

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

In the Matter of:

Carl Zeiss SBE LLC
One Zeiss Drive
Thornwood, NY 10594

Respondent

**ORDER RELATING TO
CARL ZEISS SBE LLC**

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Carl Zeiss SBE LLC of Thornwood, New York (“Zeiss”), of its intention to initiate an administrative proceeding against Zeiss pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ through the issuance of a Proposed Charging Letter to Zeiss that alleges that Zeiss committed ten violations of the Regulations.² Specifically, the charges are:

**Charges 1 - 10 15 C.F.R. § 764.2(e) – Acting with Knowledge in Connection
with Unlicensed Exports of Rifle Scopes to Canada**

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. 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 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Pub. L. 115-232, 132 Stat. 2208 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The violations alleged occurred between 2014 and 2015. The Regulations governing the violations at issue are found in the 2014 and 2015 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2014-2015). The 2020 Regulations govern the procedural aspects of this case.

On at least ten occasions between December 3, 2014 and July 1, 2015, Zeiss exported rifle scopes, items subject to the Regulations, with knowledge that a violation had occurred or was about or was intended to occur in connection with the items. Zeiss exported the items, which were classified under Export Control Classification Number ("ECCN") 0A987, controlled for Firearms Convention reasons, and valued at approximately \$889,170 from the United States to Canada without seeking or obtaining the licenses required for these exports pursuant to Section 742.17 of the Regulations. Zeiss knew or had reason to know that a license was required because *inter alia* the company had previously applied for and been granted a BIS license to export the same or similar items that were also controlled under ECCN 0A987 to Canada.

In so doing, Zeiss committed ten violations of Section 764.2(e) of the Regulations.

WHEREAS, BIS and Zeiss 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, Zeiss shall be assessed a civil penalty in the amount of \$55,000, the payment of which shall be made to the U.S. Department of Commerce by October 1, 2020.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2012)), 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, Zeiss 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 full and timely payment of the civil penalty in accordance with the payment schedule 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 Zeiss. Accordingly, if Zeiss should fail to pay the civil penalty in a full and timely manner, the undersigned may issue an order denying all of Zeiss's export privileges under the Regulations for a period of one year from the date of failure to make such payment.

FOURTH, Zeiss shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or this Order. The foregoing does not affect Zeiss's testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

FIFTH, 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.



P. Lee Smith
Performing the Non-exclusive Functions and
Duties of the Assistant Secretary for Export
Enforcement

Issued this 2 day of September, 2020.

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

In the Matter of:

Carl Zeiss SBE LLC
One Zeiss Drive
Thornwood, NY 10594

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Carl Zeiss SBE LLC of Thornwood, New York (“Zeiss”), 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

WHEREAS, BIS has notified Zeiss of its intentions to initiate an administrative proceeding against Zeiss, pursuant to the Act and the Regulations;²

WHEREAS, BIS has issued a Proposed Charging Letter to Zeiss that alleges that Zeiss committed ten violations of the Regulations, specifically:

¹ The Regulations originally issued pursuant to the Export Administration Act of 1979 (50 U.S.C. §§ 4601-4623 (Supp. III 2015) (the “EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.* (2012)) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Pub. L. 115-232, 132 Stat. 2208 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The violations alleged occurred between 2014 and 20015. The Regulations governing the violations at issue are found in the 2014 and 2015 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2014-2015). The 2020 Regulations govern the procedural aspects of this case.

**Charges 1 - 10 15 C.F.R. § 764.2(e) – Acting with Knowledge in Connection
with Unlicensed Exports of Rifle Scopes to Canada**

On at least ten occasions between December 3, 2014 and July 1, 2015, Zeiss exported rifle scopes, items subject to the Regulations, with knowledge that a violation had occurred or was about or was intended to occur in connection with the items. Zeiss exported the items, which were classified under Export Control Classification Number (“ECCN”) 0A987, controlled for Firearms Convention reasons, and valued at approximately \$889,170 from the United States to Canada without seeking or obtaining the licenses required for these exports pursuant to Section 742.17 of the Regulations. Zeiss knew or had reason to know that a license was required because *inter alia* the company had previously applied for and been granted a BIS license to export the same or similar items that were also controlled under ECCN 0A987 to Canada.

In so doing, Zeiss committed ten violations of Section 764.2(e) of the Regulations.

WHEREAS, Zeiss has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

WHEREAS, Zeiss 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, Zeiss enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

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

WHEREAS, Zeiss neither admits nor denies the allegations contained in the Proposed Charging Letter; and

WHEREAS, Zeiss agrees to be bound by the Order, if issued;

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

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

2. The following sanction shall be imposed against Zeiss in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Proposed Charging Letter:

a. Zeiss shall be assessed a civil penalty in the amount of \$55,000, the payment of which shall be made to the U.S. Department of Commerce by October 1, 2020. Payment shall be made in the manner specified in the attached instructions.

