

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

In the Matter of:

Area S.p.A.
MXP Business Park
Via Gabriele D'Annunzio 2 21010 Vizzola Ticino
(VA) Italy

Respondent

ORDER RELATING TO AREA S.p.A.

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has notified Area S.p.A. of Italy ("Area"), of its intention to initiate an administrative proceeding against Area pursuant to Section 766.3 of the Export Administration Regulations (the "Regulations"),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the "Act"),² through the issuance of a Proposed Charging Letter to Area that alleges that Area committed one violation of the Regulations. Specifically, the charge is:

Charge 1: 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation

On or about September 3, 2011, Area transferred and transported items subject to the Regulations to Syria with knowledge that a violation of the Regulations would occur in connection with the items. Specifically, Area transferred and transported to the Syrian

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2014). The charged violation occurred in 2011. The Regulations governing the violations at issue are found in the 2011 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2011)). The 2014 Regulations establish the procedures that currently apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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 7, 2014 (79 Fed. Reg. 46,959 (Aug. 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701 (2006 & Supp. IV 2010)).

Telecommunications Establishment in Syria U.S.-origin network performance monitoring items and related U.S.-origin equipment without the required U.S. Government authorization. The items, ordered by Area from a company located in the United States, were valued at approximately \$139,694. Area ordered the items to monitor and test foreign-origin systems that Area sold to the Syrian Telecommunications Establishment, an entity affiliated with the Government of Syria, and was in the process of installing the items for them to use. Once the items were exported at Area's direction from the United States to Italy, the items were hand-carried by an Area technician on a September 3, 2011 flight from Italy to Syria. In Syria, the Area technician installed the items for the Syrian Telecommunications Establishment and provided training for the Syrian Telecommunications Establishment. The monitoring equipment is classified under Export Control Classification Number ("ECCN") 5A002.a.1, and the related equipment is designated as EAR99.

With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a Department of Commerce license, as set forth at all times pertinent hereto in General Order No. 2 in Supplement No. 1 to Part 736 of the Regulations.³

Area had knowledge that U.S. Government authorization was required for the transfer and transport of items subject to the Regulations to Syria, an embargoed destination, because, *inter alia*, in 2010, Area was told about the Regulations by a U.S. manufacturer of U.S.-origin computer equipment essential to a foreign origin central monitoring system capable of collecting data (web surfing, e-mails, online chatting, and voice over internet protocol (or VOIP)), which Area sold and delivered to the Syrian Telecommunications Establishment. Specifically Area was told that the computer equipment was "subject to export control regulation under the laws of the United States.... including, but not limited to those governing use, export, re-export (to embargoed countries and entities) and transfer." In addition, the company told Area that "[i]nformation on restricted countries and other United States export control regulations can be found in the U.S. Department of Commerce website: <http://www.bis.doc.gov>."

More recently, the U.S. manufacturer of the network performance monitoring items and related equipment that are the subject of this Charge specifically informed Area that "[t]hese commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to United States law is prohibited." Nonetheless, once in receipt of the items, Area transferred and transported them to Syria via hand-carrying by its technician without obtaining U.S. Government authorization. In so doing, Area committed one violation of Section 764.2(e) of the Regulations.

³ General Order No. 2 was issued pursuant to the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003. On December 12, 2011, the controls on exports and reexports to Syria were moved to Section 746.9 of the Regulations. The licensing requirements continued unchanged. *See* 76 Fed. Reg. 77,115 (Dec. 12, 2011).

WHEREAS, BIS and Area 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, Area shall be assessed a civil penalty in the amount of \$100,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

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, Area 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 full and timely payment of the civil penalty in accordance with the payment schedule 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 Area. Accordingly, if Area should fail to pay the civil penalty in a full and timely manner as set forth above, the undersigned may issue an order denying all of Area's export privileges under the Regulations for a period of one year from the date of failure to make such payment.

FOURTH, Area shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Area's testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

FIFTH, 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.

A handwritten signature in black ink, appearing to read 'D. W. Mills', is written over a horizontal line.

David W. Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 11th day of September, 2014.

