

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

In the Matter of:)
)
G&W International Forwarders)
2299 Kenmore Ave.)
Buffalo, NY 14207)
)
Respondent)

ORDER RELATING TO G&W INTERNATIONAL FORWARDERS.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified G&W International Forwarders (“G&W”) of its intention to initiate an administrative proceeding against G&W pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),² through the issuance of a Proposed Charging Letter to G&W that alleged that it committed one violation of the Regulations. Specifically, the charge is:

Charge 1 15 C.F.R. § 764.2(b): Aiding and Abetting an Act Prohibited by the Regulations

On one occasion on or about February 27, 2006, G&W aided and abetted an act prohibited by the Regulations. Specifically, G&W, acting as a freight forwarder, arranged for the export of a

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The charged violation occurred between 2003 and 2006. The Regulations governing the violation at issue are found in the 2003 through 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-2006)). The 2009 Regulations set forth the procedures that apply to this matter.

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 13, 2009 (74 Fed. Reg. 41,325 (Aug. 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 *et seq.*).

Stack Sizer Screening Machine, designated as an EAR99 item³ and subject to the Regulations, from the United States to Indian Rare Earths, Ltd., an entity in India that is listed in Supplement No. 4 to Part 744 of the Regulations. G&W's actions aided and abetted the export of the Stack Sizer Screening Machine without the Department of Commerce license required pursuant to Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, G&W committed one violation of section 764.2(b) of the Regulations.

WHEREAS, BIS and G&W 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, G&W shall be assessed a civil penalty in the amount of \$20,000. G&W shall pay \$4,000 to the U.S. Department of Commerce within 30 days of the date of the Order. Thereafter, G&W shall pay \$4,000 to the U.S. Department of Commerce not later than May 1, 2010; \$4,000 not later than June 1, 2010; \$4,000 not later than July 1, 2010; \$4,000 not later than August 1, 2010.

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, G&W 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 G&W. Accordingly, if G&W should fail to pay the civil penalty in a timely manner, the undersigned may issue an Order

³ EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2006).

denying all of G&W's export privileges under the Regulations for a period of one year from the date of this Order.

FOURTH, G&W 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/complianceand enforcement/emcp.htm>, which is incorporated by reference. A copy of said audit report shall be transmitted to the Office of Export Enforcement, Suite 104, 1200 South Avenue, Staten Island, NY 10314, 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.



David Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 18 day of March, 2010.

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

In the Matter of:)
)
G&W International Forwarders)
2299 Kenmore Ave.)
Buffalo, NY 14207)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between G&W International Forwarders (“G&W”) 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 (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).²

WHEREAS, BIS has notified G&W 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 G&W that alleged that G&W committed one violation of the Regulations, specifically:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The charged violation occurred in 2006. The Regulations governing the violation at issue are found in the 2006 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2006)). The 2009 Regulations set forth the procedures that apply to this matter.

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 13, 2009 (74 Fed. Reg. 41,325 (Aug. 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 *et seq.*).

**Charge 1 15 C.F.R. § 764.2(b): Aiding and Abetting an Act Prohibited
by the Regulations**

On one occasion on or about February 27, 2006, G&W aided and abetted an act prohibited by the Regulations. Specifically, G&W, acting as a freight forwarder, arranged for the export of a Stack Sizer Screening Machine, designated as an EAR99 item³ and subject to the Regulations, from the United States to Indian Rare Earths, Ltd., an entity in India that is listed in Supplement No. 4 to Part 744 of the Regulations. G&W's actions aided and abetted the export of the Stack Sizer Screening Machine without the Department of Commerce license required pursuant to Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, G&W committed one violation of section 764.2(b) of the Regulations.

WHEREAS, G&W 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, G&W 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, G&W enters into this Agreement voluntarily and with full knowledge of its rights;

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

WHEREAS, G&W neither admits nor denies the allegations contained in the Proposed Charging Letter;

WHEREAS, G&W wishes to settle and dispose of all matters alleged in the Proposed Charging Letter by entering into this Agreement; and

WHEREAS, G&W agrees to be bound by the Order, if issued;

³ EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2006).

