

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

In the Matter of:)
)
)
Gusmer Europe, S.L.)
C/Masia Nova 3-5 Nave E.)
Pol. Industrial Torrent de Santa Magdalena)
08800 Vilanova i la Geltrú)
Barcelona)
Spain)
)
)
Respondent)

ORDER RELATING TO GUSMER EUROPE, S.L.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Gusmer Europe, S.L. (“Gusmer Europe”), of its intention to initiate an administrative proceeding against Gusmer Europe pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),² through issuance of a proposed charging letter to Gusmer Europe that alleged that Gusmer Europe committed 10 violations of the Regulations. Specifically, the charges are :

¹ The violations charged occurred in 2004-2005. The Regulations governing the violations at issue are found in the 2004 and 2005 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004-2005)). The 2008 Regulations establish the procedures that apply to 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 being that of July 23, 2008 (73 Fed. Reg. 43603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

Charges 1-10: 15 C.F.R. §764.2(a) – Export of Items to Cuba without a License.

On ten occasions between on or about March 19, 2004, and on or about April 20, 2005, Gusmer Europe engaged in conduct prohibited by the Regulations when it exported equipment for spray application systems for specialty polymer products (including Model D Plural Component High Pressure Spray Gun and Plural-Component Air Driven Metering Unit equipment), to Cuba without the export licenses required by the Regulations. This equipment was classified as EAR99 under the Regulations, and its export to Cuba required a license pursuant to Section 746.2 of the Regulations.³ In exporting these items to Cuba without the required export license, Gusmer Europe committed ten violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Gusmer Europe 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 \$40,000 is assessed against Gusmer Europe, 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, Gusmer Europe 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.

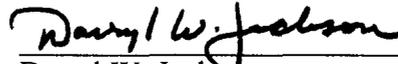
THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license,

³ EAR99 is a designation for items subject to the Regulations, but not listed on the Commerce Control List. 15 C.F.R. Section 734.3(c) (2008).

license exception, permission, or privilege granted, or to be granted, to Gusmer Europe. Accordingly, if Gusmer Europe should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Gusmer Europe'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.



Darryl W. Jackson
Assistant Secretary of Commerce
for Export Enforcement

Entered this 4th day of September, 2008.

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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Gusmer Europe, S.L. (“Gusmer Europe”) 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 (2008)) (“Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”).²

WHEREAS, Gusmer Europe filed a voluntary self-disclosure with BIS’s Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

¹ The violations charged occurred in 2004-2005. The Regulations governing the violations at issue are found in the 2004 and 2005 versions of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2004-2005). The 2008 Regulations govern the procedural aspects of this case.

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 being that of August 15, 2007 (72 Fed. Reg. 46,137, Aug. 16, 2007), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

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

WHEREAS, BIS has issued a proposed charging letter to Gusmer Europe that alleged that Gusmer Europe committed 10 violations of the Regulations, specifically:

Charges 1-10: 15 C.F.R. §764.2(a) – Export of Items to Cuba without a License.

On ten occasions between on or about March 19, 2004, and on or about April 20, 2005, Gusmer Europe engaged in conduct prohibited by the Regulations when it exported equipment for spray application systems for specialty polymer products (including Model D Plural Component High Pressure Spray Gun and Plural-Component Air Driven Metering Unit equipment), to Cuba without the export licenses required by the Regulations. This equipment was classified as EAR99 under the Regulations, and its export to Cuba required a license pursuant to Section 746.2 of the Regulations.³ In exporting these items to Cuba without the required export license, Gusmer Europe committed ten violations of Section 764.2(a) of the Regulations.

WHEREAS, Gusmer Europe has reviewed the proposed charging letter and is aware of the allegation made against it and the administrative sanctions which could be imposed against it if the allegation is found to be true;

WHEREAS, Gusmer Europe 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, Gusmer Europe enters into this Agreement voluntarily and with full knowledge of its rights;

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

³ EAR99 is a designation for items subject to the Regulations, but not listed on the Commerce Control List. 15 C.F.R. Section 734.3(c) (2008).

