	12/93	Kuwait	A
No.3	746552	1/94	Kuwait	B
No.4	746918	4/94	Kuwait	B
No. 5	747799	1/95	Kuwait	B
No. 6	747877	2/95	Kuwait	B
No. 7	747920	3/95	Kuwait	B
No. 8	747969	3/95	Kuwait	B
No. 9	748403	8/95	Kuwait	B
No. 10	748540	10/95	Kuwait	B

KEY TO REPORTABLE REQUESTS:

A = "Kindly execute the order in accordance with the instructions of the Central Medical Stores Administration, Kuwait.

a) Importation of goods from the countries mentioned herein after is strictly prohibited by Kuwait Regulation therefore Certificate of Origin covering goods originated in the following countries are not accepted: (ISRAEL,).

B = "a) Importation of goods from Israel is strictly prohibited by Kuwait Import Regulations. Therefore, Certificate of Origin covering goods originated from said countries are not acceptable."

TABLE B

Schedule of Alleged Violations of Sections 787.13 and 769.6(b)
Record Keeping ViolationsAlaris Medical Systems Case No. 97-17

Item Number	Letter of Credit Number	Date of Receipt of Letter of Credit	Date Department Requested Inspection	Boycott Request [see key]
1	747799	1/95	4/30/97	A
2	747877	2/95	4/30/97	A
3	747920	3/95	4/30/97	A
4	747969	3/95	4/30/97	A
5	748403	8/95	4/30/97	A
6	748540	10/95	4/30/95	A

KEY TO BOYCOTT REQUEST:

A = "a) Importation of goods from Israel is strictly prohibited by Kuwait Import Regulations. Therefore, Certificate of Origin covering goods originated from said countries are not acceptable."