

UNITED STATES DEPARTMENT OF COMMERCE
UNDER SECRETARY FOR INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

| | | |
|--------------------------|---|-----------|
| _____ |) | |
| In the Matter of: |) | |
| |) | |
| Suburban Guns (Pty) Ltd. |) | |
| 119 Main Road |) | 05-BIS-02 |
| Plumstead 7800 |) | |
| Cape Town, South Africa |) | |
| |) | |
| _____ |) | |
| Respondent. |) | |

DECISION AND ORDER

This matter is before me upon a Recommended Decision and Order of an Administrative Law Judge (“ALJ”), as further described below.

In a charging letter filed on January 28, 2005, the Bureau of Industry and Security (“BIS”) alleged that respondent Suburban Guns (Pty) Ltd. (“Suburban Guns”) committed four violations of the Export Administration Regulations (the “Regulations”)¹, issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”);² Specifically, BIS alleged that Suburban Guns committed two

¹ The charged violations occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2000). The 2005 Regulations establish 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 by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) 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)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2005 (70 Fed. Reg. 45273, Aug. 5, 2005), has continued the Regulations in effect under IEEPA.

violations of Section 764.2(a) and two violations of Section 764.2(e) of the Regulations. The charging letter alleged that, in violation of a denial of export privileges imposed against it by BIS on April 1, 1998,³ Suburban Guns placed two orders with U.S. companies for shotgun screw chokes, choke tubes, and barrels, which are classified under Export Control Classification Number (“ECCN”) 0A984, and for other shotgun accessories, which are designated as EAR99 items⁴ The charging letter further alleged that Suburban Guns committed these acts in violation of the Denial Order imposed against it with knowledge that a violations of an Order issued under the Act and the Regulations would occur.

BIS’s charging letter was served by certified mail on Suburban Guns on January 28, 2005, and received on or about February 10, 2005. Suburban Guns did not file an answer to BIS’s charging letter with the ALJ.

On August 4, 2005, BIS filed a Motion for Default with the ALJ, recommending that Suburban Guns be denied export privileges for a period of five years, beginning on July 25, 2007 when its current Denial Order expires, and that Suburban Guns be required to pay a \$44,000 penalty. Thereafter, on September 21, 2005, based on the record before it, the ALJ issued a Recommended Decision and Order in which he found that Suburban Guns committed four violations of the Regulations and recommended the penalty proposed by BIS – denial of Suburban Guns’ export privileges for five years, beginning on July 25, 2007, and imposition of a \$44,000 penalty against Suburban Guns.

³ *Action Affecting Export Privileges; Suburban Guns (Pty) Ltd.*, 63, Fed. Reg. 15,828 (Apr. 1, 1998).

⁴ EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law regarding the liability of Suburban Guns for the above-referenced charges. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations and the importance of preventing future unauthorized exports. Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the ALJ's Recommended Decision and Order.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that a civil penalty of \$44,000 is assessed against Suburban Guns, 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, Suburban Guns 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 Suburban Guns. Accordingly, if Suburban Guns should fail to pay the civil penalty in a timely manner, the

undersigned may enter an Order denying all of Suburban Guns' export privileges for a period of one year from the date of entry of this Order.

FOURTH, that, for a period of five years from July 25, 2007, the date of expiration of the Denial Order imposed against Suburban Guns in *Action Affecting Export Privileges; Suburban Guns (Pty) Ltd.*, 63, Fed. Reg. 15,828 (Apr. 1, 1998), Suburban Guns (Pty) Ltd. 119 Main Road, P.O. Box 30, Plumstead 7800, Cape Town, South Africa, and all of its successors or assigns, and, when acting for or on behalf of Suburban Guns, its officers, representatives, agents, and employees ("Denied Person"), 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. Benefiting 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.

FIFTH, 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 that 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.

SIXTH, 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 the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

SEVENTH, that this Order does not prohibit any export, re-export 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.

EIGHTH, that this Order shall be served on the Respondent and on BIS, and shall be published in the *Federal Register*. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the *Federal Register*.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the *Federal Register*.

Dated: 10.20.05



David H. McCormick
Under Secretary for Industry and Security

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

| | | |
|--------------------------|---|----------------------|
| In the Matter of: |) | Docket No. 05-BIS-02 |
| Suburban Guns (Pty) Ltd. |) | |
| 119 Main Road |) | |
| P.O. Box 30 |) | |
| Plumstead 7800 |) | |
| Cape Town, South Africa |) | |
| Respondent |) | |

RECOMMENDED DECISION AND ORDER

On January 28, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (hereinafter, "BIS"), issued a charging letter initiating this administrative enforcement proceeding against Suburban Guns (Pty) Ltd. The charging letter alleged that Suburban Guns (Pty) Ltd. committed four (4) violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-74 (2005)) ("the Regulations"),¹ issued under the Export Administration Act of 1979, as amended.²

¹ The charged violations occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 C.F.R. Parts 730-74 (2000)). The 2005 Regulations establish the procedures that apply to this matter.

