

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

In the Matter of:)
)
Thermon Korea, Ltd.)
Suite No. 4106, KWTC Building, 159-1)
Samsung-Dong, Kangnam-ku,)
Seoul 135-729, Korea)
)
Respondent)

ORDER RELATING TO THERMON KOREA, LTD.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Thermon Korea, Ltd. (“Thermon Korea”) of its intention to initiate an administrative proceeding against Thermon Korea pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2009)) (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),² through issuance of a proposed charging letter to Thermon Korea that alleged that Thermon Korea committed eight violations of the Regulations. Specifically, these charges are:

¹ The alleged violations occurred during the 2002-2006 period. The Regulations governing the violation at issue are found in the 2002-2006 versions of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2002-2006). The 2009 Regulations govern the procedural aspects of this case.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 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 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707).

Charges 1 – 5 15 C.F.R. § 764.2(b): Causing the Export of Heat Tracing Equipment to Iran Without the Required Licenses

On five occasions between on or about December 13, 2002 and on or about January 24, 2005, Thermon Korea caused, aided, abetted, and/or induced the export of heat tracing equipment, items subject to the Regulations³ and to the Iranian Transactions Regulations,⁴ from the United States to Iran, via South Korea, without the required U.S. Government authorization. Specifically, Thermon Korea took actions including, but not limited to, placing orders with its U.S. parent company, receiving the items from the United States, and immediately shipping, forwarding, or directing the shipment of the items to Iran. Pursuant to Section 746.7 of the Regulations, authorization was required from U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") before the items could be exported to Iran, but no such authorization was obtained. Thermon Korea did not inform the parent company that the items were destined for Iran, and, in doing so, caused, aided, abetted and/or induced the parent company's failure to obtain the required authorization. In so doing, Thermon Korea committed five violations of Section 764.2(b) of the Regulations.

Charges 6 – 8 15 C.F.R. § 764.2(e): Acting with Knowledge of a Violation

On three occasions between on or about March 18, 2005 and on or about August 8, 2006, Thermon Korea acted with knowledge of a violation when it ordered, bought, sold, transferred or forwarded U.S.-origin heat tracing equipment, items subject to the Regulations⁵ and to the Iranian Transactions Regulations, and exported or to be exported from the United States to Iran, with knowledge that a violation of the EAR had occurred, was about to occur, or was intended to occur in connection with the items. Specifically, Thermon Korea took actions including, but not limited to, placing orders with the parent company, receiving the items from the United States and immediately shipping, forwarding, or directing the shipment of the items manufactured in the United States by Thermon Korea's parent company, Thermon Manufacturing Company ("Thermon US"), to Iran. Pursuant to Section 746.7 of the Regulations, authorization was required from U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") before the items could be exported to Iran, but no such authorization was obtained. Thermon Korea acted with knowledge because, on February 25, 2005, Thermon US sent an email to its subsidiaries, including Thermon Korea, stating that "products manufactured by Thermon US may not be sold to countries on the US trade sanctions list." The email included Iran

³ Under the Regulations, the items were designated as "EAR99," which is a designation for items that are subject to the Regulations but which do not fall into any specific entry on the Commerce Control List.

⁴ 31 C.F.R. Part 560.

⁵ See note 3, *supra*.

as one of 10 countries that should not be sold Thermon US products and further stated that "Thermon's export permissions assume our products will not be transhipped to any of the above listed countries." In so doing, Thermon Korea committed three violations of 764.2(e) of the Regulations.

WHEREAS, BIS and Thermon Korea 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 \$58,500 is assessed against Thermon Korea, which shall be paid to the U.S. Department of Commerce within 30 days from the date 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, Thermon Korea 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 Thermon Korea. Accordingly, if Thermon Korea should fail to pay the civil penalty in a timely manner, the undersigned may issue an Order denying all of Thermon Korea'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.



Kevin Delli-Colli
Acting Assistant Secretary of Commerce
for Export Enforcement

Issued this 11th day of September, 2009.

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

In the Matter of:)
)
Thermon Korea, Ltd.)
Suite No. 4106, KWTC Building, 159-1)
Samsung-Dong, Kangnam-ku,)
Seoul 135-729, Korea)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Thermon Korea, Ltd. (“Thermon Korea”) and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2009)) (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”).²

WHEREAS, Thermon Korea’s parent company, Thermon Manufacturing Company, filed a voluntary self-disclosure³ with BIS’s Office of Export Enforcement in

¹ The violations alleged to have been committed occurred during 2002 through 2006. The Regulations governing the violations at issue are found in the 2002 through 2006 versions of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2002-06). The 2009 Regulations govern the procedural aspects of this case.

