

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

In the Matter of:)
)
Thermon Far East Ltd.)
2nd. Fl, Recruit Yokohama Bldg.)
6-3 Kinko-cho, Kanagawa-ku)
Yokohama Kanagawa-Pref. 221-0056)
Japan)
)

Respondent)

ORDER RELATING TO THERMON FAR EAST LTD.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Thermon Far East Ltd. (“Thermon Far East”) of its intention to initiate an administrative proceeding against Thermon Far East 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 Thermon Far East that alleged that Thermon Far East committed three violations of the Regulations. Specifically, these charges are:

¹ The alleged violations occurred during the 2003-2004 period. The Regulations governing the violation at issue are found in the 2003-2004 versions of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2003-2004). The 2009 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 13,222 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 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707).

Charges 1 – 3 15 C.F.R. § 764.2(b): Causing the Reexport of Heat Tracing Equipment to Libya Without the Required Licenses

On three occasions between on or about October 28, 2003 and on or about February 3, 2004, Thermon Far East caused, aided, abetted, and/or induced the reexport of U.S.-origin heat tracing equipment, items subject to the Regulations,³ from the Netherlands to Libya without the required U.S. Government authorization. Thermon Far East took actions including, but not limited to, ordering the items from Thermon Europe, B.V., an affiliate located in the Netherlands, and directing that the items be shipped to Libya. Pursuant to Section 746.4 of the Regulations, 15 C.F.R. § 746.4 (2003-2004), the reexport of these items from the Netherlands to Libya required a Department of Commerce license, but no license was obtained. In so doing, Thermon Far East committed three violations of Section 764.2(b) of the Regulations.

WHEREAS, BIS and Thermon Far East 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 \$13,500 is assessed against Thermon Far East, which shall be paid to the U.S. Department of Commerce within 30 days from the date 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, Thermon Far East 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.

³ Under the Regulations, the items were designated as “EAR99,” which is a designation for items that are subject to the Regulations but which do not fall into any specific entry on the Commerce Control List.

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



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

Issued this 11th day of September, 2009.

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6-3 Kinko-cho, Kanagawa-ku)
Yokohama Kanagawa-Pref. 221-0056)
Japan)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Thermon Far East Ltd. (“Thermon Far East”) 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, Thermon Far East’s parent company, Thermon Manufacturing Company, filed a voluntary self-disclosure³ with BIS’s Office of Export Enforcement in

¹ The violations alleged to have been committed occurred during 2003 through 2004. The Regulations governing the violations at issue are found in the 2003 through 2004 versions of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2003-04). 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 August 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707).

³ The Voluntary Self-Disclosure refers to Thermon Manufacturing Company's March 22, 2007 Initial Notice of Voluntary Self-Disclosure, its January 18, 2008 Final Report of Voluntary Self-Disclosure, and its April 17, 2008 Supplement to the Final Report.

accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

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

WHEREAS, BIS has issued a proposed charging letter to Thermon Far East that alleged that it committed three violations of the Regulations, specifically:

Charges 1 – 3 15 C.F.R. § 764.2(b): Causing the Reexport of Heat Tracing Equipment to Libya Without the Required Licenses

On three occasions between on or about October 28, 2003 and on or about February 3, 2004, Thermon Far East caused, aided, abetted, and/or induced the reexport of U.S.-origin heat tracing equipment, items subject to the Regulations,⁴ from the Netherlands to Libya without the required U.S. Government authorization. Thermon Far East took actions including, but not limited to, ordering the items from Thermon Europe, B.V., an affiliate located in the Netherlands, and directing that the items be shipped to Libya. Pursuant to Section 746.4 of the Regulations, 15 C.F.R. § 746.4 (2003-2004), the reexport of these items from the Netherlands to Libya required a Department of Commerce license, but no license was obtained. In so doing, Thermon Far East committed three violations of Section 764.2(b) of the Regulations.

WHEREAS, Thermon Far East 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, Thermon Far East 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, Thermon Far East enters into this Agreement voluntarily and with full knowledge of its rights;

⁴ Under the Regulations, the items were designated as “EAR99,” which is a designation for items that are subject to the Regulations but which do not fall into any specific entry on the Commerce Control List.

