

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

In the Matter of:)
)
Orcas International, Inc.)
230 U.S. Highway 206)
Suite 3)
Flanders, NJ 07836)
)
Respondent.)
)

ORDER

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Orcas International, Inc. (hereinafter referred to as “Orcas”) of its intention to initiate an administrative proceeding against Orcas 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 Orcas that alleged that Orcas committed two violations of the Regulations. Specifically, the charges are:

¹ The violations charged occurred in 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 through 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2005 Regulations establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which has 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 (2000)) (“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)), which has been extended by successive presidential notices, the most recent being that of August 2, 2005 (70 Fed. Reg. 45273 (August 5, 2005)), has continued the Regulations in effect under the IEEPA.

1. *One Violation of 15 C.F.R. §764.2(d) - Conspiracy to Export Toxins to North Korea Without the Required License:* Beginning in late 2000 and continuing into September 2002, Orcas conspired and acted in concert with others, known and unknown, to export toxins from the United States to North Korea without the required Department of Commerce license. The goal of the conspiracy was to obtain toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under export control classification number (“ECCN”) 1C351, on behalf of a North Korean end-user and to export those toxins to North Korea. In furtherance of the conspiracy, Orcas acquired the toxins from a U.S. company and then attempted to export them from the United States to a co-conspirator in the Netherlands who was to complete the export to North Korea. Contrary to Section 742.2 of the Regulations, no Department of Commerce license was obtained for the export of toxins from the United States to North Korea.
2. *One Violation of 15 C.F.R. §764.2(b) -Attempting to Export Toxins Without the Required License:* On or about September 12, 2002, Orcas attempted to export toxins, Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under ECCN 1C351, from the United States to North Korea without obtaining an export license from the Department of Commerce as required by Section 742.2 of the Regulations.

WHEREAS, BIS and Orcas 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 the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$19,800 is assessed against Orcas, which shall be paid to the U.S. Department of Commerce no later than 30 days from the date of entry 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 as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Orcas 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 agreed to in paragraph 2.a 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 Orcas. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all Orcas's export privileges under the Regulations for a period of one year from the date of imposition of the penalty. The payment of the civil penalty is guaranteed by Mr. Graneshawar K. Rao (hereinafter referred to as "K.G. Rao"), in his individual capacity, and K.G. Rao and Orcas, are jointly and severally liable for the payment of the penalty.

FOURTH, that for a period of four years from the date of entry of this Order, Orcas, its successors or assigns, and when, acting for or on behalf of Orcas, its officers, representatives, agents, or employees ("Denied Person") may not, directly or indirectly, participate 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 specified on the

Commerce Control List (“Control List”),³ or in any other activity that is subject to the

Regulations involving an item that is specified on the Control List, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document in connection with an item that is specified on the Control List;
- 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 specified on the Control List, or in any other activity subject to the Regulations involving an item that is specified on the Control List; or
- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is specified on the Control List, or in any other activity subject to the Regulations involving an item that is specified on the Control List.

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

- A. Export or reexport to or on behalf of the Denied Person any item specified on the Control List;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item specified on the Control List that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the

³The Commerce Control List is set forth in Supp. 1 to Part 774 of the Regulations. “EAR99” items are subject to the Regulations but not “specified” on the Control List. *See* 15 C.F.R. § 774.1.

- Denied Person 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 the Denied Person of any item specified on the Control List that has been exported from the United States;
 - D. Obtain from the Denied Person in the United States any item specified on the Control List 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 specified on the Control List that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item specified on the Control List that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

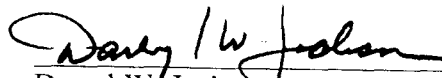
SIXTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Orcas by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

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

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

NINTH, that this Order shall be served on the Denied Person and on BIS, and shall be published in the *Federal Register*.

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 2nd day of March 2006.

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

In the Matter of:)
)
Orcas International, Inc.)
230 U.S. Highway 206)
Suite 3)
Flanders, NJ 07836)
)
Respondent.)
_____)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Orcas International, Inc. (hereinafter referred to as “Orcas”), 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

¹ The violations charged occurred in 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 through 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2005 Regulations establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which has 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 (2000)) (“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)), which has been extended by successive presidential notices, the most recent

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

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

1. *One Violation of 15 C.F.R. §764.2(d) - Conspiracy to Export Toxins to North Korea Without the Required License:* Beginning in late 2000 and continuing into September 2002, Orcas conspired and acted in concert with others, known and unknown, to export toxins from the United States to North Korea without the required Department of Commerce license. The goal of the conspiracy was to obtain toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under export control classification number (“ECCN”) 1C351, on behalf of a North Korean end-user and to export those toxins to North Korea. In furtherance of the conspiracy, Orcas acquired the toxins from a U.S. company and then attempted to export them from the United States to a co-conspirator in the Netherlands who was to complete the export to North Korea. Contrary to Section 742.2 of the Regulations, no

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

Department of Commerce license was obtained for the export of toxins from the United States to North Korea.

2. *One Violation of 15 C.F.R. §764.2(b) - Attempting to Export Toxins Without the Required License:* On or about September 12, 2002, Orcas attempted to export toxins, Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under ECCN 1C351, from the United States to North Korea without obtaining an export license from the Department of Commerce as required by Section 742.2 of the Regulations.

