

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

In the Matter of
ALLISON ENGINE COMPANY, INC.

Case No. 97-4

ORDER

The Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce ("Department"), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the "Act"),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)), against Allison Engine Company, Inc., ("Allison Engine"), a domestic concern resident in the state of Indiana, based on the allegations set forth in the Proposed Charging Letter, dated November 24, 1998, attached hereto and incorporated herein by this reference;

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)) and August 13, 1998 (63 Fed. Reg. 44121, August 17, 1998), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

The Department and Allison Engine having entered into a Settlement Agreement, incorporated herein by this reference, whereby the parties have agreed to settle this matter; and

I, the Assistant Secretary for Export Enforcement, having approved the terms of the Settlement Agreement:

IT IS THEREFORE ORDERED THAT,

FIRST, a civil penalty in the amount of \$3,000 is assessed against Allison Engine;

SECOND, Allison Engine shall pay to the Department the sum of \$3,000, within thirty (30) days of the date of this Order, as specified in the attached instructions.

THIRD, pursuant to the Debt Collection Act of 1982, as amended (U.S.C.A §§ 3701-3720E (1983 and Supp. 1998)), 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, Allison Engine will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

FOURTH, as authorized by Section 11(d) of the Act, the timely payment of the sum of \$3,000 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 Allison Engine. Accordingly, if Allison Engine should fail to pay the sum of \$3,000 in a timely manner, I will enter an Order under the authority of Section 11(d) of the Act denying all of Allison Engine's export privileges for a period of one year from the date of the entry of this Order; and

FIFTH, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public, and a copy of this Order shall be served upon Allison Engine.

This Order is effective immediately.


F. Amanda DeBusk
Assistant Secretary for Export Enforcement
Bureau of Export Administration

Entered this 23rd day of December, 1998

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty and the rights, if any, that Allison Engine may have to seek review, both within the U.S. Department of Commerce and the courts. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1998)) and the Federal Claims Collection Standards (4 C.F.R. Parts 101-105 (1998)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed Allison Engine is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and Allison Engine will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The foregoing constitutes the initial written notice and demand to Allison Engine in accordance with section 102.2(b) of the Federal Claims Collection Standards (4 C.F.R. § 102.2(b)).

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The check should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The check should be mailed to:

**U.S. Department of Commerce
Bureau of Export Administration
Room 6622
14th & Constitution Avenue, N.W.
Washington, D.C. 20230**

Attention: Miriam Cohen

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

In the Matter of
ALLISON ENGINE COMPANY, INC.

Case No. 97-4

SETTLEMENT AGREEMENT

This agreement is made by and between Allison Engine Company, Inc. ("Allison Engine"), a domestic concern resident in the State of Indiana, and the Office of Antiboycott Compliance, Bureau of Export Administration, United States Department of Commerce ("Department"), pursuant to Section 766.18 (a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the "Act").¹

WHEREAS, the Department has notified Allison Engine of its intention to initiate an administrative proceeding against Allison Engine pursuant to Section 11 (c) of the Act by issuing

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the Proposed Charging Letter, dated November 24, 1998, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, Allison Engine has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; Allison Engine fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and Allison Engine states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, Allison Engine neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Allison Engine agrees to be bound by the appropriate Order ("Order") when entered;

NOW, THEREFORE, Allison Engine and the Department agree as follows:

1. Under the Act and the Regulations, the Department has jurisdiction over Allison Engine with respect to the matters alleged in the Proposed Charging Letter.
2. In complete settlement of all matters set forth in the Proposed Charging Letter, Allison Engine will pay to the Department, within 30 days of service upon it of the appropriate Order, when entered, the amount of \$3,000.
3. As authorized by Section 11(d) of the Act, timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Allison Engine. Failure to make payment of this amount, in a timely manner, shall result in the denial of all of Allison Engine's export privileges for a period of one year from the date of entry of the appropriate Order.
4. Subject to the approval of this Settlement Agreement pursuant to paragraph 9 hereof, Allison Engine hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the appropriate Order,

when entered) including, without limitation, any right to:

- a. an administrative hearing regarding the allegations in the Proposed Charging Letter;
 - b. request a refund of the funds paid by Allison Engine pursuant to this Settlement Agreement and the appropriate Order, when entered; or
 - c. seek judicial review or otherwise contest the validity of this Settlement Agreement or the appropriate Order, when entered.
5. The Department, upon entry of the appropriate Order, will not subsequently initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against Allison Engine, with respect to any violation of Section 8 of the Act or Part 769 or redesignated Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by the Department in the course of its investigation.

6. Allison Engine understands that the Department will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered.

7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by Allison Engine that it has violated the Regulations or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and an appropriate Order not entered by the Assistant Secretary for Export Enforcement, the Department may not use this Settlement Agreement against Allison Engine in any administrative or judicial proceeding.

8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered. This Settlement Agreement shall not bind, constrain or otherwise limit any action by any other agency or department of the United States

Government with respect to the facts and circumstances herein addressed.

9. This Settlement Agreement will become binding on the Department only when approved by the Assistant Secretary for Export Enforcement by entering the appropriate Order.

ALLISON ENGINE COMPANY , INC.



