



NOV - 7 2001

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Eli Cohen  
23<sup>rd</sup> Halamed Hay Avenue  
Haifa 32202, Israel

Dear Mr. Cohen:

The Bureau of Export Administration, United States Department of Commerce ("BXA"), has reason to believe that Eli Cohen (Cohen) has violated 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> on one occasion. Specifically, BXA charges that Cohen committed the following violation:

**15 C.F.R. § 764.2(g) - Misrepresentation and Concealment of Facts - Making False and Misleading Representations and Concealing Material Facts**

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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 (2001). The violation charged occurred in 1996. The Regulations governing the violation at issue are found in the 1996 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996)). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, 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 Regulations define the violation that BXA alleges occurred in 1996, and establish the procedures that apply to this matter.

<sup>2</sup> 50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999). 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 then in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 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 (66 *Fed. Reg.* 44025, August 22, 2001), has continued the Regulations in effect under the IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bxa/>.



On or about August 30, 1995, BXA issued a validated export license that authorized the export of an infrared camera from the United States to Elbit Ltd.<sup>3</sup> ("Elbit") in Israel. The license included a condition that no resale, transfer, or reexport of the infrared camera could be effected without prior authorization from the U.S. Government. This condition appeared with all other conditions on an invoice generated by the U.S. exporter and accompanied the shipment of the infrared camera to Elbit. On or about September 8, 1996, Cohen represented to BXA employees that the infrared camera for which the validated export license had been issued was being used at Elbit in Israel and had not been resold, transferred, or otherwise reexported. In fact, Cohen knew that on or about October 12, 1995, Elbit had resold and transferred the infrared camera to another company in Israel without the prior U.S. Government approval required by the license. In so doing, Cohen committed one violation of Section 764.2(g) of the Regulations.

Accordingly, Cohen is hereby notified that an administrative proceeding is instituted against him 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 \$10,000 per violation:

Denial of export privileges; and/or

Exclusion from practice before BXA

If Cohen fails to answer the charge 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 Cohen defaults, the Administrative Law Judge may find the charge alleged in this letter are true without a hearing or further notice to Cohen. The Under Secretary for Export Administration may then impose up to the maximum penalty on the charge in this letter.

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

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<sup>3</sup> The export license application submitted to BXA and the license issued by BXA for the export of the infrared camera listed Elbit Systems, Ltd. as the ultimate consignee. The ultimate consignee of the infrared camera was in fact a company named Elbit, Ltd. While Elbit Systems, Ltd. is a corporation that was created as part of a demerger of Elbit, Ltd. in 1996, it was not an operating corporation at the time the current violation occurred and Elbit Systems, Ltd. is not a relevant corporate entity regarding this matter.

Eli Cohen  
Charging Letter  
Page 3

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

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Cohen's answer must be filed in accordance with the instructions set forth in Section 766.5(a) of the Regulations with:

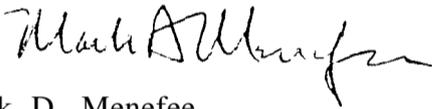
U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street, Baltimore, Maryland 21202-4022

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

Chief Counsel for Export Administration  
Attention: David C. Recker  
Room H-3 839  
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 BXA 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) 482-5304.

Sincerely,



Mark D. Menefee  
Director  
Office of Export Enforcement

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

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In the Matter of: )

Docket No.: OO-BXA-07

ELI COHEN, )  
23<sup>rd</sup> Halamad Hay Avenue )  
Haifa 32202, Israel, )

Respondent )

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SETTLEMENT AGREEMENT BETWEEN ELI COHEN AND THE  
BUREAU OF EXPORT ADMINISTRATION

This Settlement Agreement is made by and between Eli Cohen (“Cohen”) and the Bureau of Export Administration, United States Department of Commerce (“BXA”), pursuant to Section 766.18(b) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2001)) (the “Regulations”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (the “Act”),<sup>2</sup> and which are currently

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<sup>1</sup> The violation charged occurred in September of 1996. The Regulations governing the violation at issue are found in the 1996 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996)). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, 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 Regulations define the violation that BXA alleges occurred in 1996, and 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

maintained in force under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (1994 & Supp. V 1999)).

WHEREAS, BXA has initiated an administrative proceeding against Cohen pursuant to the Regulations, based on allegations that on or about September 8, 1996, Cohen provided a false and misleading representation or statement of material fact directly to BXA and concealed material facts from BXA in connection with an improper transfer of an infrared camera, an item subject to the Regulations, in Israel, in violation of Section 764.2(g) of the Regulations.