3. Zeiss shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Zeiss's testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

4. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a, BIS will not initiate any further administrative proceeding against Zeiss in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

5. 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.


6. 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.

7. 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.

8. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

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

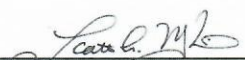
BUREAU OF INDUSTRY AND
SECURITY
U.S. DEPARTMENT OF COMMERCE



John Sonderman
Director of Export Enforcement

Date: 8/31/2020


CARL ZEISS SBE LLC



Scott A. Margolin
Corporate Secretary & Counsel to Carl
Zeiss SBE, LLC

Date: 21 August 2020

Reviewed and approved by:



Alexandre Lamy, Esq.
Baker & McKenzie LLP
Counsel for Carl Zeiss SBE LLC

Date: 21 August 2020

PROPOSED CHARGING LETTER

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Carl Zeiss Sports Optics, LLC
711 Moorefield Park Drive, Building E
N. Chesterfield, VA 23236

*Attention: Dr. Michael Kaschke
President and CEO*

Dear Dr. Kaschke,

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Carl Zeiss Sports Optics, LLC (“Zeiss”) of North Chesterfield, VA, has committed ten violations of the Export Administration Regulations (the “Regulations”),¹ which issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS alleges that Zeiss committed the following violations:

Charges 1 - 10 15 C.F.R. § 764.2(e) – Acting with Knowledge in Connection with Unlicensed Exports of Rifle Scopes to Canada

As set forth in greater detail in the Schedule of Violations attached hereto and incorporated herein, on at least ten occasions between December 3, 2014 and July 1, 2015, Zeiss exported rifle scopes, items subject to the Regulations, with knowledge that a violation had occurred or was about or was intended to occur in connection with the items. Zeiss exported the items, which were classified under Export Control Classification Number (“ECCN”) 0A987, controlled for Firearms Convention reasons, and valued at approximately \$889,170 from the United States to Canada without seeking or obtaining the licenses required for these exports pursuant to Section 742.17 of the Regulations. Zeiss knew or had reason to know that a license was required because *inter alia* the company had previously applied for and been granted a BIS license to export the same or similar items that were also controlled under ECCN 0A987 to Canada.

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2017). The violations alleged occurred between 2014 and 2015. The Regulations governing the violations at issue are found in the 2014 and 2015 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2014-2015). The 2017 Regulations govern the procedural aspects of this case.

² 50 U.S.C. §§ 4601-4623 (Supp. III 2015). 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 15, 2017 (82 Fed. Reg. 39,005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2012).

In so doing, Zeiss committed ten violations of Section 764.2(e) of the Regulations.

* * * * *

Accordingly, Zeiss 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, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$289,238 per violation,³ or twice the value of the transaction that is the basis of the violation;⁴
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

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

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

Zeiss is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Zeiss may be eligible for assistance from the Office of the National

³ *See* 15 C.F.R. § 6.3(b)(4). This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015. *See* 81 Fed. Reg. 95432, 95434 (Dec. 28, 2016) (Adjusting for inflation the maximum civil monetary penalty under IEEPA from \$284,582 to \$289,238, effective January 15, 2017).

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

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, Zeiss' 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 Zeiss' answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Adrienne Frazier
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

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

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement

Schedule of Violations

Charge Number	Date	ECCN	Item	Value	Destination	Violation
1	12/3/2014	0A987	Rifle Scopes	\$103,000	Canada	§ 764.2(e)
2	12/15/2014	0A987	Rifle Scopes	\$63,909	Canada	§ 764.2(e)
3	1/2/2015	0A987	Rifle Scopes	\$135,416	Canada	§ 764.2(e)
4	1/21/2015	0A987	Rifle Scopes	\$25,817	Canada	§ 764.2(e)
5	2/2/2015	0A987	Rifle Scopes	\$29,000	Canada	§ 764.2(e)
6	2/19/2015	0A987	Rifle Scopes	\$14,717	Canada	§ 764.2(e)
7	3/2/2015	0A987	Rifle Scopes	\$25,641	Canada	§ 764.2(e)
8	4/1/2015	0A987	Rifle Scopes	\$189,383	Canada	§ 764.2(e)
9	6/1/2015	0A987	Rifle Scopes	\$157,367	Canada	§ 764.2(e)
10	7/1/2015	0A987	Rifle Scopes	\$144,920	Canada	§ 764.2(e)
	Total			\$889,170		