



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

MAR 19 2002

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Oerlikon-Welding Ltd.
Neumbrunnenstrasse 50
CH-8050 Zurich
Switzerland

Attention: Christian Welter
Director

Dear Mr. Welter:

The Bureau of Export Administration, United States Department of Commerce ("BXA"), has reason to believe that Oerlikon-Welding Ltd. ("Oerlikon") violated the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act"),² on three occasions. Specifically, BXA charges that Oerlikon committed the following violations:

Charge 1 (§764.2(d) Conspiracy – Conspiracy to Export in Violation of the Regulations)

In or about February 2000, Oerlikon conspired with Reweld AG, and others both known and unknown to BXA, to bring about an act prohibited by the Regulations. The purpose of the conspiracy was to export 30,000 pounds of Cellulose Solka-Floe, an item subject to the

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2001). The violations charged occurred in 1997. The Regulations governing the violations are codified at 15 C.F.R. Parts 730-774 (1997). They are substantially the same as the 2001 version of the Regulations that govern the procedural aspects of this case.

² 50 U.S.C. app. 2401- 2420 (1994 & Supp. V. 1999). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 *Fed. Reg.* 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bxa/>.



Regulations and subject to the Iranian Transactions Regulations,³ from the United States to the Islamic Republic of Iran without prior authorization from the Office of Foreign Assets Control, Department of the Treasury, as required by Section 746.7 of the Regulations. To accomplish their purpose, the conspirators placed an order for the abovementioned goods without identifying the Iran as the ultimate destination of the export and attempted to export the goods to Iran. In doing so, Oerlikon violated Section 764.2(d) of the Regulations.

Charge 2 (§764.2(c) Solicitation - Solicitation of Exportation in Violation of the Regulations)

On or about February 25, 2000, Oerlikon solicited Reweld AG to export the goods referred to in Charge 1 to Iran via Switzerland and which were subject both to the Export Administration Regulations and to the Iranian Transactions Regulations, without prior authorization from the Office of Foreign Assets Control, Department of the Treasury, as required by § 746.7 of the regulations. By soliciting the export of goods that it knew would be exported in violation of the Regulations, Oerlikon violated Section 764.2(e) of the Regulations – solicitation of a violation of the Regulations.

Charge 3 (§ 764.2(e) Acting with Knowledge of a Violation - Solicitation of Exportation without a License with Knowledge of Violation)

On or about February 25, 2000, Oerlikon ordered the goods referred to in Charge 1 from the United States through Reweld knowing that the goods would be exported from the United States to Iran in violation of the Regulations. By ordering goods that it knew would be exported in violation of the Regulations, Oerlikon violated Section 764.2(e) of these Regulations – acting with knowledge of a violation.

Accordingly, Oerlikon 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:

A civil penalty of up to \$11,000 for each violation⁴;

A denial of export privileges; and

Exclusion from practice before BXA.

³ 31 C.F.R. Part 560 (2001).

⁴ Pursuant to the Federal Civil Penalties Adjustment Act of 1990, (28 U.S.C. 2461, note (1994 & Supp. V 1999)) and 15 C.F.R. § 6.4(a)(2), the maximum penalty for each violation committed after October 23, 1996 and before November 1, 2000 is \$11,000.

If Oerlikon 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 Oerlikon defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to Oerlikon. The Under Secretary for Export Administration may then impose up to the maximum penalty on each of the charges in this letter.

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

The U.S. Coast Guard provides administrative law judge services in connection with the matters set forth in this letter. Accordingly, Oerlikon's answer should be tiled pursuant to the instructions in Section 766.5(a) of the Regulations with:

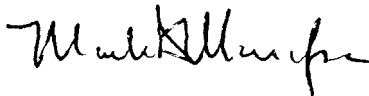
U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

A copy of Oerlikon's answer must be served on BXA at:

Chief Counsel for Export Administration
Attention: Peter R. Klason
Room H-3839
U.S. Department of Commerce
14th and Constitution Avenue, N. W.
Washington, D.C. 20230

Peter R. Klason is the attorney representing the Bureau of Export Administration on this case. He may be contacted by telephone at (202) 482-5304.

Sincerely,



Mark D. Menefee
Director
Office of Export Enforcement

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

In the Matter of:)
)
Oerlikon Schweisstechnik AG)
Neumbrunnerstrasse 50)
CH-8050 Zurich)
Switzerland,)
)
Respondent)

Case No. 02-BXA-07

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Oerlikon Schweisstechnik AG (also known in Switzerland as Oerlikon-Welding Ltd.) (“Oerlikon”) and the Bureau of Industry and Security, United States Department of Commerce (“BIS”), pursuant to Section 766.1 S(b) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2001)) (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (“Act”),² and which are currently maintained

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2002). The violations charged occurred in 2000. The Regulations governing the violations are codified at 15 C.F.R. Par@ 730-774 (2000). They are substantially the same as the 2002 version of the Regulations which govern the procedural aspects of this case.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. 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 by the Notice of August 14, 2002 (67 *Fed. Reg.* 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

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in force under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (1994 & supp. v 1999)).

WHEREAS, BIS has initiated an administrative proceeding against Oerlikon pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a charging letter to Oerlikon that alleged that Oerlikon committed three violations of the Regulations. Specifically, the charges are that Oerlikon violated Sections 764.2(c), 764.2(d), and 764.2(e) of the Regulations by soliciting the export of cellulose from the U.S. to Iran and conspiring to export cellulose from the U.S. to Iran without the required authorization from the Office of Foreign Assets Control, Department of the Treasury, as required by the Regulations, and taking an action that Oerlikon knew to be a violation of the Regulations.

