

Proposed Charging Letter

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Lufthansa German Airlines  
c/o Lufthansa Cargo AG  
3400 Peachtree Road, NE  
Suite 1200  
Atlanta, GA 30326

Attn: Klaus Holler  
Vice President, The Americas

Dear Mr. Holler:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that Lufthansa Cargo AG of Boston, Massachusetts, ("Lufthansa Cargo") has committed three 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> BIS believes that Lufthansa German Airlines ("Lufthansa Airlines"), as owner of Lufthansa Cargo, is liable for the violations. Specifically, BIS charges that Lufthansa Cargo committed the following violations:

---

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2005). The charged violations occurred in 1999. The Regulations governing the violations at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2005 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 6, 2004, (69 *Fed. Reg.* 48763 (August 10, 2004)), has continued the Regulations in effect under IEEPA.

**Charge 1      15 C.F.R. § 764.2(b) - Aiding and Abetting an unlicensed export to a Entity List organization**

On or about January 6 1999, Lufthansa Cargo aided and abetted the doing of an act prohibited by the Regulations by forwarding a shipment of Cobalt-57, an item subject to the Regulations, to the Department of Atomic Energy, Directorate of Purchase and Stores, in India ("DAE") that did not have the Department of Commerce license required by Section 744.11 of the Regulations. At all times relevant hereto, DAE was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations ("Entity List"). In doing so, Lufthansa Cargo committed one violation of Section 764.2(b) of the Regulations.

**Charge 2      15 C.F.R. §764.2(b) Aiding and Abetting an Attempted Unlicensed Export to a Entity List Organization**

On or about January 15, 1999, Lufthansa Cargo aided and abetted the doing of an act prohibited by the Regulations by attempting to forward a shipment of Cobalt-57, iron foil, and potassium ferrocyanide, items subject to the Regulations, to DAE without the Department of Commerce license required by Section 744.11 of the Regulations. At all times relevant hereto, DAE was an organization listed on the Entity List. In doing so, Lufthansa Cargo committed one violation of Section 764.2(b) of the Regulations.

**Charge 3      15 C.F.R. § 764.2(e) - Transporting or Storing items to be Exported to an Entity List Organization with Knowledge that a Violation of the Regulations Would Occur.**

On or about January 16, 1999, in connection with the transaction referenced in Charge 2, Lufthansa Cargo transported or stored Cobalt-57, iron foil, and potassium ferrocyanide, items subject to the Regulations, with knowledge that violations of the Regulations were about to occur. At all times relevant hereto, Lufthansa Cargo knew or should have known that a Department of Commerce license was required to export the items to DAE and that the required licenses would not be obtained. In doing so, Lufthansa Cargo committed one violation of Section 764.2(e) of the Regulations.

Accordingly, Lufthansa Airlines 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>3</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Lufthansa Airlines 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 Lufthansa Airlines defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Lufthansa Airlines. *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.*

Lufthansa Airlines 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. Lufthansa Airlines 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 Lufthansa Airlines have a proposal to settle this case, Lufthansa Airlines or its 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, Lufthansa Airlines' 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 Lufthansa Airlines' answer must be served on BIS at the following address:

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

---

<sup>3</sup> *See* 15 C.F.R. § 6.4(a)(2).

Lufthansa  
Proposed Charging Letter  
Page 3 of 3

Melissa B. Mannino is the attorney representing BIS in this case. Any communications that you may wish to have concerning this matter should occur through her. She may be contacted by telephone at (202) 482-5301.

Sincerely,

Michael D. Turner  
Director  
Office of Export Enforcement

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

.....  
In the Matter of: )  
 )  
Lufthansa German Airlines )  
c/o Lufthansa Cargo AG )  
3400 Peachtree Road, NE )  
Suite 1200 )  
Atlanta, GA 30326 )  
 )  
..... Respondent )

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Lufthansa German Airlines ("Lufthansa Airlines"), owner of Lufthansa Cargo AG ("Lufthansa Cargo"), 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"),<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>

.....  
<sup>1</sup> The charged violations occurred in 1999. The Regulations governing the violations at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2005 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 6, 2004, (69 *Fed. Reg.* 48763 (August 10, 2004)), has continued the Regulations in effect under IEEPA.

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

WHEREAS, BIS has issued a proposed charging letter to Lufthansa Airlines that alleged that Lufthansa Cargo committed three violations of the Regulations, specifically:

1. *One Violation of - 15 C.F.R. § 764.2(b) Aiding and Abetting an unlicensed export to a Entity List organization:* On or about January 6, 1999, Lufthansa Cargo aided and abetted the doing of an act prohibited by the Regulations by forwarding a shipment of Cobalt-57, an item subject to the Regulations, to the Department of Atomic Energy, Directorate of Purchase and Stores, in India ("DAE") that did not have the Department of Commerce license required by Section 744.11 of the Regulations. At all times relevant hereto, DAE was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations ("Entity List").
2. *One Violation of 15 C.F.R. §764.2(b) Aiding and Abetting an Attempted Unlicensed Export to a Entity List Organization:* On or about January 15, 1999, Lufthansa Cargo aided and abetted the doing of an act prohibited by the Regulations by attempting to forward a shipment of Cobalt-57, iron foil, and potassium ferrocyanide, items subject to the Regulations, to DAE without the Department of Commerce license required by Section 744.11 of the Regulations. At all times relevant hereto, DAE was an organization listed on the Entity List.
3. *One Violation of 15 C.F.R. § 764.2(e) - Transporting or Storing items to be Exported to an Entity List Organization with Knowledge that a Violation of the*