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Orcas, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against Orcas in complete settlement of the violations of the Regulations set forth in the proposed charging letter:

- a. Orcas shall be assessed a civil penalty in the amount of \$19,800, which shall be paid to the U.S. Department of Commerce no later than 30 days from entry of this 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, license exception, permission, or privilege granted, or to be granted, to Orcas. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all Orcas's export privileges under the Regulations for a period of one year from the date of imposition of the penalty. The payment of the civil penalty is guaranteed by Mr. Graneshawar K. Rao (hereinafter referred to as "K.G. Rao"), in his individual capacity, and K.G. Rao and Orcas, are jointly and severally liable for the payment of the penalty.

- c. For a period of four years from the date of entry of the Order, Orcas, its successors or assigns, and, when acting for or on behalf of Orcas, its officers, representatives, agents, or employees (“Denied Person”) 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 specified on the Commerce Control List (“Control List”)³, or in any other activity that is subject to the Regulations involving an item that is specified on the Control List, including, but not limited to:
- i. Applying for, obtaining, or using any license, License Exception, or export control document in connection with an item that is specified on the Control List;
 - ii. 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 specified on the Control List, or in any other activity that is subject to the Regulations involving an item that is specified on the Control List; or

³The Commerce Control List is set forth in Supp. No. 1 to Part 774 of the Regulations. “EAR99” items are subject to the Regulations but not “specified” on the Control List. *See* 15 C.F.R. § 774.1.

- iii. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is specified on the Control List, or in any other activity that is subject to the Regulations involving an item that is specified on the Control List.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Orcas 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 any 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. BIS agrees that, upon entry of the Order, it will not initiate any further administrative proceeding against Orcas 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

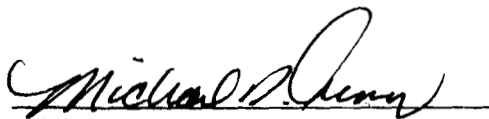
in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

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.

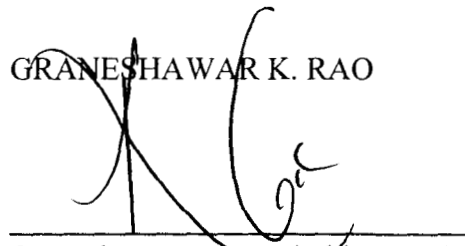
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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



Michael D. Turner
Director
Office of Export Enforcement

GRANESHAWAR K. RAO



Graneshawar K. Rao, in his capacity
as President of Orcas International
Inc., and in his individual capacity
as Guarantor.

Date: FEB 17, 2006

Date: Jan 15th 2006

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Orcas International, Inc.
230 U.S. Highway 206
Suite 3
Flanders, NJ 07836

Attn: *Graneshawar K. Rao*
President

Dear Mr. Rao:

The Bureau of Industry and Security, United States Department of Commerce (“BIS”) has reason to believe that Orcas International, Inc. (“Orcas”) of Flanders, New Jersey 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 two occasions. Specifically, BIS charges that Orcas committed the following violations:

**Charge 1 (15 C.F.R § 764.2(d) - Conspiracy to Export Toxins to North Korea
without the required Department of Commerce License)**

Beginning in late 2000 and continuing into September 2002, Orcas conspired and acted in concert with others, known and unknown, to export toxins from the United States to North Korea without the required Department of Commerce license. The goal of the conspiracy was to obtain toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred in 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 through 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2005 Regulations establish the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401- 2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which has 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 (2000)) (“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)), which has been extended by successive presidential notices, the most recent being that of August 2, 2005 (70 Fed. Reg. 45273 (August 5, 2005)), has continued the Regulations in effect under the IEEPA.

subject to the Regulations and classified under export control classification number (“ECCN”) 1C351, on behalf of a North Korean end-user and to export those toxins to North Korea. In furtherance of the conspiracy, Orcas acquired the toxins from a U.S. company and then attempted to export them from the United States to a co-conspirator in the Netherlands who was to complete the export to North Korea. Contrary to Section 742.2 of the Regulations, no Department of Commerce license was obtained for the export of toxins from the United States to North Korea. In doing so, Orcas committed one violation of Section 764.2(d) of the Regulations.

Charge 2 (15 C.F.R. §764.2(b) - Attempting to Export Toxins Without the Required Department of Commerce License)

On or about September 12, 2002, Orcas attempted to export toxins, Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under ECCN 1C351, from the United States to North Korea without obtaining an export license from the Department of Commerce as required by Section 742.2 of the Regulations. In doing so, Orcas committed one violation of Section 764.2(b) of the Regulations.

* * * *

Accordingly, Orcas 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 \$11,000 per violation;¹

Denial of export privileges; and/or

Exclusion from practice before BIS.

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

Orcas 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. Orcas is also entitled to be represented

¹ 15 C.F.R. § 6.4(a)(4).

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 Orcas have a proposal to settle this case, Orcas or its 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, Orcas'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 Orcas's answer must be served on BIS at the following address:

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

James C. Pelletier is the attorney representing BIS in this case; any communications that Orcas may wish to have concerning this matter should occur through him. Mr. Pelletier may be contacted by telephone at (202) 482-5301.

Sincerely,

Michael D. Turner
Director
Office of Export Enforcement