WHEREAS, Oerlikon has reviewed the 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, Oerlikon fully understands the terms of this Agreement and the Order that will be issued to give effect to this Settlement Agreement (“Order”);

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

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

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

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

WHEREAS, Oerlikon agrees to be bound by the Order, when entered;

NOW THEREFORE, Oerlikon and BIS agree as follows:

1. BIS has jurisdiction over Oerlikon, under the Regulations, in connection with the matters alleged in the charging letter.
2. The following sanctions shall be imposed against Oerlikon in complete settlement of the alleged violations set forth in the charging letter:
 - a. For a period of one year from the date of the appropriate Order, Oerlikon, and, when acting for or on behalf of Oerlikon, its representatives, agents, assigns, or employees (“denied persons”), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:
 1. Applying for, obtaining, or using any license, License Exception, or export control document;
 2. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting,

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to any alleged violations of this Agreement or the Order, when entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, when entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, when entered.

4. BIS agrees that, upon entry of the Order, it will not initiate any administrative proceeding against Oerlikon in connection with any violation, of the Act or the Regulations arising out the transactions identified in the charging letter. BIS additionally agrees that it will withdraw the pending charging letter against Oerlikon in case number 02-BXA-07 from adjudication by the administrative law judge.

5. Oerlikon understands that BIS will make the charging letter, this Agreement, and the Order, when entered, available to the public.

6. BIS and Oerlikon agree that 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 766.1 S(b) of the Regulations, BIS and Oerlikon agree that they may not use this Agreement in any administrative or judicial proceeding and that 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, when entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by

c)

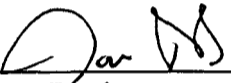
any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BIS only when 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

OERLIKON SCHWEISSTECHNIK
AG



Jon A Dyck
Chief Counsel for
Industry and Security



Guy Missiaen

Date: 10/28/02

Date: 14/12/2002

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

In the Matter of:)
)
Oerlikon Schweisstechnik AG)
Neumbrunnerstrasse 50)
CH-8050 Zurich)
Switzerland,)
)

Respondent)

Case No. 02-BXA-07

ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), has notified Oerlikon Schweisstechnik AG (also known in Switzerland as Oerlikon-Welding Ltd.) (“Oerlikon”), of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (“Act”),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2002)) (“Regulations”),² based on allegations in a charging letter issued to Oerlikon that alleged that Oerlikon committed three violations of the Regulations.

¹ From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §91701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. 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 by the Notice of August 14, 2002 (67 Fed. Reg. 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2002). The violations charged occurred in 2000. The Regulations governing the violations are codified at 15 C.F.R. Parts 730-774 (2000). They are substantially the same as the 2002 version of the Regulations which govern the procedural aspects of this case.

Specifically, the charges are that Oerlikon violated Sections 764.2(c), 764.2(d), and 764.2(e) of the Regulations by soliciting the export of cellulose from the U.S. to Iran and conspiring to export cellulose from the U.S. to Iran without the required authorization from the Office of Foreign Assets Control, Department of the Treasury, as required by the Regulations, and taking an action that Oerlikon knew to be a violation of the Regulations.

BIS and Oerlikon having entered into a Settlement Agreement pursuant to Section 766.1 8(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that, for a period of one year from the date of this Order, Oerlikon Schweisstechnik AG (also known in Switzerland as Oerlikon-Welding Ltd.), Neumbrunnerstrasse 50, CH-8050 Zurich, Switzerland, shall be denied its U.S. export privileges as described herein (hereinafter the “denial period”). Oerlikon, and all of its successors, assigns, officers, representatives, agents, and employees, may not participate, directly or indirectly, in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, **financing**, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR, or

C. **Benefitting** in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

SECOND, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a person subject to this order any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a person subject to this order of the ownership, possession, or control of any item subject to the EAR that has been or will be exported **from** the United States, including financing or other support activities related to a transaction whereby a person subject to this order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a person subject to this order of any item subject to the EAR that has been exported from the United States;

D. Obtain from a person subject to this order in the United States any item subject

to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this order, or service any item, of whatever origin, that is owned, possessed or controlled by a person subject to this order if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, **firm**, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this order.

FOURTH, that this order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

FIFTH, that, as authorized by Section 766.18(c) of the Regulations, the final six months of the denial period set forth above shall be suspended for one year from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Oerlikon has not committed a violation of the Act or any regulation, order or license issued thereunder.

SIXTH, that a civil penalty of \$33,000 is assessed against Oerlikon which shall be paid to

the U.S. Department of Commerce within thirty days from the date of entry of this Order.

Payment shall be made in the manner specified in the attached instructions.

SEVENTH, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§3701-3720E (1983 and Supp. 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, Oerlikon 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.

EIGHTH, 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 Oerlikon. Accordingly, if Oerlikon should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Oerlikon's export privileges for a period of one year **from** the date of entry **of this** Order.

NINTH, that the charging letter, the Settlement Agreement, and this Order shall be made available to the public.

TENTH, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202-4022, notifying that office that case number 02-BXA-07 naming Oerlikon as a respondent is withdrawn from adjudication, as provided by Section 766.18(b) of the Regulations.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Michael J. Garcia
Assistant Secretary of Commerce
for Export Enforcement

Entered this 12th day of November 2002.