WHEREAS, Gusmer Europe neither admits nor denies the allegation contained in the proposed charging letter;

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

WHEREAS, Gusmer Europe agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Gusmer Europe, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against Gusmer Europe in complete settlement of the alleged violation of the Regulations relating to the transaction specifically detailed in the voluntary self-disclosure and the proposed charging letter:
 - a. Gusmer Europe shall be assessed a civil penalty in the amount of \$40,000, 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 Gusmer Europe. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Gusmer Europe'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, Gusmer Europe 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 any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; and (c) 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 \$40,000 civil penalty, BIS will not initiate any further administrative proceeding against Gusmer Europe in connection with any violation of the Act or the Regulations arising out of the transaction specifically detailed in the voluntary self disclosure and 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 the Parties 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

GUSMER EUROPE, S.L.



Thomas Madigan
Director
Office of Export Enforcement



James A. Graner
Attorney-in-Fact

Date: 8/28/8

Date: 08-21-08

PROPOSED CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Gusmer Europe, S.L.
C/Masia Nova 3-5 Nave E.
Pol. Industrial Torrent de Santa Magdalena
08800 Vilanova i la Geltrú
Barcelona
Spain

Dear Sir or Madam:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Gusmer Europe, S.L. (“Gusmer Europe”), a limited liability company organized under the laws of Spain and an affiliate of GRACO, Inc., of Minneapolis, Minnesota, has committed ten violations of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that Gusmer Europe committed the following violations:

Charges 1-10: 15 C.F.R. §764.2(a) – Export of Items to Cuba without a License.

As described in further detail in the attached Schedule of Violations, which is incorporated herein by reference, on ten occasions between on or about March 19, 2004, and on or about April 20, 2005, Gusmer Europe engaged in conduct prohibited by the Regulations when it exported equipment for spray application systems for specialty polymer products (including Model D Plural Component High Pressure Spray Gun and Plural-Component Air Driven Metering Unit equipment), to Cuba without the export licenses required by the Regulations. This equipment was classified as EAR99 under the Regulations, and its export to Cuba required a license pursuant to Section 746.2 of the

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2008). The violations charged occurred in 2004-2005. Regulations governing the violations at issue are found in the 2004 and 2005 versions of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2004-05). The 2008 Regulations govern the procedural aspects of this case.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse. However, 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 15, 2007, 72 Fed. Reg. 46,137 (Aug. 16, 2007), has continued the Regulations in effect under the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706 (2008)(“IEEPA”). The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.

Regulations.³ In exporting these items to Cuba without the required export license, Gusmer Europe committed ten violations of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, Gusmer Europe 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 \$250,000 per violation;⁴
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Gusmer Europe 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 (2008). If Gusmer Europe defaults, the Administrative Law Judge may find the charges alleged in this letter to be true without a hearing or further notice to Gusmer Europe. 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.

Gusmer Europe 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 (2008). Gusmer Europe is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. 15 C.F.R. §§ 766.3(a) and 766.4 (2008).

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2008). Should Gusmer Europe have a proposal to settle this case, Gusmer Europe's representative should transmit it through the attorney representing BIS, who is named below.

Gusmer Europe is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Gusmer 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/>.

³ EAR99 is a designation for items subject to the Regulations, but not listed on the Commerce Control List. 15 C.F.R. Section 734.3(c) (2008).

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

Gusmer Europe
Proposed Charging Letter
Page 3

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

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

Camille M. Caesar is the attorney representing BIS in this case; any communications that Gusmer Europe may wish to have concerning this matter should occur through her. Ms. Caesar may be contacted by telephone at (202) 482-2288.

Sincerely,

Thomas Madigan
Acting Director
Office of Export Enforcement

Gusmer Europe, S.L.

SCHEDULE OF VIOLATIONS

UNDER 15 C.F.R. Section 764.2(a)

<i>Date of Violation</i>	<i>Classification</i>	<i>Destination</i>
On or about:		
March 19, 2004	EAR99	Cuba
July 6, 2004	EAR99	Cuba
September 3, 2004	EAR99	Cuba
January 13, 2005	EAR99	Cuba
February 1, 2005	EAR99	Cuba
February 3, 2005	EAR99	Cuba
February 23, 2005	EAR99	Cuba
March 15, 2005	EAR99	Cuba
March 31, 2005	EAR99	Cuba
April 20, 2005	EAR99	Cuba