

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

In the Matter of:)
)
Nippon Express U.S.A., Inc.)
590 Madison Ave, Rm 2402)
New York, NY 10022-8548)
)
Respondent)

ORDER RELATING TO NIPPON EXPRESS U.S.A., INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Nippon Express U.S.A., Inc. (“Nippon”), of its intention to initiate an administrative proceeding against Nippon pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005)) (“Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),² by issuing a proposed charging letter to Nippon that alleged that Nippon committed two violations of the Regulations. Specifically, the charges are:

1. *One Violation of 15 C.F.R. § 764.2(b) - Causing an Attempted Export of Seismic Equipment Without the Required License:* On or about September 23, 2004, Nippon caused an act prohibited by the Regulations when it caused the attempted

¹ The violations charged occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The 2005 Regulations govern the procedures that apply to this matter.

² 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 2, 2005 (70 Fed. Reg. 45273, August 5, 2005), has continued the Regulations in effect under IEEPA.

export of seismic equipment, items classified as EAR99³, to Syria without the Department of Commerce (the "Department") license required by BIS General Order No. 2, Supplement One to Part 736 of the Regulations. Specifically, Nippon provided the seismic equipment to a shipper for export to Syria without the required Department license.

2. *One Violation of 15 C.F.R. § 764.2(g) - Misrepresentation of Proper Authorization on Export Control Document:* On or about September 23, 2004, Nippon made a false or misleading representation, statement, or certification, to the U.S. Government in connection with effecting an export subject to the Regulations. Nippon filed a Shipper's Export Declaration with the U.S. Government containing a false statement regarding the authorization for the export of the seismic equipment to Syria. Nippon asserted that the export was authorized pursuant to "NLR" (no license required), when in fact a license was required from the Department.

WHEREAS, BIS and Nippon 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 \$17,000 is assessed against Nippon, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

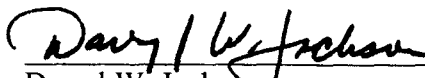
³ The term "EAR99" refers to items subject to the Regulations that are not listed on the Commerce Control List. See 15 C.F.R. § 734.3(c).

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



Darryl W. Jackson
Assistant Secretary of Commerce
for Export Enforcement

Entered this 27th day of January 2006.

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

In the Matter of:)
)
Nippon Express U.S.A., Inc.)
590 Madison Ave., Rm 2402)
New York, NY 10022-8548)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Nippon Express U.S.A., Inc. (“Nippon”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005)) (“Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),²

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

¹ The violations charged occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The 2005 Regulations govern the procedures that apply to this matter.

² 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 2, 2005 (70 Fed. Reg. 45273, August 5, 2005), has continued the Regulations in effect under IEEPA.

WHEREAS, BIS has issued a proposed charging letter to Nippon that alleged that Nippon committed two violations of the Regulations, specifically:

1. *One Violation of 15 C.F.R. § 764.2(b) - Causing an Attempted Export of Seismic Equipment Without the Required License:* On or about September 23, 2004, Nippon caused an act prohibited by the Regulations when it caused the attempted export of seismic equipment, items classified as EAR99³, to Syria without the Department of Commerce (the "Department") license required by BIS General Order No. 2, Supplement One to Part 736 of the Regulations. Specifically, Nippon provided the seismic equipment to a shipper for export to Syria without the required Department license.
2. *One Violation of 15 C.F.R. § 764.2(g) - Misrepresentation of Proper Authorization on Export Control Document:* On or about September 23, 2004, Nippon made a false or misleading representation, statement, or certification, to the U.S. Government in connection with effecting an export subject to the Regulations. Nippon filed a Shipper's Export Declaration with the U.S. Government containing a false statement regarding the authorization for the export of the seismic equipment to Syria. Nippon asserted that the export was authorized pursuant to "NLR" (no license required), when in fact a license was required from the Department.

³ The term "EAR99" refers to items subject to the Regulations that are not listed on the Commerce Control List. See 15 C.F.R. § 734.3(c).

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

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

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

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

WHEREAS, Nippon agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Nippon, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against Nippon in complete settlement of the violations of the Regulations relating to the transactions specifically detailed in the proposed charging letter:

- a. Nippon shall be assessed a civil penalty in the amount of \$17,000 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry 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 Nippon. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Nippon'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, Nippon 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 entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$17,000 civil penalty, BIS will not initiate any further administrative proceeding against Nippon in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, 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.

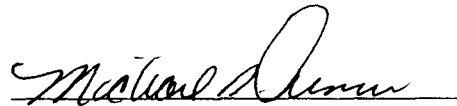
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BIS only if 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

NIPPON EXPRESS U.S.A, INC.



Michael D. Turner
Director
Office of Export Enforcement



Edward Temple, Esq.
Vice President

Date: 01/18/2006

Date: January 11, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nippon Express U.S.A., Inc.
590 Madison Ave, Rm 2402
New York, NY 10022-8548

Attention: *Mr. Tadaaki Hashimoto*
President & CEO

Dear Mr. Hashimoto:

The Bureau of Industry and Security, U. S. Department of Commerce ("BIS"), has reason to believe that Nippon Express, Inc. ("Nippon"), of New York, New York, has committed two violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that Nippon committed the following violations:

Charge 1 (15 C.F.R. §764.2(b) - Causing an Attempted Export of Seismic Equipment Without the Required License)

On or about September 23, 2004, Nippon caused an act prohibited by the Regulations when it caused the attempted export of seismic equipment, items classified as EAR99³, to Syria without the Department of Commerce (the "Department") license required by BIS General Order No. 2, Supplement One to Part 736 of the Regulations. Specifically, Nippon provided the seismic equipment to a shipper for export to Syria without the required Department license. In so doing, Nippon 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 (2005). The violations charged occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004)). The 2005 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)), as extended most recently by the Notice of August 2, 2005, (70 Fed. Reg. 45273 (August 5, 2005)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA").

³ The term "EAR99" refers to items subject to the Regulations that are not listed on the Commerce Control List. See 15 C.F.R. § 734.3(c).

Charge 2 (15 C.F.R. §764.2(g) - Misrepresentation of Proper Authorization on Export Control Document)

On or about September 23, 2004, Nippon made a false or misleading representation, statement, or certification, to the U.S. Government in connection with effecting an export subject to the Regulations. Nippon filed a Shipper's Export Declaration with the U.S. Government containing a false statement regarding the authorization for the export of the seismic equipment to Syria. Nippon asserted that the export was authorized pursuant to "NLR" (no license required), when in fact a license was required from the Department. In so doing, Nippon committed one violation of Section 764.2(g) of the Regulations.

Accordingly, Nippon 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 \$11,000 per violation;⁴

Denial of export privileges; and/or

Exclusion from practice before BIS.

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

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

⁴ See 15 C.F.R. § 6.4(a)(2).

Nippon Express U.S.A, Inc.
Proposed Charging Letter
Page 3

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

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

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

Sincerely,

Michael Turner
Director
Office of Export Enforcement