W. Eric Pedersen
W. Eric Pedersen
General Counsel
and Corporate Secretary

Date: 9 Dec 98

U.S. DEPARTMENT OF COMMERCE



Dexter M. Price
Dexter M. Price
Director
Office of Antiboycott Compliance

Date: December 18, 1998



PROPOSED CHARGING LETTER

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

November 24, 1998

Allison Engine Company, Inc.
Post Office Box 420
Indianapolis, IN 46206-0420

Case No. 97-4

Attention: W. Eric Pedersen, Esq.
Counsel

Gentlemen:

We have reason to believe and charge that you, Allison Engine Company, Inc., ("Allison Engine"), have committed two violations of the Export Administration Regulations, currently codified at 15 C.F.R. Parts 730-774 (1998), (the "Regulations")¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. §§ 2401-2420 (1991 and Supp. 1998)) (the "Act").² We charge that, with intent to comply with, further, or support an unsanctioned foreign boycott, you furnished, through an independent contractor with which you regularly do business ("the independent contractor"), one item of information about your business relationships with or in a boycotted country, in violation of Section 769.2(d) of the former Regulations. Additionally, we charge that, on one occasion you failed to report to the Department, as directed by Section 769.6 of the

^{1/} The alleged violations occurred in 1995. The Regulations governing the violations at issue are found in the 1995 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). Those Regulations define the violations that the Bureau of Export Administration alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth in this letter.

^{2/} The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)) and August 13, 1998 (63 Fed. Reg. 44121, August 17, 1998), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).



former Regulations, your receipt of a request to engage in a restrictive trade practice or an unsanctioned foreign boycott.

We allege that:

1. You, Allison Engine Company, Inc., are a domestic concern resident in the State of Indiana, and as such, are a United States person as defined in Section 760.1(b) of the Regulations.
2. During the period July 1995 through December 1995, you engaged in a transaction involving the shipment of United States origin goods to Dubai, an activity in the interstate or foreign commerce of the United States, as defined in Section 769.1(d) of the former Regulations.
3. On or about December 15, 1995, you received a request to provide the following clause on an invoice related to goods being shipped to Dubai, UAE:

"We hereby certify that the goods enumerated in this invoice are not of Israeli Origin nor do they contain Israeli materials and are not being exported from Israel."
4. On or about December 18, 1995, you sent the request referred to in paragraph 3 above, to the independent contractor with a cover memo advising the independent contractor to "... follow the pertinent instructions."
5. In connection with the request referred to in paragraphs 3 and 4 above, on or about December 27, 1995, the independent contractor furnished the requested information in the requested form.
6. By providing the information referred to in paragraph 5 above, you, through the independent contractor, furnished one item of information about your business relationships with or in a boycotted country, an activity prohibited by Section 769.2(d) of the former Regulations, and not excepted.
7. In connection with the transaction referred to in paragraph 3 above, you received a request to take an action which had the effect of furthering or supporting a restrictive trade practice or an unsanctioned foreign boycott. In one instance, you failed to report the request to the Department as directed by Section 769.6 of the former Regulations. We therefore charge you with one violation of Section 769.6 of the former Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions.³ If you fail to answer the allegations contained in this letter within thirty (30) days after service, as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. You are entitled to be represented by counsel, and under Section 766.18 of the Regulations, to seek a settlement agreement.

As provided in Section 766.3, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between the Bureau of Export Administration and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

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

Attention: Administrative Law Judge

³ Administrative sanctions may include any or all the following:

- a. Denial of export privileges (See Section 764.3(a)(2) of the Regulations);
- b. Exclusion from practice (See Section 764.3(a)(3) of the Regulations); and/or
- c. The maximum civil penalty of \$10,000 per violation, (See Section 764.3(a)(1) of the Regulations).

Also, in accordance with the instructions in Section 766.5(a) of the Regulations, a copy of your answer should also be served on the Bureau of Export Administration at:

Office of the Chief Counsel for Export Administration
U.S. Department of Commerce
Room H-3839
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

The Office of Chief Counsel for Export Administration can be reached by telephone at (202)-482-5311.

Sincerely,

Dexter M. Price
Director
Office of Antiboycott Compliance

UNITED STATES DEPARTMENT OF
COMMERCE
NEWS

WASHINGTON, D.C. 20230

BUREAU OF
EXPORT
ADMINISTRATION

FOR IMMEDIATE RELEASE

December 23, 1998

www.bxa.doc.gov

CONTACTS: Susan Hofer

Eugene Cottilli

202-482-2721

Indianapolis Company Settles Antiboycott Charges

WASHINGTON--The Commerce Department's Assistant Secretary for Export Enforcement, F. Amanda DeBusk, announced that Allison Engine Company, Inc. has agreed to pay a \$3,000 civil penalty for two alleged violations of the antiboycott provisions of the Export Administration Regulations. Allison Engine Company, Inc. is an aircraft and industrial engine manufacturer located in Indianapolis, Indiana.

The Office of Antiboycott Compliance ("OAC") charged that Allison Engine Company furnished, through its independent contractor, information regarding its business relationships with Israel by certifying that the goods shipped were not of Israeli origin. The OAC also maintained that the company failed to report its receipt of the request for the information furnished. The alleged violations occurred in a transaction involving a sale to Dubai, the United Arab Emirates, in 1995.

The company voluntarily disclosed the alleged violations to the OAC. While neither admitting nor denying the allegations, the company agreed to pay the civil penalty.

The antiboycott provisions prohibit U. S. companies and individuals from complying with certain aspects of unsanctioned foreign boycotts against any country friendly to the United States that is not, itself, the object of any U. S. boycott. Through its Office of Antiboycott Compliance, the Commerce Department investigates alleged violations, provides support in administrative or criminal litigation of cases, and prepares cases for settlement.