

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

In the Matter of:)
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)
Southwall Technologies, Inc.)
3788 Fabian Way)
Palo Alto, CA 94303)
)
)
Respondent)

ORDER RELATING TO SOUTHWALL TECHNOLOGIES, INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Southwall Technologies, Inc. (“Southwall ”), of its intention to initiate an administrative proceeding against Southwall pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2009)) (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 Southwall that alleged that Southwall committed two violations of the Regulations. Specifically, the charges are:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The violations charged occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2004). The 2009 Regulations govern the procedural aspects of this case.

² 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 July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

Charge 1 15 C.F.R. § 764.2(a) - Unlicensed Export of Sputter Deposition Roll to Roll Coater to China

On or about August 2, 2004, Southwall engaged in conduct prohibited by the Regulations by exporting a Sputter Deposition Roll to Roll Coater, an item subject to the Regulations and classified under Export Control Classification Number ("ECCN") 2B005.e, to China, without the Department of Commerce license required by Section 742.4(a) of the Regulations. In doing so, Southwall committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 C.F.R. §764.2(g) - False Statement on Shipper's Export Declaration

On or about August 2, 2004, in connection with the transaction described in Charge 1 above, Southwall made a false statement to the U.S. Government in connection with the submission of an export control document. Specifically, Southwall filed a Shipper's Export Declaration ("SED") with the U.S. Government stating that the item that was the subject of the SED qualified for export as "NLR," i.e., that no license was required. That representation was false, as a license was required to export the commodity to China. In doing so, Southwall committed one violation of Section 764.2(g) of the Regulations.

WHEREAS, BIS and Southwall 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 \$16,000 is assessed against Southwall, 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, Southwall 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 Southwall. Accordingly, if Southwall should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Southwall's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that Southwall shall perform an audit of its internal compliance program within 12 months from the date of entry of this Order. Said audit shall be in substantial compliance with the Export Management Systems audit module, which is available from the BIS website at <http://www.bis.doc.gov/complianceandenforcement/emcp.htm>, which is incorporated by reference. A copy of said audit report shall be transmitted to the Office of Export Enforcement, Suite 725, 160 W. Santa Clara Street, San Jose, CA 95113, no later than 13 months from the date of entry of the Order.

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.



Kevin Delli-Colli
Acting Assistant Secretary of Commerce
for Export Enforcement

Entered this 11th day of August, 2009.

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

In the Matter of:)
)
Southwall Technologies, Inc.)
3788 Fabian Way)
Palo Alto, CA 94303)
)
)
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Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Southwall Technologies, Inc. (“Southwall”), 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 (currently codified at 15 C.F.R. Parts 730-774 (2009)) (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),²

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

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The violations charged occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2004). The 2009 Regulations govern the procedural aspects of this case.

² 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 July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

WHEREAS, BIS has issued a proposed charging letter to Southwall that alleged that Southwall committed two violations of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(a) - Unlicensed Export of Sputter Deposition Roll to Roll Coater to China

On or about August 2, 2004, Southwall engaged in conduct prohibited by the Regulations by exporting a Sputter Deposition Roll to Roll Coater, an item subject to the Regulations and classified under Export Control Classification Number ("ECCN") 2B005.e, to China, without the Department of Commerce license required by Section 742.4(a) of the Regulations. In doing so, Southwall committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 C.F.R. §764.2(g) - False Statement on Shipper's Export Declaration

On or about August 2, 2004, in connection with the transaction described in Charge 1 above, Southwall made a false statement to the U.S. Government in connection with the submission of an export control document. Specifically, Southwall filed a Shipper's Export Declaration ("SED") with the U.S. Government stating that the item that was the subject of the SED qualified for export as "NLR," i.e., that no license was required. That representation was false, as a license was required to export the commodity to China, In doing so, Southwall committed one violation of Section 764.2(g) of the Regulations.

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

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Southwall, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against Southwall in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the proposed charging letter:

a. Southwall shall be assessed a civil penalty in the amount of \$16,000, which shall be paid to the U.S. Department of Commerce within 30 days of the date 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 Southwall. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Southwall's export privileges for a period of one year from the date of imposition of the penalty.

c. Southwall shall perform an audit of its internal compliance program within 12 months of the date of entry of the Order. Said audit shall be in substantial compliance with the Export Management System audit module, which

is available from the BIS website at <http://www.bis.doc.gov/complianceandenforcement/emcp.htm>, which is incorporated by reference. A copy of said audit report shall be transmitted to the Office of Export Enforcement, Suite 725, 160 W. Santa Clara Street, San Jose, CA 95113, no later than 13 months from the date of entry of the Order.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Southwall 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 \$16,000 civil penalty, BIS will not initiate any further administrative proceeding against Southwall 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.

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 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 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

SOUTHWALL TECHNOLOGIES, INC.



Thomas Madigan
Director
Office of Export Enforcement



Dennis Capovilla
President and CEO

Date: August 10, 2009

Date: 4-Aug-2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Southwall Technologies, Inc.
3975 East Bayshore Road
Palo Alto, CA 94303

Attention: *Mr. Sicco Westra,*
Vice President of Business Development

Dear Mr. Westra:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Southwall Technologies, Inc. (“Southwall”), of Palo Alto, California, 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 Southwall committed the following violations:

Charges 1 15 C.F.R. § 764.2(a) - Unlicensed Export of Sputter Deposition Roll to Roll Coater to China

On or about August 2, 2004, Southwall engaged in conduct prohibited by the Regulations by exporting a Sputter Deposition Roll to Roll Coater, an item subject to the Regulations and classified under Export Control Classification Number (“ECCN”) 2B005.e, to China, without the Department of Commerce license required by Section 742.4(a) of the Regulations. In doing so, Southwall committed one violation of Section 764.2(a) of the Regulations.

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2006). The violations charged occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004)). The 2006 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 2, 2005, (70 Fed. Reg. 45273 (August 5, 2005)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”).

Charge 2 15 C.F.R. §764.2(g) - False Statement on Shipper's Export Declaration

On or about August 2, 2004, in connection with the transaction described in Charge 1 above, Southwall made a false statement to the U.S. Government in connection with the submission of an export control document. Specifically, Southwall filed a Shipper's Export Declaration ("SED") with the U.S. Government stating that the item that was the subject of the SED qualified for export as "NLR," i.e., that no license was required. That representation was false, as a license was required to export the commodity to China. In doing so, Southwall committed one violation of Section 764.2(g) of the Regulations.

Accordingly, Southwall 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;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Southwall 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 Southwall defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Southwall. 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.

Southwall is further notified that it is entitled to an agency hearing on the record if Southwall files a written demand for one with its answer. (Regulations, Section 766.6). Southwall 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 Southwall have a proposal to settle this case, Southwall or its representative should transmit it to the attorney representing BIS named below.

³ See 15 C.F.R. § 6.4(a)(2).

Southwall Technologies, Inc.
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, Southwall'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 Southwall's answer must be served on BIS at the following address:

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

Gregory Michelsen is the attorney representing BIS in this case; any communications that Southwall may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Michael D. Turner
Director
Office of Export Enforcement

Enclosure