WHEREAS, Cohen has received notice of issuance of the charging letter pursuant to section 766.3(b) of the Regulations;

WHEREAS, Cohen has reviewed the charging letter and is aware of the allegations made against him and the administrative sanctions which could be imposed against him if the allegations are found to be true;

WHEREAS, Cohen fully understands the terms of this Settlement Agreement and the appropriate Order that will be issued to give effect to this Settlement Agreement ("Order"), Cohen enters into this Settlement Agreement voluntarily and with full knowledge of his rights;

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

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U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 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 (66 *Fed. Reg.* 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

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

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

WHEREAS, Cohen agrees to be bound by the Order, when entered;

NOW THEREFORE, Cohen and BXA agree as follows:

1. BXA has jurisdiction over Cohen under the Regulations, in connection with the matters alleged in the charging letter.

2. The following sanctions shall be imposed against Cohen in complete settlement of the alleged violations set forth in the charging letter:

- a. Cohen shall be assessed a civil penalty in the amount of \$10,000, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.
- b. For a period of five years from the date of the Order, Cohen, and, when acting for or on behalf of Cohen, his representatives, agents, assigns, and employees (“denied person”) may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- i. Applying for, obtaining, or using any license, license exception, or export control document;
- ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- iii. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

3. Subject to the approval of this Settlement Agreement pursuant to paragraph eight hereof, Cohen hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the Order, when entered), including, without limitation, any right: (a) to an administrative hearing regarding the allegations in the charging letter; (b) to request a refund of any civil penalty paid pursuant to this Settlement Agreement and the Order, when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the Order, when entered.

4. BXA agrees that, upon entry of the Order, it will not initiate any administrative proceeding against Cohen in connection with any violation of the Regulations arising out the transaction identified in the charging letter.

5. Cohen understands that BXA will make the charging letter, this Settlement Agreement, and the Order, when entered, available to the public.

6. BXA and Cohen agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and the Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(b) of the Regulations, BXA and Cohen agree that neither may 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 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 Agreement shall become binding on BXA only when the Assistant Secretary 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.

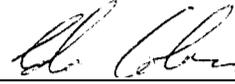
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF EXPORT ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE

ELI COHEN



Karan Bhatia  
Chief Counsel  
Office of Chief Counsel for  
Export Administration



Eli Cohen

Date: 1/30/02

Date: 1/13/01

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

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In the Matter of	)	
	)	Docket No.: OO-BXA-07
ELI COHEN,	)	
23 <sup>rd</sup> Halamad Hay Avenue	)	
Haifa 32202, Israel,	)	
	)	
Respondent	)	

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ORDER RELATING TO RESPONDENT. ELI COHEN

The Bureau of Export Administration, United States Department of Commerce (“BXA”), having initiated an administrative proceeding against Eli Cohen (“Cohen”) pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1991 & Supp. V 1999)) (the “Act”),<sup>1</sup> and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2001)) (the “Regulations”),<sup>2</sup> based on allegations that

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<sup>1</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which was 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. §91701 - 1706 (1994 & Supp. V 1999)) (“IEEPA”). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 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 (66 *Fed. Reg.* 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

<sup>2</sup> The violation charged occurred in 1996. The Regulations governing the violation at issue are found in the 1996 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996)). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25, 1996 *Federal Register* publication

on or about September 8, 1996, Cohen provided a false and misleading representation or statement of material fact directly to BXA and concealed material facts from BXA in connection with an improper transfer of an infrared camera, an item subject to the Regulations, in Israel, in violation of Section 764.2(g) of the Regulations.

BXA and Cohen having entered into a Settlement Agreement pursuant to Section 766.18(b) 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 \$10,000 is assessed against Cohen 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 (1983 & Supp. V 1999)), 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, Cohen will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

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restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The Regulations define the violation that BXA alleges occurred in 1996, and establish the procedures that apply to this matter.

THIRD, that, for a period of five years from the date of this Order, Cohen, and when acting for or on behalf of Cohen, his representatives, agents, assigns, and employees (“denied persons”), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, license exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the

Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control:

- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

FIFTH, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Cohen by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

SIXTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

SEVENTH, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202-4022, notifying that office that this case is withdrawn from adjudication, as provided by Section 766.18(b) of the Regulations.

EIGHTH, that, the 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.



Michael J. Garcia  
Assistant Secretary  
for Export Enforcement

Entered this 30<sup>th</sup> day of January, 2002.