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

In the Matter of:

Area S.p.A.
MXP Business Park
Via Gabriele D'Annunzio 2 21010 Vizzola Ticino
(VA) Italy

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Area S.p.A., of Italy ("Area"), and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively, the "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (the "Act").²

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

WHEREAS, BIS has issued a Proposed Charging Letter to Area that alleges that Area committed one violation of the Regulations, specifically:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2014). The charged violation occurred in 2011. The Regulations governing the violations at issue are found in the 2011 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2011)). The 2014 Regulations establish the procedures that currently apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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 7, 2014 (79 Fed. Reg. 46,959 (Aug. 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701 (2006 & Supp. IV 2010)).

Charge 1: 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation

On or about September 3, 2011, Area transferred and transported items subject to the Regulations to Syria with knowledge that a violation of the Regulations would occur in connection with the items. Specifically, Area transferred and transported to the Syrian Telecommunications Establishment in Syria U.S.-origin network performance monitoring items and related U.S.-origin equipment without the required U.S. Government authorization. The items, ordered by Area from a company located in the United States, were valued at approximately \$139,694. Area ordered the items to monitor and test foreign-origin systems that Area sold to the Syrian Telecommunications Establishment, an entity affiliated with the Government of Syria, and was in the process of installing the items for them to use. Once the items were exported at Area's direction from the United States to Italy, the items were hand-carried by an Area technician on a September 3, 2011 flight from Italy to Syria. In Syria, the Area technician installed the items for the Syrian Telecommunications Establishment and provided training for the Syrian Telecommunications Establishment. The monitoring equipment is classified under Export Control Classification Number ("ECCN") 5A002.a.1, and the related equipment is designated as EAR99.

With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a Department of Commerce license, as set forth at all times pertinent hereto in General Order No. 2 in Supplement No. 1 to Part 736 of the Regulations.³

Area had knowledge that U.S. Government authorization was required for the transfer and transport of items subject to the Regulations to Syria, an embargoed destination, because, *inter alia*, in 2010, Area was told about the Regulations by a U.S. manufacturer of U.S.-origin computer equipment essential to a foreign origin central monitoring system capable of collecting data (web surfing, e-mails, online chatting, and voice over internet protocol (or VOIP)), which Area sold and delivered to the Syrian Telecommunications Establishment. Specifically Area was told that the computer equipment was "subject to export control regulation under the laws of the United States.... including, but not limited to those governing use, export, re-export (to embargoed countries and entities) and transfer." In addition, the company told Area that "[i]nformation on restricted countries and other United States export control regulations can be found in the U.S. Department of Commerce website: <http://www.bis.doc.gov>."

More recently, the U.S. manufacturer of the network performance monitoring items and related equipment that are the subject of this Charge specifically informed Area that "[t]hese commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to United States law is prohibited." Nonetheless, once in receipt of the items, Area transferred and transported them to Syria via

³ General Order No. 2 was issued pursuant to the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003. On December 12, 2011, the controls on exports and reexports to Syria were moved to Section 746.9 of the Regulations. The licensing requirements continued unchanged. *See* 76 Fed. Reg. 77,115 (Dec. 12, 2011).

hand-carrying by its technician without obtaining U.S. Government authorization. In so doing, Area committed one violation of Section 764.2(e) of the Regulations.

WHEREAS, Area has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

WHEREAS, Area fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Area enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

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

WHEREAS, Area neither admits nor denies the allegations contained in the Proposed Charging Letter; and

WHEREAS, Area agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over Area, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanction shall be imposed against Area in complete settlement of the alleged violation of the Regulations relating to the transaction specifically detailed in the Proposed Charging Letter:
 - a. Area shall be assessed a civil penalty in the amount of \$100,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of

the date of the Order. Payment shall be made in the manner specified in the attached instructions.

b. The full and timely payment of the civil penalty as set forth 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 Area. Failure to make full and timely payment of the civil penalty as set forth in Paragraph 2.a may result in the denial of all of Area's export privileges under the Regulations for one year from the date of the failure to make such payment.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, Area 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 issued), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. Area also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until the later of the date Area pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement.

4. Area shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Area's testimonial obligations in any proceeding, nor does it affect its

right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a, BIS will not initiate any further administrative proceeding against Area in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

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.

