

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

In the Matter of:)
)
MTS Systems Corporation)
1400 Technology Drive)
Eden Prairie, MN 55344-22900)
)
Respondent)

ORDER

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified MTS Systems Corporation (“MTS”), of Eden Prairie, MN, of its intention to initiate an administrative proceeding against MTS pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2007)) (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 the issuance of a proposed charging letter to MTS that alleged that MTS committed two violations of the Regulations, specifically:

¹ The charged violations occurred in 2003. The Regulations governing the violation at issue are found in the 2003 version of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2003). The 2007 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 International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“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(g) – Misrepresentation of Material Facts in Connection with the Submission of a License Application)

Between on or about March 20, 2003, and on or about March 26, 2003, MTS submitted a license application to BIS in connection with a proposed export to India containing a misleading representation of material facts. Specifically, on March 20, 2003, MTS applied for a license to export seismic testing equipment classified under Export Control Classification Number (“ECCN”)³ 9B990, and valued at \$525,000, to the Electrical Research and Development Association (ERDA) in Makarpura, India. Prior to the submission of the license application, MTS had knowledge that the system could be used for testing nuclear power plant components. However, MTS omitted that information from the licensing application materials, including supporting materials it submitted to BIS on March 26, 2003. In presenting the license application with a misleading representation of material facts, MTS committed one violation of section 764.2(g) of the Regulations.

Charge 2 (15 C.F.R. § 764.2(g) – Misrepresentation of Material Facts in Connection with the Submission of a License Application)

Between on or about November 14, 2003, and on or about August 20, 2004, MTS submitted a license application to BIS in connection with a proposed export to India containing a misleading representation of material facts. Specifically, on November 14, 2003, MTS applied for a license to export seismic testing equipment classified under ECCN 9B990, and valued at more than \$3,000,000, to the Structural Engineering Research Centre (SERC) in Chennai, India. Prior to the submission of the license application, MTS had knowledge that the Indian Department of Atomic Energy, an entity listed on the Entity List set forth in Part 744 of the Regulations, had provided funding for the transaction. In addition, MTS had knowledge that the end use of the system could involve seismic testing on behalf of Indian nuclear facilities. However, MTS omitted that information from the licensing application materials, including supplementary materials it submitted to BIS on November 20, 2003. MTS also omitted that material information from information it submitted to the Department of Commerce on August 20, 2004, in the context of a rebuttal filed when BIS informed MTS that the November 14, 2003 license application would be denied. In presenting the license application with a misleading representation of material facts, MTS committed one violation of section 764.2(g) of the Regulations.

WHEREAS, BIS and MTS 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;

³ “ECCN” refers to “Export Control Classification Number.” See 15 C.F.R. § 772.1.

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$400,000 is assessed against MTS, 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, MTS 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 MTS. Accordingly, if MTS should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of MTS's export privileges under the Regulations 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 12th day of March, 2008.

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

In the Matter of:)
)
MTS Systems Corporation)
1400 Technology Drive)
Eden Prairie, MN 55344-22900)
)
)
Respondent)
)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Respondent, MTS Systems Corporation ("MTS"), of Eden Prairie, MN, 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 (2007)) ("Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act").²

WHEREAS, BIS has notified MTS of its intention to initiate an administrative Proceeding against MTS, pursuant to the Act and the Regulations;

¹ The charged violations occurred in 2003. The Regulations governing the violation at issue are found in the 2003 version of the Code of Federal Regulations. See 15 C.F.R. Parts 730-774 (2003). The 2007 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 International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.

Settlement Agreement
MTS Systems Corporation
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WHEREAS, BIS has issued a proposed charging letter to MTS that alleged that

MTS committed two violations of the Regulations, specifically:

Charge 1 (15 C.F.R. § 764.2(g) – Misrepresentation of Material Facts in Connection with the Submission of a License Application)

Between on or about March 20, 2003, and on or about March 26, 2003, MTS submitted a license application to BIS in connection with a proposed export to India containing a misleading representation of material facts. Specifically, on March 20, 2003, MTS applied for a license to export seismic testing equipment classified under Export Control Classification Number (“ECCN”)³ 9B990, and valued at \$525,000, to the Electrical Research and Development Association (ERDA) in Makarpura, India. Prior to the submission of the license application, MTS had knowledge that the system could be used for testing nuclear power plant components. However, MTS omitted that information from the licensing application materials, including supporting materials it submitted to BIS on March 26, 2003. In presenting the license application with a misleading representation of material facts, MTS committed one violation of section 764.2(g) of the Regulations.