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over G&W, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanction shall be imposed against G&W in complete settlement of the alleged violation of the Regulations relating to the transaction specifically detailed in the Proposed Charging Letter:

a. G&W shall be assessed a civil penalty in the amount of \$20,000.

G&W shall pay \$4,000 to the U.S. Department of Commerce within 30 days of the date of the Order. Thereafter, G&W shall pay \$4,000 to the U.S. Department of Commerce not later than May 1, 2010; \$4,000 not later than June 1, 2010; \$4,000 not later than July 1, 2010; \$4,000 not later than August 1, 2010. Payment shall be made in the manner specified in the attached instructions.

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 G&W. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of G&W's export privileges for a period of one year from the date of imposition of the penalty.

c. G&W 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/complianceand enforcement/emcp.htm>, which is incorporated by reference. A copy of said audit report shall be transmitted to the Office of Export Enforcement, Suite 104, 1200 South Avenue, Staten Island, NY 10314, 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, G&W 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. BIS agrees that, upon issuance of the Order, it will not initiate any further administrative proceeding against G&W in connection with any violation of the Act or the Regulations arising out of the transaction specifically detailed in 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.

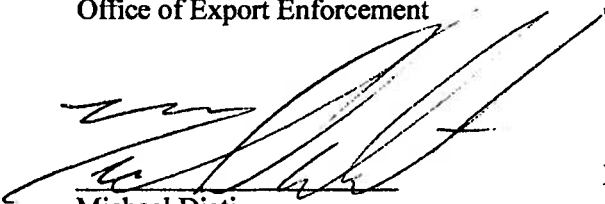
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind its respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE



John Sonderman
Acting Director
Office of Export Enforcement

Date: 3/15, 2010



Michael Diati
President
G&W International Forwarders

Date: MARCH 12th, 2010

PROPOSED CHARGING LETTER

CERTIFIED RETURN RECEIPT REQUESTED

G&W International Forwarders
2299 Kenmore Ave.
Buffalo, NY 14207

Attn: *Michael Diati*
President

Dear Mr. Diati:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that G&W International Forwarders, of Buffalo, New York (“G&W”), has committed one violation 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 G&W committed the following violation:

Charges 1 15 C.F.R. § 764.2(b): Aiding and Abetting an Act Prohibited by the Regulations

On one occasion on or about February 27, 2006, G&W aided and abetted an act prohibited by the Regulations. Specifically, G&W, acting as a freight forwarder, arranged for the export of a Stack Sizer Screening Machine, designated as an EAR99 item³ and subject to the Regulations, from the United States to Indian Rare Earths, Ltd., an entity in India that is listed in Supplement No. 4 to Part 744 of the Regulations. G&W’s actions aided and abetted the export of the Stack Sizer Screening Machine without the Department of Commerce license required pursuant to Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, G&W committed one violation of section 764.2(b) of the Regulations.

* * * * *

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The charged violation occurred in 2006. The Regulations governing the violation at issue are found in the 2006 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2006)). The 2009 Regulations set forth the procedures that apply to this matter.

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 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice 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)).

³ EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2006).

Accordingly, G&W 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;³
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If G&W 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 (2009). If G&W defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to G&W. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

G&W 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 (2009). G&W 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 (2009).

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2009). Should G&W have a proposal to settle this case, G&W or its representative should transmit it to the attorney representing BIS named below.

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

³ *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

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

Elias Wolfberg and Thea Kendler are the attorneys representing BIS in this case; any communications that G&W may wish to have concerning this matter should occur through them. Mr. Wolfberg and Ms. Kendler may be contacted by telephone at (202) 482-5301.

Sincerely,

Tom Madigan
Director
Office of Export Enforcement