*Regulations Would Occur:* On or about January 15, 1999, in connection with the attempted export to DAE, Lufthansa Cargo transported or stored Cobalt-57, iron foil, and potassium ferrocyanide, items subject to the Regulations, with knowledge that a violation of the Regulations was about to occur. At all times relevant hereto, Lufthansa Cargo knew or should have known that a Department of Commerce license was required to export the items to DAE and that the required license would not be obtained.

WHEREAS, Lufthansa Airlines has reviewed the proposed charging letter and is aware of the allegations made against Lufthansa Cargo and the administrative sanctions which could be imposed against it if the allegations are found to be true;

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

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

2. The following sanction shall be imposed against Lufthansa Airlines in complete settlement of the violations of the Regulations committed by Lufthansa Cargo set forth in the proposed charging letter:

- a. Lufthansa Airlines shall be assessed a civil penalty in the amount of \$18,000 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 Lufthansa Airlines. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of Lufthansa Airlines'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, Lufthansa Airlines 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 \$18,000 civil penalty, BIS will not initiate any further administrative proceeding against Lufthansa Airlines 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.

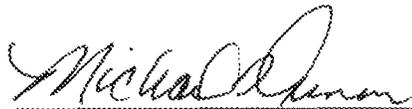
6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial 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



Michael D. Turner  
Director  
Office of Export Enforcement

Date: 06/08/2005

LUFTHANSA GERMAN AIRLINES



Anthony Santangelo  
House Counsel N.A.

Date: 5/31/05

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

.....  
In the Matter of: )  
 )  
Lufthansa German Airlines )  
c/o Lufthansa Cargo AG )  
3400 Peachtree Road, NE )  
Suite 1200 )  
Atlanta, GA 30326 )  
 )  
..... Respondent )

ORDER RELATING TO LUFTHANSA GERMAN AIRLINES

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) having notified Lufthansa German Airlines (“Lufthansa Airlines”), owner of Lufthansa Cargo AG (“Lufthansa Cargo”), of its intention to initiate an administrative proceeding against Lufthansa Airlines pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005)) (“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> by issuing a proposed charging letter to Lufthansa Airlines that alleged that Lufthansa Cargo, committed three violations of the Regulations. Specifically, the charges are:

.....  
<sup>1</sup> The charged violations occurred in 1999. The Regulations governing the violations at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2005 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 6, 2004, (69 *Fed. Reg.* 48763 (August 10, 2004)), has continued the Regulations in effect under IEEPA.

1. *One Violation of - 15 C.F.R. § 764.2(b) Aiding and Abetting an unlicensed export to a Entity List organization:* On or about January 6, 1999, Lufthansa Cargo aided and abetted the doing of an act prohibited by the Regulations by forwarding a shipment of Cobalt-57, an item subject to the Regulations, to the Department of Atomic Energy, Directorate of Purchase and Stores, in India ("DAE") that did not have the Department of Commerce license required by Section 744.11 of the Regulations. At all times relevant hereto, DAE was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations ("Entity List").
2. *One Violation of 15 C.F.R. §764.2(b) Aiding and Abetting an Attempted Unlicensed Export to a Entity List Organization:* On or about January 15, 1999, Lufthansa Cargo aided and abetted the doing of an act prohibited by the Regulations by attempting to forward a shipment of Cobalt-57, iron foil, and potassium ferrocyanide, items subject to the Regulations, to DAE without the Department of Commerce license required by Section 744.11 of the Regulations. At all times relevant hereto, DAE was an organization listed on the Entity List.
3. *One Violation of 15 C.F.R. § 764.2(e) - Transporting or Storing items to be Exported to an Entity List Organization with Knowledge that a Violation of the Regulations Would Occur:* On or about January 15, 1999, in connection with the attempted export to DAE, Lufthansa Cargo transported or stored Cobalt-57, iron foil, and potassium ferrocyanide, items subject to the Regulations, with knowledge that a violation of the Regulations was about to occur. At all times relevant hereto, Lufthansa Cargo knew or should have known that a Department

of Commerce license was required to export the items to DAE and that the required license would not be obtained.

WHEREAS, BIS and Lufthansa Airlines 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 \$18,000 is assessed against Lufthansa Airlines, 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, Lufthansa Airlines 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 Lufthansa Airlines. Accordingly, if Lufthansa Airlines should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Lufthansa Airlines'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.

Wendy L. Wysong  
Wendy L. Wysong  
Acting Assistant Secretary of Commerce  
for Export Enforcement

Entered this 13th day of June 2005.