² Sections 50 U.S.C. §§ 2401-2420 (2000) (hereinafter, "the Act"). 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 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. §§ 1701-06 (2000)) (hereinafter, "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. 45,273 (August 5, 2005)), has continued the Regulations in effect under IEEPA.

Specifically, the charging letter alleged that Suburban Guns (Pty) Ltd. violated the Denial Order imposed against it by placing an order on or about February 2, 2000, with a U.S. company for shotgun screw chokes, choke tubes, and other accessories, which were exported to Suburban Guns (Pty) Ltd. on or about March 1, 2000 (Charge 1). The charging letter also alleged that Suburban Guns (Pty) Ltd. violated its Denial Order by placing an additional order on or about March 29, 2000, with a U.S. company for shotgun barrels and screw chokes, which were exported to Suburban Guns (Pty) Ltd. on or about March 30, 2000 (Charge 3). Pursuant to the Denial Order imposed against it, Suburban Guns (Pty) Ltd. was prohibited from participating in any transaction involving any item subject to the Regulations that was exported or to be exported from the United States. *See Action Affecting Export Privileges; Suburban Guns (Pty) Ltd.*, 63 Fed. Reg. 15828 (Apr. 1, 1998). The BIS charging letter also alleged that, in both exports described above, Suburban Guns (Pty) Ltd. ordered and purchased the items with knowledge that violations of an Order issued under the Act and the Regulations would occur (Charges 2 and 4).

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address. In accordance with the Regulations, on January 28, 2005, BIS mailed the notice of issuance of a charging letter by certified mail to Suburban Guns (Pty) Ltd. at: Suburban Guns (Pty) Ltd. 119 Main Road, P.O. Box 30, Plumstead 7800, Cape Town, South Africa. BIS has submitted evidence that establishes that this charging letter was received by Suburban

Guns (Pty) Ltd. on or about February 10, 2005. These actions constitute service under the Regulations.

Section 766.6(a) of the Regulations provides, in pertinent part, that “[t]he respondent must answer the charging letter within thirty (30) days after being served with notice of issuance of the charging letter” initiating the administrative enforcement proceeding. To date, Suburban Guns (Pty) Ltd. has not filed an answer to the charging letter.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I find the facts to be as alleged in the charging letter, and hereby determine that those facts establish that Suburban Guns (Pty) Ltd. committed two violations of Section 764.2(e), one violation of Section 764.2(g), and two violations of Section 764.2(k) of the Regulations.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (1) a monetary penalty; (2) suspension from practice before the Department of Commerce; and (3) denial of export privileges under the Regulations. *See* 15 C.F.R. § 764.3 (2005). Because Suburban Guns (Pty) Ltd. knowingly violated the Regulations by violating the Denial Order imposed against it, BIS requests that I recommend to the Undersecretary of Commerce for Industry and Security³ that Suburban Guns (Pty) Ltd.’s export privileges be denied for five (5) years, beginning on July 25, 2007, when its current Denial Order, issued pursuant

³ Pursuant to Section 13(c)(1) of the Export Administration Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary’s action is the final decision for the U.S. Commerce Department.

field parts from an equipment manufacturer located in the United States without authorization and with knowledge that a violation would occur). A five (5) year denial of Suburban Guns (Pty) Ltd.'s export privileges is warranted because Suburban Guns (Pty) Ltd.'s violations, like those of the defendants in the above-cited case, were deliberate acts in violation of an order denying export privileges.

RECOMMENDED ORDER

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the respondent, as provided in Section 766.7 of the Regulations.

Within thirty (30) days after receipt of this Recommended Decision and Order, the Under Secretary will issue a written order affirming, modifying or vacating the Recommended Decision and Order. *See* 15 C.F.R. § 766.22(c).

Done and dated this 21st day of September, 2005
New York, NY



Walter J. Brudzinski
Administrative Law Judge
U.S. Coast Guard

Certificate of Service

I hereby certify that I have served the foregoing RECOMMENDED DECISION & ORDER by Federal Express to the following persons:

Under Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
Room H-3839
14th & Constitution Avenue, N.W.
Washington, D.C. 20230
Phone: 202-482-5301

ALJ Docketing Center, Baltimore
40 S. Gay Street, Room 412
Baltimore, Maryland 21202-4022
Phone: 410-962-7434

Done and dated this 21st day of September, 2005
New York, NY



Regina V. Thompson
Paralegal Specialist, Assistant to the
Administrative Law Judge

COPY



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

JAN 28 2005

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Suburban Guns (Pty) Ltd.
119 Main Road
P.O. Box 30
Plumstead 7800
Cape Town, South Africa

Attention: *Phaedon Nicholas Criton Constan-Tatos*
(a.k.a. Fred Tatos)
Managing Director

RECEIVED
FRONT DESK
2005 JAN 31 P 3:22
ALBANY, MARYLAND

Dear Mr. Constan-Tatos:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Suburban Guns (Pty) Ltd. of Cape Town, South Africa, has committed four 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 Suburban Guns (Pty) Ltd. committed the following violations:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The violations charged occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000)). The 2004 Regulations govern the procedural aspects of this case.