² Since August 21, 2001 the Act has been in lapse. However, 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 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707).

³ The Voluntary Self-Disclosure refers to Thermon Manufacturing Company’s March 22, 2007 Initial Notice of Voluntary Self-Disclosure, its January 18, 2008 Final Report of Voluntary Self-Disclosure, and its April 17, 2008 Supplement to the Final Report.

accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

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

WHEREAS, BIS has issued a proposed charging letter to Thermon Korea that alleged that it committed eight violations of the Regulations, specifically:

Charges 1 – 5 15 C.F.R. § 764.2(b): Causing the Export of Heat Tracing Equipment to Iran Without the Required Licenses

On five occasions between on or about December 13, 2002 and on or about January 24, 2005, Thermon Korea caused, aided, abetted, and/or induced the export of heat tracing equipment, items subject to the Regulations⁴ and to the Iranian Transactions Regulations,⁵ from the United States to Iran, via South Korea, without the required U.S. Government authorization. Specifically, Thermon Korea took actions including, but not limited to, placing orders with its U.S. parent company, receiving the items from the United States, and immediately shipping, forwarding, or directing the shipment of the items to Iran. Pursuant to Section 746.7 of the Regulations, authorization was required from U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") before the items could be exported to Iran, but no such authorization was obtained. Thermon Korea did not inform the parent company that the items were destined for Iran, and, in doing so, caused, aided, abetted and/or induced the parent company's failure to obtain the required authorization. In so doing, Thermon Korea committed five violations of Section 764.2(b) of the Regulations.

Charges 6 – 8 15 C.F.R. § 764.2(e): Acting with Knowledge of a Violation

On three occasions between on or about March 18, 2005 and on or about August 8, 2006, Thermon Korea acted with knowledge of a violation when it ordered, bought, sold, transferred or forwarded U.S.-origin heat tracing equipment, items subject to the Regulations⁶ and to the Iranian Transactions Regulations, and exported or to be exported from the United States to Iran, with knowledge that a violation of the EAR had occurred, was about to occur, or was intended to occur in connection with the items. Specifically,

⁴ Under the Regulations, the items were designated as "EAR99," which is a designation for items that are subject to the Regulations but which do not fall into any specific entry on the Commerce Control List.

⁵ 31 C.F.R. Part 560.

⁶ See note 4, *supra*.

Thermon Korea took actions including, but not limited to, placing orders with the parent company, receiving the items from the United States and immediately shipping, forwarding, or directing the shipment of the items manufactured in the United States by Thermon Korea's parent company, Thermon Manufacturing Company ("Thermon US"), to Iran. Pursuant to Section 746.7 of the Regulations, authorization was required from U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") before the items could be exported to Iran, but no such authorization was obtained. Thermon Korea acted with knowledge because, on February 25, 2005, Thermon US sent an email to its subsidiaries, including Thermon Korea, stating that "products manufactured by Thermon US may not be sold to countries on the US trade sanctions list." The email included Iran as one of 10 countries that should not be sold Thermon US products and further stated that "Thermon's export permissions assume our products will not be transshipped to any of the above listed countries." In so doing, Thermon Korea committed three violations of 764.2(e) of the Regulations.

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

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

WHEREAS, Thermon Korea neither admits nor denies the allegations contained in the Proposed Charging Letter;

WHEREAS, Thermon Korea wishes to settle and dispose of all matters alleged in the Proposed Charging Letter by entering into this Agreement; and

WHEREAS, Thermon Korea agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Thermon Korea, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanction shall be imposed against Thermon Korea in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Voluntary Self-Disclosure and the Proposed Charging Letter:

a. Thermon Korea shall be assessed a civil penalty in the amount of \$58,500, all of which shall be paid to the U.S. Department of Commerce within 30 days from the date 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 Thermon Korea. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Thermon Korea'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, Thermon Korea 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 issued), 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 issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued.

4. Upon entry of the Order, BIS will not initiate any further administrative proceeding against Thermon Korea in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Voluntary Self-Disclosure and the Proposed Charging Letter.

5. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, 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 issued; 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 the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing 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.

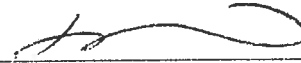
BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE

THERMON KOREA, LTD.



Thomas Madigan
Director
Office of Export Enforcement

Date: August 26, 2009



Byung Ho Park
Managing Director
Thermon Korea, Ltd.

