

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

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In the Matter of)
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)
Thermon (UK) Limited (United Kingdom))
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)
_____)

Case No. 09-20(C)

ORDER

The Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce (“BIS”), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. §§ 2401-2420 (2000)) (the “Act”)¹ and the Export Administration Regulations (currently codified at 15 C.F.R Parts 730-774 (2010)) (the “Regulations”), against Thermon (UK) Limited (United Kingdom) (“Thermon UK”), a controlled-in-fact foreign subsidiary of a domestic concern, based on allegations set forth in the Proposed Charging Letter, dated 17 June 2010, that alleged that Thermon UK committed two violations of the Regulations;

¹ 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 of which was August 13, 2009 (74 Fed. Reg. 41325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

Specifically, the charges are:

1. *Two Violations of 15 C.F.R. §760.5 - Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States:*

During the years 2003 through 2005, Thermon UK engaged in transactions involving the sale and/or transfer of goods or services (including information) from the United States to Dubai and Iran, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations. In connection with these activities, Thermon UK, on two occasions, received a request to take an action which would have the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott. Thermon UK failed to report its receipts of these requests to the Department of Commerce, as directed by Section 760.5 of the Regulations.

BIS and Thermon UK having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby the parties have 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 THAT:

FIRST, a civil penalty of \$ 2,000 is assessed against Thermon UK and shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment of this sum shall be made in the manner specified in the attached instructions

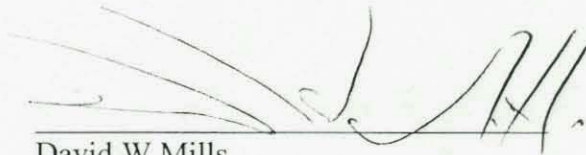
SECOND, pursuant to the Debt Collections Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. 2001)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice and, if payment is not made by the due date specified herein, Thermon UK will be assessed, in addition to the full amount of the penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, the timely payment of the sum of \$ 2,000 is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be granted, to Thermon UK.

Accordingly, if Thermon UK should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Thermon UK's export privileges for a period of one year from the date of the entry of this Order.

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

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

Entered this 13 day of August, 2010

Attachments

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The check should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The check should be mailed to:

U.S. Department of Commerce
Bureau of Industry and Security
Room 6622
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: James Vidale

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. 2001)) and the Federal Claims Collection Standards (65 Fed. Reg. 70390-70406, November 22, 2000, to be codified at 31 C.F.R. Parts 900-904), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C. §3717 and 31 C.F.R. §901.9.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C. §3717 and 4 C.F.R. §901.9.

The foregoing constitutes the initial written notice and demand to respondent in accordance with Section 901.2 of the Federal Claims Collection Standards (31 C.F.R. §901.2(b)).

¹ 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 of which was August 13, 2009 (74 Fed. Reg. 41325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

WHEREAS, BIS has notified Thermon UK of its intention to initiate an administrative proceeding against Thermon UK pursuant to the Act and the Regulations by issuing the Proposed Charging Letter dated 17 June 2010, a copy of which is attached hereto and incorporated herein by this reference; and

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

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

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

NOW, THEREFORE, Thermon UK and BIS agree as follows:

1. Under the Act and the Regulations, BIS has jurisdiction over Thermon UK with respect to the matters alleged in the Proposed Charging Letter.
2. BIS will impose a civil penalty in the amount of \$ 2,000. Thermon UK will pay to the U.S. Department of Commerce, within 30 days from the date of entry of the Order, and in accordance with the terms of the Order, when entered, the amount of \$ 2,000 in complete settlement of all matters set forth in the Proposed Charging Letter.
3. The timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Thermon UK. Failure to make payment of this amount shall result in the denial of all of Thermon UK's export privileges for a period of one year from the date of entry of the Order.

4. Subject to the approval of this Settlement Agreement, pursuant to paragraph 9 hereof, Thermon UK hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the Order, when entered) including, without limitation, any right to:
 - A. An administrative hearing regarding the allegations in the Proposed Charging Letter;
 - B. Request a refund of the funds paid by Thermon UK pursuant to this Settlement Agreement and the Order, when entered; or
 - C. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.
5. BIS, upon entry of the Order, will not initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against Thermon UK with respect to any violation of Section 8 of the Act or Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by BIS in the course of its investigation.

6. Thermon UK understands that BIS will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the Order, when entered.
7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by Thermon UK that it has violated the Regulations, or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement.

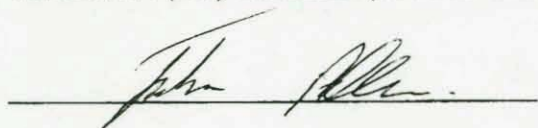
Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary for Export Enforcement, BIS may not use this Settlement Agreement against Thermon UK in any administrative or judicial proceeding.

