

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

In the Matter of:)
)
MERCATOR, INC.)
560 Sylvan Avenue, 3rd Floor)
Englewood Cliffs, New Jersey 07632,)
)
Respondent)

ORDER RELATING TO ALLEGATIONS UNDER 15 C.F.R. PART 764

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), has notified Mercator, Inc. (“Mercator”), 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)) (the “Act”),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2002)) (the “Regulations”),² based on allegations in the proposed charging letter issued to Mercator that Mercator committed three violations of the Regulations. Specifically, the allegations are:

- (1) On or about February 22, 1997, Mercator allegedly exported plastic products that were

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 then 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.

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2002). The Regulations are also available on the Government Printing Office website at <http://w3.access.gpo.gov/bis/>.

subject to the Regulations and to the Iranian Transactions Regulations from the United States to Iran without obtaining prior authorization from the Treasury Department's Office of Foreign Assets Control, in violation of Section 764.2(a) of the Regulations;

(2) On or about February 22, 1997, Mercator allegedly transferred plastic products from the United States to the United Arab Emirates with knowledge that the plastic products would be exported to Iran without the required authorization, in violation of 764.2(e) of the Regulations; and

(3) On or about January 24, 2002, Mercator allegedly failed to comply with the recordkeeping provisions of Section 762.2 by failing to retain export control documents and other records required to be maintained, in violation of Section 764.2(i) of the Regulations.

BIS and Mercator, having 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, the terms of the Settlement Agreement having been approved by me;

IT IS HEREBY ORDERED:

FIRST, that a civil penalty of \$18,000 is assessed against Mercator, which shall be paid to the U.S. Department of Commerce in six equal, monthly installments of \$3,000 each, the first payment being due on September 1, 2002, and the subsequent five payments being due on the first day of each succeeding month. 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 (1983 and Supp. V 1999)), 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 dates specified herein, Mercator 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 Mercator. Accordingly, if Mercator should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Mercator's export privileges for a period of one year from the date of entry of this Order. Prior to entry of such Order Mercator shall be provided with notice and opportunity to cure.

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.



Michael J. Garcia
Assistant Secretary of Commerce
for Export Enforcement

Entered this 14th day of August, 2002.

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

In the Matter of:)

MERCATOR, INC.)
560 Sylvan Avenue, 3rd Floor)
Englewood Cliffs, New Jersey 07632.)

Respondent)

SETTLEMENT AGREEMENT BETWEEN MERCATOR, INC. AND THE
BUREAU OF INDUSTRY AND SECURITY
RELATING TO ALLEGATIONS UNDER 15 C.F.R. PART 764

This Settlement Agreement is made by and between Mercator, Inc. ("Mercator"), and the Bureau of Industry and Security, United States Department of Commerce ("BIS"),¹ pursuant to Section 766.18(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2002)) (the "Regulations"),² issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (the "Act").³

¹ On April 18, 2002, the Department of Commerce announced that the name of the Bureau of Export Administration ("BXA") had been changed to the Bureau of Industry and Security ("BIS") and made conforming changes in the Export Administration Regulations. *67 Fed. Reg.* 20630-32 (April 26, 2002). This change does not affect the substantive activities or responsibilities of BIS. All actions taken before or after April 18 under the name of BIS will be deemed to have been taken under the name BIS and all references to BIS are deemed to be to BIS. *Id.*

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2002). The Regulations are also available on the Government Printing Office website at <http://w3.access.gpo.gov/bis/>.

³ 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

WHEREAS, BIS has notified Mercator of its intention to initiate administrative proceedings against Mercator pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Mercator pursuant to the Regulations, based on allegations that Mercator committed the following violations of the Regulations:

(1) On or about February 22, 1997, Mercator allegedly exported plastic products that were subject to the Regulations and to the Iranian Transactions Regulations from the United States to Iran without obtaining prior authorization from the Treasury Department's Office of Foreign Assets Control, in violation of Section 764.2(a) of the Regulations;

(2) On or about February 22, 1997, Mercator transferred plastic products from the United States to the United Arab Emirates allegedly with knowledge that the plastic products would be exported to Iran without the required authorization, in violation of 764.2(e) of the Regulations;
and

(3) On or about January 24, 2002, Mercator allegedly failed to comply with the recordkeeping provisions of Section 762.2 by failing to retain export control documents and other records required to be maintained, in violation of Section 764.2(i) of the Regulations;

WHEREAS, Mercator, 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;

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 (66 *Fed. Reg.* 44025 (August 22, 2001)), has continued the Regulations in effect under IIEPA.