Charge 2 (15 C.F.R. § 764.2(g) – Misrepresentation of Material Facts in Connection with the Submission of a License Application)

Between on or about November 14, 2003, and on or about August 20, 2004, MTS submitted a license application to BIS in connection with a proposed export to India containing a misleading representation of material facts. Specifically, on November 14, 2003, MTS applied for a license to export seismic testing equipment classified under ECCN 9B990, and valued at more than \$3,000,000, to the Structural Engineering Research Centre (SERC) in Chennai, India. Prior to the submission of the license application, MTS had knowledge that the Indian Department of Atomic Energy, an entity listed on the Entity List set forth in Part 744 of the Regulations, had provided funding for the transaction. In addition, MTS had knowledge that the end use of the system could involve seismic testing on behalf of Indian nuclear facilities. However, MTS omitted that information from the licensing application materials, including supplementary materials it submitted to BIS on November 20, 2003. MTS also omitted that material information from information it submitted to the Department of Commerce on August 20, 2004, in the context of a rebuttal filed when BIS informed MTS that the November 14, 2003 license application would be denied. In presenting the license application with a misleading representation of material facts, MTS committed one violation of section 764.2(g) of the Regulations.

WHEREAS, MTS has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed

³ “ECCN” refers to “Export Control Classification Number.” See 15 C.F.R. § 772.1.

Settlement Agreement
MTS Systems Corporation
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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 MTS. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of MTS'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, MTS 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, BIS will not initiate any further administrative proceeding against MTS 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.

Settlement Agreement
MTS Systems Corporation
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against it if the allegations are found to be true;

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over MTS, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against MTS in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the proposed charging letter:
 - a. MTS shall be assessed a civil penalty in the amount of \$400,000, all of which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.

Settlement Agreement
MTS Systems Corporation
Page 5 of 5

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.

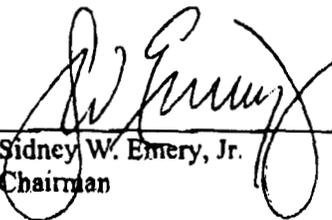
8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

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

MTS SYSTEMS CORPORATION


Thomas Madigan
Acting Director
Office of Export Enforcement


Sidney W. Emery, Jr.
Chairman

Date: 3/5/08

Date: 3/5/08

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

MTS Systems Corporation
1400 Technology Drive
Eden Prairie, MN 55344-2290

Attn: Sidney W. Emery, Jr., Chairman

Dear Mr. Emery:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that MTS Systems Corporation (“MTS”), of Eden Prairie, Minnesota, has committed two 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 MTS committed the following violations:

Charge 1 (15 C.F.R. § 764.2(g) – Misrepresentation of Material Facts in Connection with the Submission of a License Application)

Between on or about March 20, 2003, and on or about March 26, 2003, MTS submitted a license application to BIS in connection with a proposed export to India containing a misleading representation of material facts. Specifically, on March 20, 2003, MTS applied for a license to export seismic testing equipment classified under Export Control Classification Number (“ECCN”)³ 9B990, and valued at \$525,000, to the Electrical Research and Development Association (ERDA) in Makarpura, India. Prior to the submission of the license application, MTS had knowledge that the system could be used for testing nuclear power plant components. However, MTS omitted that information from the licensing application materials, including supporting materials it submitted to BIS on March 26, 2003. In presenting the license

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2007). The violations charged occurred during 2003-2004. The Regulations governing the violations at issue are found in the 2003-2004 versions of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2003-2007). The 2007 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 and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice 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. §§ 1701-1707 (2000)).

³ “ECCN” refers to “Export Control Classification Number.” See 15 C.F.R. § 772.1.

application with a misleading representation of material facts, MTS committed one violation of section 764.2(g) of the Regulations.

Charge 2 (15 C.F.R. § 764.2(g) – Misrepresentation of Material Facts in Connection with the Submission of a License Application)

Between on or about November 14, 2003, and on or about August 20, 2004, MTS submitted a license application to BIS in connection with a proposed export to India containing a misleading representation of material facts. Specifically, on November 14, 2003, MTS applied for a license to export seismic testing equipment classified under ECCN 9B990, and valued at more than \$3,000,000, to the Structural Engineering Research Centre (SERC) in Chennai, India. Prior to the submission of the license application, MTS had knowledge that the Indian Department of Atomic Energy, an entity listed on the Entity List set forth in Part 744 of the Regulations, had provided funding for the transaction. In addition, MTS had knowledge that the end use of the system could involve seismic testing on behalf of Indian nuclear facilities. However, MTS omitted that information from the licensing application materials, including supplementary materials it submitted to BIS on November 20, 2003. MTS also omitted that material information from information it submitted to the Department of Commerce on August 20, 2004, in the context of a rebuttal filed when BIS informed MTS that the November 14, 2003 license application would be denied. In presenting the license application with a misleading representation of material facts, MTS committed one violation of section 764.2(g) of the Regulations.

* * * * *

Accordingly, MTS 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 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 MTS 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 MTS defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to MTS. The Under Secretary of Commerce

⁴ 50 U.S.C. § 1705(b) (2007).

for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

MTS 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. MTS 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 MTS have a proposal to settle this case, MTS should transmit it to the attorney representing BIS named below.

MTS is further notified that under the Small Business Regulatory Enforcement Flexibility Act, MTS 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, MTS'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 MTS's answer must be served on BIS at the following address:

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

Glenn Kaminsky is the attorney representing BIS in this case; any communications that MTS may wish to have concerning this matter should occur through her. Mr. Kaminsky may be contacted by telephone at (202) 482-5301.

Sincerely,

Thomas L. Madigan
Acting Director
Office of Export Enforcement