8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances herein addressed.

This paragraph shall not limit Thermon UK's right to challenge any action brought by any other agency based on a referral by BIS or any employee thereof, in contravention of paragraph 5 of this Settlement Agreement.

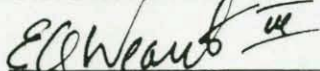
9. This Settlement Agreement will become binding on BIS only when approved by the Assistant Secretary for Export Enforcement by entering the Order.

THERMON (UK) LIMITED (UNITED KINGDOM)



DATE: 4/8/10.

U.S. DEPARTMENT OF COMMERCE



Edward O. Weant III
Director
Office of Antiboycott Compliance

DATE: 8-12-10

Attachment



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

PROPOSED CHARGING LETTER

17 June 2010

Thermon (UK) Limited
7th Avenue, Team Valley Trading Estate
Gateshead, Tyne and Wear NE110JW
England
United Kingdom

Case No. 09.20(C)

Gentlemen/Ladies:

We, the Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce ("BIS"), have reason to believe that you, Thermon (UK) Limited (United Kingdom), on two occasions, have violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2010)) (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the "Act").²

We charge that you committed two violations of Section 760.5 of the Regulations, in that, on two occasions, you failed to report to the Department of Commerce ("Department") your receipt of a request to engage in a restrictive trade practice or boycott, as required by the Regulations.

¹ The alleged violations occurred during the years 2004 and 2006. The Regulations governing the violations at issue are found in the 2004 and 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004 and 2006)). The prior years' Regulations are substantially the same as the 2010 version of the Regulations which govern the procedural aspects of this matter.

² 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 of which was August 13, 2009 (74 Fed. Reg. 41325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).



We allege that:

Thermon Manufacturing Company ("Thermon US") is, and at all times relevant was, a domestic concern incorporated in the State of Texas and, as such, a United States person as defined in Section 760.1(b) of the Regulations.

You, Thermon (UK) Limited (United Kingdom) are, and at all times relevant were, a company registered under the laws of the United Kingdom and, indirectly, a wholly-owned subsidiary of Thermon US. Accordingly, you are a controlled-in-fact foreign subsidiary of a domestic concern, as defined in Section 760.1(c) of the Regulations and, as such, a United States person, as defined in Section 760.1(b) of the Regulations.

During the years 2003 through 2005, you engaged in transactions involving the sale and/or transfer of goods or services (including information) from the United States to Dubai and Iran, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations.

Charges 1 - 2 (15 C.F.R. § 760.5 - Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States)

In connection with the activities referred to above, during the years 2003 through 2005, on two occasions, you received a request, as described in Table A, which is attached and incorporated herein by this reference, to take an action which would have the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott. Section 760.5 of the Regulations requires United States persons to report to the Department their receipts of such requests. You failed to report to the Department your receipts of these requests.

By failing to report your receipts of these requests, as directed by Section 760.5 of the Regulations, you are in violation of Section 760.5. We therefore charge you with two violations of Section 760.5 of the Regulations.

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

³ Administrative sanctions may include any or all the following:

- a. A maximum civil penalty of the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation (see International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007)).
- b. Denial of export privileges (see § 764.3(a)(2) of the Regulations); and/or
- c. Exclusion from practice before BIS (see § 764.3(a)(3) of the Regulations).

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

Under the Small Business Regulatory Enforcement Flexibility Act, you may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter.⁴

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

As provided in Section 766.3, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between BIS and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

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

Attention: Administrative Law Judge

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

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

Sincerely,

Edward O Weant, III
Director
Office of Antiboycott Compliance

Enclosure

⁴ To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman>.

TABLE A

Schedule of Alleged Violations of Section 760.5
Failure to Report Receipts of Boycott Requests

Thermon (UK) Limited (United Kingdom)
Case No. 09-20(C)

| Item | Reference | Date Request Received | Boycotting Country | Boycott Request |
|------|---|-----------------------|--------------------|---|
| 1 | Letter of Credit Banque Banorabe # 051LCI300734 | 11.25.03 | Dubai | A CERTIFICATE ISSUED BY THE CARRIER OR MASTER OF THE VESSEL OR THEIR AGENTS STATING THAT THE SHIP IS ALLOWED BY THE ARAB AUTHORITIES TO CALL AT ARABIAN PORTS AND IS NOT SCHEDULED TO CALL AT ANY ISRAELI PORT DURING THE TRIP TO ARABIAN PORTS (IN CASE SHIPMENT EFFECTED BY SEA). |
| 2 | Bid Inquiry | 10.27.05 | Iran | <u>REQUIREMENTS ...</u> 1-3....(GOODS ORIGINATING FROM ISRAEL ARE NOT ACCEPTABLE) |