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 was 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. The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.



Charge 1 (15 C.F.R. § 764.2(k) - Acting Contrary to the Terms of a Denial Order)

From on or about February 2, 2000 through on or about March 1, 2000, Suburban Guns (Pty) Ltd. took action prohibited by a U.S. Commerce Department Denial Order imposed against Suburban Guns (Pty) Ltd. *See Action Affecting Export Privileges; Suburban Guns (PTY) Ltd.*, 63 Fed. Reg. 15828 (Apr. 1, 1998). This Denial Order prohibited Suburban Guns (Pty) Ltd., until July 25, 2007, from participating in any transaction involving any item exported or to be exported from the United States that is subject to the Regulations. On or about February 2, 2000, Suburban Guns (Pty) Ltd. placed an order with a U.S. company in Houston, Texas for shotgun screw chokes and choke tubes, which are classified under Export Control Classification Number ("ECCN") 0A984, and other shotgun accessories, which are designated as EAR99 items³ (collectively referred to hereinafter as "shotgun parts and accessories"). These items were exported to Suburban Guns (Pty) Ltd. in South Africa on or about March 1, 2000. In so doing, Suburban Guns (Pty) Ltd. committed one violation of Section 764.2(k) of the Regulations.

Charge 2 (15 C.F.R. § 764.2(e) - Acting with Knowledge of a Violation)

From on or about February 2, 2000 through on or about March 1, 2000, in connection with the transaction described in Charge 1, above, Suburban Guns (Pty) Ltd. bought shotgun parts and accessories that were exported from the United States with knowledge that a violation of an Order issued under the Act and the Regulations would occur. Specifically, Suburban Guns (Pty) Ltd. had knowledge that a violation of the Denial Order would occur because Suburban Guns (Pty) Ltd. appealed the Denial Order imposed against it in 1998. In so doing, Suburban Guns (Pty) Ltd. committed one violation of Section 764.2(e) of the Regulations.

Charge 3 (15 C.F.R. § 764.2(k) - Acting Contrary to the Terms of a Denial Order)

From on or about March 29, 2000 through on or about March 30, 2000, Suburban Guns (Pty) Ltd. took action prohibited by a U.S. Commerce Department Denial Order imposed against Suburban Guns (Pty) Ltd. *See Action Affecting Export Privileges; Suburban Guns (PTY) Ltd.*, 63 Fed. Reg. 15828 (Apr. 1, 1998). This Denial Order prohibited Suburban Guns (Pty) Ltd., until July 25, 2007, from participating in any transaction involving any item exported or to be exported from the United States that is subject to the Regulations. On or about March 29, 2000,

³ EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List.

Suburban Guns (Pty) Ltd. placed an order with a U.S. company in Houston, Texas for shotgun barrels and screw chokes, which are classified under ECCN 0A984. These items were exported to Suburban Guns (Pty) Ltd. in South Africa on or about March 30, 2000. In so doing, Suburban Guns (Pty) Ltd. committed one violation of Section 764.2(k) of the Regulations.

Charge 4 (15 C.F.R. § 764.2(e) - Acting with Knowledge of a Violation)

From on or about March 29 through on or about March 30, 2000, in connection with the transaction described in Charge 3, above, Suburban Guns bought shotgun barrels and screw chokes that were exported from the United States with knowledge a violation of an Order issued under the Act and the Regulations would occur. Specifically, Suburban Guns (Pty) Ltd. had knowledge that a violation of the Denial Order would occur because Suburban Guns (Pty) Ltd. appealed the Denial Order imposed against it in 1998. In so doing, Suburban Guns (Pty) Ltd. committed one violation of Section 764.2(e) of the Regulations.

* * * * *

Accordingly, Suburban Guns (Pty) Ltd. is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and 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 to \$11,000 per violation;⁴

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Suburban Guns (Pty) Ltd. 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. (Regulations, Sections 766.6 and 766.7). If Suburban Guns (Pty) Ltd. defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Suburban Guns (Pty) Ltd. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

⁴ See 15 C.F.R. § 6.4(a)(1) (2000).

Suburban Guns (Pty) Ltd.
Charging Letter
Page 4

Suburban Guns (Pty) Ltd. is further notified that it is entitled to an agency hearing on the record if Suburban Guns (Pty) Ltd. files a written demand for one with its answer. (Regulations, Section 766.6). Suburban Guns (Pty) Ltd. is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Suburban Guns (Pty) Ltd. have a proposal to settle this case, it or its representative should transmit it 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, Suburban Guns (Pty) Ltd.'s answer must be filed in accordance with the instructions 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 Suburban Guns (Pty) Ltd.'s answer must be served on BIS at the following address:

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

Suburban Guns (Pty) Ltd.
Charging Letter
Page 5

Thea D. R. Kendler is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through her. Ms. Kendler may be contacted by telephone at (202) 482-5301.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Shimon". The signature is stylized with large, overlapping loops and a long horizontal tail.

Rick Shimon
Acting Director
Office of Export Enforcement