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

WHEREAS, Thermon Far East neither admits nor denies the allegations contained in the Proposed Charging Letter;

WHEREAS, Thermon Far East wishes to settle and dispose of all matters alleged in the Proposed Charging Letter by entering into this Agreement; and

WHEREAS, Thermon Far East agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Thermon Far East, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanction shall be imposed against Thermon Far East in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Voluntary Self-Disclosure and the Proposed Charging Letter:

a. Thermon Far East shall be assessed a civil penalty in the amount of \$13,500, all of which shall be paid to the U.S. Department of Commerce within 30 days from 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 Thermon Far East. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Thermon Far East'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, Thermon Far East 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.

4. Upon entry of the Order, BIS will not initiate any further administrative proceeding against Thermon Far East in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Voluntary Self-Disclosure and the Proposed Charging Letter.

5. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, 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 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. 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

THERMON FAR EAST LTD.

Thomas Madigan

Thomas Madigan
Director
Office of Export Enforcement

Date: August 26, 2009

F. Arimori

Fukuo Arimori
Managing Director
Thermon Far East Ltd.

Date: 21 Aug. 2009

PROPOSED CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Thermon Far East Ltd.
2nd. Fl, Recruit Yokohama Bldg.
6-3 Kinko-cho, Kanagawa-ku
Yokohama Kanagawa-Pref. 221-0056 Japan

Attention: *President and CEO*

Dear Sir or Madam:

The Bureau of Industry and Security, U. S. Department of Commerce ("BIS"), has reason to believe that Thermon Far East LTD ("Thermon Far East") has committed three 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 The attached Schedule of Violations describes the violations in greater detail. Specifically, BIS charges that Thermon Far East committed the following violations:

Charges 1 – 3 15 C.F.R. § 764.2(b): Causing the Reexport of Heat Tracing Equipment to Libya Without the Required Licenses

As described in greater detail in the attached Schedule of Violations, which is incorporated herein, on three occasions between on or about October 28, 2003 and on or about February 3, 2004, Thermon Far East caused, aided, abetted, and/or induced the

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 2003-2004. The Regulations governing the violations at issue are found in the 2003-2004 versions of the Code of Federal Regulations, as appropriate (15 C.F.R. Parts 730-774 (2003-2004)). The 2009 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)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707) ("IEEPA").

reexport of U.S.-origin heat tracing equipment, items subject to the Regulations,³ from the Netherlands to Libya without the required U.S. Government authorization. Thermon Far East took actions including, but not limited to, ordering the items from Thermon Europe, B.V., an affiliate located in the Netherlands, and directing that the items be shipped to Libya. Pursuant to Section 746.4 of the Regulations, 15 C.F.R. § 746.4 (2003-2004), the reexport of these items from the Netherlands to Libya required a Department of Commerce license, but no license was obtained. In so doing, Thermon Far East committed three violations of Section 764.2(b) of the Regulations.

* * * * *

Accordingly, Thermon Far East 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 Thermon Far East 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 Thermon Far East defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Thermon Far East. 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.

Thermon Far East is hereby notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. (Regulations, Section 766.6). Thermon Far East 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).

Thermon Far East is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Thermon Far East may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter.

³ Under the Regulations, the items were designated as "EAR99," which is a designation for items that are subject to the Regulations but which do not fall into any specific entry on the Commerce Control List.

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

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

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Thermon Far East have a proposal to settle this case, Thermon Far East's representative should transmit it to the attorney representing BIS named below.

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

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

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

Sincerely,

Thomas Madigan
Director
Office of Export Enforcement

Thermon Far East Schedule of Violations

Violations	Shipment Date	Destination	Classification	Purchase Order Number/Entity	Transaction Value
1	10/28/2003	Libya	EAR99	TFE3085	\$29,537.60
2	12/5/2003	Libya	EAR99	TFE3121	\$2,538.52
3	2/3/2004	Libya	EAR99	TFE3182	\$4,751.91