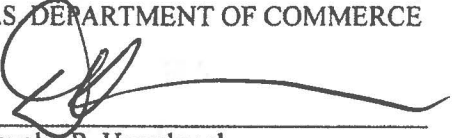
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing 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. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

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

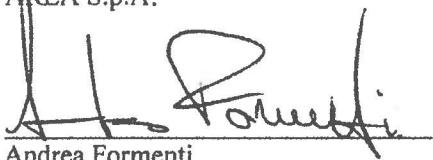
BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE



Douglas R. Hassebrock
Director of Export Enforcement

Date: 9/8/14

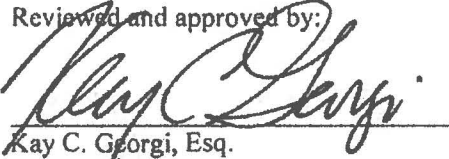
AREA S.p.A.



Andrea Formenti
CEO

Date: AUGUST 15th, 2014

Reviewed and approved by:



Kay C. Georgi, Esq.
Arent Fox, LLP
Counsel for Area S.p.A.

Date: Aug 15, 2014

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Area S.p.A.
MXP Business Park
Via Gabriele D'Annunzio 2
21010 Vizzola Ticino (VA)
Italy

Attn: Mr. Andrea Formenti, CEO

Dear Mr. Formenti:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Area S.p.A., ("Area") of Italy, committed one violation of the Export Administration Regulations (the "Regulations"),¹ which issued under the authority of the Export Administration Act of 1979, as amended (the "Act").² Specifically, BIS charges that Area committed the following violation:

Charge 1: 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation

On or about September 3, 2011, Area transferred and transported items subject to the Regulations to Syria with knowledge that a violation of the Regulations would occur in connection with the items. Specifically, Area transferred and transported to the Syrian Telecommunications Establishment in Syria U.S.-origin network performance monitoring items and related U.S.-origin equipment without the required U.S. Government authorization. The items, ordered by Area from a company located in the United States, were valued at approximately \$139,694. Area ordered the items to monitor and test foreign-origin systems that Area sold to the Syrian Telecommunications Establishment, an entity affiliated with the Government of Syria, and was in the process of installing the items for them to use. Once the

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items were exported at Area's direction from the United States to Italy, the items were hand-carried by an Area technician on a September 3, 2011 flight from Italy to Syria. In Syria, the Area technician installed the items for the Syrian Telecommunications Establishment and provided training for the Syrian Telecommunications Establishment. The monitoring equipment is classified under Export Control Classification Number ("ECCN") 5A002.a.1, and the related equipment is designated as EAR99.

With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a Department of Commerce license, as set forth at all times pertinent hereto in General Order No. 2 in Supplement No. 1 to Part 736 of the Regulations.³

Area had knowledge that U.S. Government authorization was required for the transfer and transport of items subject to the Regulations to Syria, an embargoed destination, because, *inter alia*, in 2010, Area was told about the Regulations by a U.S. manufacturer of U.S.-origin computer equipment essential to a foreign origin central monitoring system capable of collecting data (web surfing, e-mails, online chatting, and voice over internet protocol (or VOIP)), which Area sold and delivered to the Syrian Telecommunications Establishment. Specifically Area was told that the computer equipment was "subject to export control regulation under the laws of the United States.... including, but not limited to those governing use, export, re-export (to embargoed countries and entities) and transfer." In addition, the company told Area that "[i]nformation on restricted countries and other United States export control regulations can be found in the U.S. Department of Commerce website: <http://www.bis.doc.gov>."

More recently, the U.S. manufacturer of the network performance monitoring items and related equipment that are the subject of this Charge specifically informed Area that "[t]hese commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to United States law is prohibited." Nonetheless, once in receipt of the items, Area transferred and transported them to Syria via hand-carrying by its technician without obtaining U.S. Government authorization. In so doing, Area committed one violation of Section 764.2(e) of the Regulations.

* * * * *

Accordingly, Area 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:

³ General Order No. 2 was issued pursuant to the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003. On December 12, 2011, the controls on exports and reexports to Syria were moved to Section 746.9 of the Regulations. The licensing requirements continued unchanged. *See* 76 Fed. Reg. 77,115 (Dec. 12, 2011).

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation;⁴
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

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

Area 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. Area 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 Area have a proposal to settle this case, Area or its representative should transmit it to the attorney representing BIS named below.

Area is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Area may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Area'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 Area's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Adrienne Frazier, Esq.

⁴ International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Adrienne Frazier is the attorney representing BIS in this case; any communications that Area may wish to have concerning this matter should occur through her. Ms. Frazier may be contacted by telephone at (202) 482-5301 or by email at afrazier@doc.gov.

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement