

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

\_\_\_\_\_  
In the Matter of: )  
)  
Thermon Heat Tracers Pvt. Ltd. )  
F-139, 1st Floor, Kailash Vaibhav Commercial Complex )  
Vikhroli Parksite, Mumbai - 400 079 )  
India )  
)  
\_\_\_\_\_  
Respondent )

ORDER RELATING TO THERMON HEAT TRACERS PVT. LTD.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Thermon Heat Tracers Pvt. Ltd. (“Thermon Heat Tracers”) of its intention to initiate an administrative proceeding against Thermon Heat Tracers pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2009)) (the “Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),<sup>2</sup> through issuance of a proposed charging letter to Thermon Heat Tracers that alleged that Thermon Heat Tracers committed seven violations of the Regulations. Specifically, these charges are:

<sup>1</sup> The alleged violations occurred during the 2003-2005 period. The Regulations governing the violation at issue are found in the 2003-2005 versions of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2003-2005). The 2009 Regulations govern the procedural aspects of this case.

<sup>2</sup> 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 – 7            15 C.F.R. § 764.2(b): Causing the Export of Heat Tracing  
Equipment to Listed Entities Without the Required Licenses.**

On seven occasions between on or about February 4, 2003 and on or about October 24, 2005, Thermon Heat Tracers caused, aided, abetted, and/or induced the unlicensed export of U.S.-origin heat tracing equipment, items subject to the Regulations,<sup>3</sup> from the United States to end users in India that were listed on BIS's Entity List at the time, without the licenses required by the Department of Commerce. Specifically, Thermon Heat Tracers took actions including, but not limited to, placing orders with its U.S. parent company, receiving the items from the United States and immediately shipping, forwarding, or directing the shipment of the items to the end users. The Indian end-users, Bhabha Atomic Research Center (BARC), the Department of Atomic Energy's heavy water plant in Manuguru, and the Department of Atomic Energy's heavy water plant in Rajasthan, were listed on BIS's Entity List at the time the exports occurred. A license was required for these exports under Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. Thermon Heat Tracers did not inform the parent company that the items were destined for entities listed on BIS's Entity List, and, in doing so, caused, aided, abetted and/or induced the parent company's failure to obtain the licenses required by the Department of Commerce. In engaging in this activity, Thermon Heat Tracers committed seven violations of Section 764.2(b) of the Regulations.

WHEREAS, BIS and Thermon Heat Tracers 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 \$31,500 is assessed against Thermon Heat Tracers, 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

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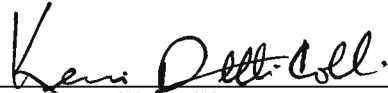
<sup>3</sup> Under the Regulations, the items were designated as "EAR99," which is a designation for items that are subject to the Regulations but which do not fall into any specific entry on the Commerce Control List.

as more fully described in the attached Notice, and if payment is not made by the due date specified herein, Thermon Heat Tracers 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 Thermon Heat Tracers. Accordingly, if Thermon Heat Tracers should fail to pay the civil penalty in a timely manner, the undersigned may issue an Order denying all of Thermon Heat Tracers' 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.

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

Issued this 11<sup>th</sup> day of September, 2009.

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

In the Matter of: )  
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Thermon Heat Tracers Pvt. Ltd. )  
F-139, 1st Floor, Kailash Vaibhav Commercial Complex )  
Vikhroli Parksite, Mumbai - 400 079 )  
India )  
)  
Respondent )

SETTLEMENT AGREEMENT

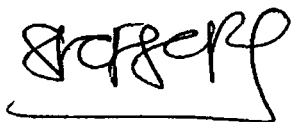
This Settlement Agreement ("Agreement") is made by and between Thermon Heat Tracers Pvt. Ltd. ("Thermon Heat Tracers") and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively, the "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2009)) (the "Regulations"),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the "Act").<sup>2</sup>

WHEREAS, Thermon Heat Tracers' parent company, Thermon Manufacturing Company, filed a voluntary self-disclosure<sup>3</sup> with BIS's Office of Export Enforcement in

<sup>1</sup> The violations alleged to have been committed occurred during 2003 through 2005. The Regulations governing the violations at issue are found in the 2003 through 2005 versions of the Code of Federal Regulations. See 15 C.F.R. Parts 730-774 (2003-05). The 2009 Regulations govern the procedural aspects of this case.

<sup>2</sup> 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).

<sup>3</sup> 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 Heat Tracers 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 Heat Tracers that alleged that it committed seven violations of the Regulations, specifically:

**Charges 1 – 7      15 C.F.R. § 764.2(b): Causing the Export of Heat Tracing Equipment to Listed Entities Without the Required Licenses.**

On seven occasions between on or about February 4, 2003 and on or about October 24, 2005, Thermon Heat Tracers caused, aided, abetted, and/or induced the unlicensed export of U.S.-origin heat tracing equipment, items subject to the Regulations,<sup>4</sup> from the United States to end users in India that were listed on BIS's Entity List at the time, without the licenses required by the Department of Commerce. Specifically, Thermon Heat Tracers took actions including, but not limited to, placing orders with its U.S. parent company, receiving the items from the United States and immediately shipping, forwarding, or directing the shipment of the items to the end users. The Indian end-users, Bhabha Atomic Research Center (BARC), the Department of Atomic Energy's heavy water plant in Manuguru, and the Department of Atomic Energy's heavy water plant in Rajasthan, were listed on BIS's Entity List at the time the exports occurred. A license was required for these exports under Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. Thermon Heat Tracers did not inform the parent company that the items were destined for entities listed on BIS's Entity List, and, in doing so, caused, aided, abetted and/or induced the parent company's failure to obtain the licenses required by the Department of Commerce. In engaging in this activity, Thermon Heat Tracers committed seven violations of Section 764.2(b) of the Regulations.

WHEREAS, Thermon Heat Tracers 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;

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<sup>4</sup> 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.

A handwritten signature in black ink, appearing to read "J. J. J.", with a horizontal line underneath it.

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

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

WHEREAS, Thermon Heat Tracers neither admits nor denies the allegations contained in the Proposed Charging Letter;

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

WHEREAS, Thermon Heat Tracers agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree as follows:

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

2. The following sanction shall be imposed against Thermon Heat Tracers 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 Heat Tracers shall be assessed a civil penalty in the amount of \$31,500, all of which shall be paid to the U.S. Department of Commerce within 30 days from the date of the Order.

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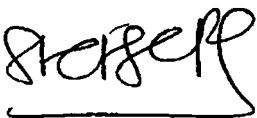
b. The timely payment of the civil penalty agreed to in paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Thermon Heat Tracers. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Thermon Heat Tracers' 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 Heat Tracers 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 Heat Tracers 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

  
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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

Thomas Madigan

Thomas Madigan  
Director  
Office of Export Enforcement

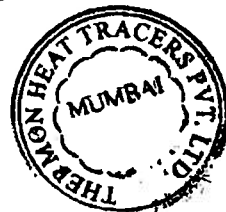
Date: August 26, 2009

THERMON HEAT TRACERS PVT. LTD.

Prasad Sheyte

Prasad Sheyte  
Vice President  
Thermon Heat Tracers Pvt. Ltd.

Date: August 21<sup>st</sup>, 2009





PROPOSED CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Thermon Heat Tracers Pvt. Ltd.  
F-139, 1st Floor, Kailash Vaibhav Commercial Complex  
Vikhroli Parksite, Mumbai - 400 079  
India

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 Heat Tracers Private Ltd., ("Thermon Heat Tracers") has committed seven violations of the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979, as amended (the "Act").<sup>2</sup> The attached Schedule of Violations describes the violations in greater detail. Specifically, BIS charges that Thermon Heat Tracers committed the following violations:

**Charges 1 – 7            15 C.F.R. § 764.2(b): Causing the Export of Heat Tracing Equipment to Listed Entities Without the Required Licenses.**

As described in greater detail in the attached Schedule of Violations, which is incorporated herein, on seven occasions between on or about February 4, 2003 and on or about October 24, 2005, Thermon Heat Tracers caused, aided, abetted, and/or induced the unlicensed export of U.S.-origin heat tracing equipment, items subject to the

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<sup>1</sup> 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 2003-2005. The Regulations governing the violations at issue are found in the 2003-2005 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-2005)). The 2009 Regulations govern the procedural aspects of this case.

<sup>2</sup> 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").

Regulations,<sup>3</sup> from the United States to end users in India that were listed on BIS's Entity List at the time, without the licenses required by the Department of Commerce. Specifically, Thermon Heat Tracers took actions including, but not limited to, placing orders with its U.S. parent company, receiving the items from the United States and immediately shipping, forwarding, or directing the shipment of the items to the end users. The Indian end-users, Bhabha Atomic Research Center (BARC), the Department of Atomic Energy's heavy water plant in Manuguru, and the Department of Atomic Energy's heavy water plant in Rajasthan, were listed on BIS's Entity List at the time the exports occurred. A license was required for these exports under Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. Thermon Heat Tracers did not inform the parent company that the items were destined for entities listed on BIS's Entity List, and, in doing so, caused, aided, abetted and/or induced the parent company's failure to obtain the licenses required by the Department of Commerce. In engaging in this activity, Thermon Heat Tracers committed seven violations of Section 764.2(b) of the Regulations.

\* \* \* \* \*

Accordingly, Thermon Heat Tracers 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;<sup>4</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

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

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<sup>3</sup> 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.

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

Thermon Heat Tracers 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 Heat Tracers is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Thermon Heat Tracers 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 Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Thermon Heat Tracers have a proposal to settle this case, Thermon Heat Tracers' 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 Heat Tracers' 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 Heat Tracers' 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 Heat Tracers 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 Heat Tracers Schedule of Violations**

<b>Violations</b>	<b>Shipment Date</b>	<b>Destination</b>	<b>Classification</b>	<b>Purchase Order Number/Entity</b>	<b>Transaction Value</b>
1	2/4/2003	India	EAR99	B.A.R.C. Mysore	\$9,600.00
2	3/11/2004	India	EAR99	Dept. Atomic Energy/HWP	\$8,490.00
3	6/28/2004	India	EAR99	Dept. Atomic Energy/HWP	\$9,471.86
4	9/16/2004	India	EAR99	B.A.R.C. Mysore	\$9,042.82
5	3/18/2005	India	EAR99	Dept. Atomic Energy/HWP	\$7,316.48
6	5/4/2005	India	EAR99	Dept. Atomic Energy/HWP	\$9,141.01
7	10/24/2005	India	EAR99	Dept. Atomic Energy/HWP	\$8,638.86