WHEREAS, Mercator fully understands the terms of this Settlement Agreement and the Order that will be issued to give effect to this Settlement Agreement (the "Order");

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

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

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

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

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

NOW THEREFORE, Mercator and BIS agree as follows:

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

2. BIS and Mercator agree that the following sanction shall be imposed against Mercator in complete settlement of the alleged violations set forth in the proposed charging letter:

- a. Mercator shall be assessed a civil penalty in the amount of \$18,000. Mercator shall pay this civil penalty to the U.S. Department of Commerce in six equal, monthly installments of \$3,000 each, the first payment being due on September 1, 2002, and the subsequent five payments being due on the first day of each succeeding month.

b. The timely payment of the civil penalty agreed to in paragraph 2a. 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 Mercator. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Mercator's export privileges for a period of one year from the date of imposition of the civil penalty.

3. Mercator agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the Order, when entered), including, without limitation, any right to: (a) administrative hearings regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Settlement Agreement and the Order, when entered; and (c) seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.

4. BIS agrees that, upon entry of the Order, it will not initiate any administrative proceeding against Mercator in connection with any violation of the Regulations arising out the transactions identified in the proposed charging letter.

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

6. BIS and Mercator agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement 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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mercator, Inc.
560 Sylvan Avenue, 3rd Floor
Englewood Cliffs, NJ 07632

Attention: Mr. Manuel Bailmer

Dear Mr. Bailmer:

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

Charge 1 (15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failure to Obtain Proper Export Authorization)

On or about February 22, 1997, Mercator exported chemical products² that were subject to the Regulations and to the Iranian Transactions Regulations,⁴ from the United States to Iran without obtaining prior authorization from the Treasury Department's Office of Foreign Assets Control

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2001). The Regulations are also available on the Government Printing Office website at: <http://w3.access.gpo.gov/bxa/>.

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 of lapse, 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 then in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). From November 13, 2000 through August 20, 2001, the Act was in effect. From August 21, 2001 to present, the Act is in lapse. During this period of lapse, 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 other legal authority for the Regulations is also available on the Government Printing Office website at: <http://w3.access.gpo.gov/bxa/>.

³ The chemical products exported were 4,080 bags of ethylene vinyl acetate.

⁴ The Iranian Transactions Regulations are currently codified in the Code of Federal Regulations at 31 C.F.R. Part 560 (2001).

(OFAC) in violation of Section 746.7 of the Regulations. By exporting in violation of the Regulations, Mercator violated Section 764.2(a) of the Regulations by engaging in prohibited conduct.

Charge 2 (15 C.F.R. § 764.2(e) - Acting With Knowledge of a Violation)

On or about February 22, 1997, Mercator transferred the goods referred to in Charge 1 from the United States to the United Arab Emirates with knowledge that the goods would be exported to Iran without the authorization required pursuant to §746.7 of the Regulations. By transferring goods that it knew would be exported in violation of the Export Administration Regulations, Mercator violated Section 764.2(e) of the Export Administration Regulations, acting with knowledge of a violation.

Charge 3 (15 C.F.R. § 764.2(i) - Failure to Comply with Reporting, Recordkeeping Requirements)

On or about January 24, 2002, Mercator failed to comply with the recordkeeping provisions of §762.2 by failing to retain export control documents and other records required to be maintained in connection with the transaction described herein. By failing to comply with the recordkeeping and reporting requirements, Mercator has violated §764.2(i) of the Regulations.

Accordingly, Mercator is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 760 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 for each violation; and/or

A denial of export privileges; and/or

Exclusion from practice before BXA.

If Mercator 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 & 766.7. If Mercator defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to Mercator. The Under Secretary for Export Administration may then impose up to the maximum penalty on each of the charges in this letter.

Mercator is further notified that it is entitled to an agency hearing on the record if Mercator files a written demand for one with its answer. See 15 C.F.R. §766.6. Mercator 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 & 766.4.

The Regulations provide for settlement without a hearing. See 15 C.F.R. §766.18. Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing the BXA named below.

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

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

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

Chief Counsel for Export Administration
Attention: Glenn H. Kaminsky
Room H-3839
U.S. Department of Commerce
14th & Constitution Avenue, N.W.
Washington, DC 20230

Glenn Kaminsky is the attorney representing the BXA in this matter. He may be contacted by telephone at (202) 482-5501.

Sincerely

Mark D. Meneffé
Director
Office of Export Enforcement

cc: Lawrence A. Joel
Joel & Joel
496 Kinderkamack Rd.
Oradell, New Jersey 07649