Date: Aug. 21, 2009

PROPOSED CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Thermon Korea, Ltd.
Suite No. 4106, KWTC Building, 159-1
Samsung-Dong, Kangnam-ku,
Seoul 135-729, Korea

Attention: *President and CEO*

Dear Sir or Madam:

The Bureau of Industry and Security, U. S. Department of Commerce (“BIS”), has reason to believe that Thermon Korea Ltd. (“Thermon Korea”) has committed eight violations of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² The attached Schedule of Violations describes the violations in greater detail. Specifically, BIS charges that Thermon Korea committed the following violations:

Charges 1 – 5 15 C.F.R. § 764.2(b): Causing the Export of Heat Tracing Equipment to Iran Without the Required Licenses

As described in greater detail in the attached Schedule of Violations, which is incorporated herein, on five occasions between on or about December 13, 2002 and on or about January 24, 2005, Thermon Korea caused, aided, abetted, and/or induced the export

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The violations charged occurred in 2002-2006. The Regulations governing the violations at issue are found in the 2002-2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002-2006)). The 2009 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)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (“IEEPA”).

of heat tracing equipment, items subject to the Regulations³ and to the Iranian Transactions Regulations,⁴ from the United States to Iran, via South Korea, without the required U.S. Government authorization. Specifically, Thermon Korea took actions including, but not limited to, placing orders with its U.S. parent company, receiving the items from the United States, and immediately shipping, forwarding, or directing the shipment of the items to Iran. Pursuant to Section 746.7 of the Regulations, authorization was required from U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") before the items could be exported to Iran, but no such authorization was obtained. Thermon Korea did not inform the parent company that the items were destined for Iran, and, in doing so, caused, aided, abetted and/or induced the parent company's failure to obtain the required authorization. In so doing, Thermon Korea committed five violations of Section 764.2(b) of the Regulations.

Charges 6 – 8 15 C.F.R. § 764.2(e): Acting with Knowledge of a Violation

As described in greater detail in the attached Schedule of Violations, which is incorporated herein, on three occasions between on or about March 18, 2005 and on or about August 8, 2006, Thermon Korea acted with knowledge of a violation when it ordered, bought, sold, transferred or forwarded U.S.-origin heat tracing equipment, items subject to the Regulations⁵ and to the Iranian Transactions Regulations, and exported or to be exported from the United States to Iran, with knowledge that a violation of the EAR had occurred, was about to occur, or was intended to occur in connection with the items. Specifically, Thermon Korea took actions including, but not limited to, placing orders with the parent company, receiving the items from the United States and immediately shipping, forwarding, or directing the shipment of the items manufactured in the United States by Thermon Korea's parent company, Thermon Manufacturing Company ("Thermon US"), to Iran. Pursuant to Section 746.7 of the Regulations, authorization was required from U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") before the items could be exported to Iran, but no such authorization was obtained. Thermon Korea acted with knowledge because, on February 25, 2005, Thermon US sent an email to its subsidiaries, including Thermon Korea, stating that "products manufactured by Thermon US may not be sold to countries on the US trade sanctions list." The email included Iran as one of 10 countries that should not be sold Thermon US products and further stated that "Thermon's export permissions assume our products will not be transshipped to any of the above listed countries." In so doing, Thermon Korea committed three violations of 764.2(e) of the Regulations.

* * * * *

³ Under the Regulations, the items were designated as "EAR99," which is a designation for items that are subject to the Regulations but which do not fall into any specific entry on the Commerce Control List.

⁴ 31 C.F.R. Part 560.

⁵ See note 3, *supra*.

Accordingly, Thermon Korea 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 the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation;⁶

Denial of export privileges; and/or

Exclusion from practice before BIS.

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

Thermon Korea is hereby notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. (Regulations, Section 766.6). Thermon Korea 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).

Thermon Korea is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Thermon Korea may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Thermon Korea have a proposal to settle this case, Thermon Korea's 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, Thermon Korea'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

⁶ See International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

In addition, a copy of Thermon Korea's answer must be served on BIS at the following address:

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

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

Sincerely,

Thomas Madigan
Director
Office of Export Enforcement

Thermon Korea Schedule of Violations

Violations	Shipment Date	Destination	Classification	Purchase Order Number/Entity	Transaction Value
1	12/13/2002	Iran	EAR99	TKL021030	\$23,031.39
2	6/1/2003	Iran	EAR99	TKL030414 - TPO 1	\$109,670.37
3	10/17/2003	Iran	EAR99	TKL030925-CPO-1	\$18,360.00
4	1/12/2005	Iran	EAR99	TKL041228-TPO-1	\$2,490.59
5	1/24/2005	Iran	EAR99	TKL041228-TPO-1	\$4,431.49
6	3/18/2005	Iran	EAR99	TKL050307-TPO-1	\$730.18
7	8/5/2005	Iran	EAR99	TKL050729-TPO-L	\$412.00
8	8/8/2006	Iran	EAR99	TKL060608-CPO-1	\$9,256.80