

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

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In the Matter of: )  
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)  
Philips Electronics North America Corporation )  
3000 Minuteman Road )  
Building One, MS 109 )  
Andover, MA 01810 )  
)  
)  
Respondent )  
\_\_\_\_\_

ORDER RELATING TO PHILIPS ELECTRONICS NORTH AMERICA  
CORPORATION

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

<sup>1</sup> The violations alleged occurred in 2005. The Regulations governing the violation at issue are found in the 2005 version of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2005). The 2009 Regulations govern the procedural aspects of this case.

<sup>2</sup> 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 July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

**Charge 1                    15 C.F.R. §764.2(a) – Exporting without a license.**

On or about March 24, 2005, PENAC engaged in conduct prohibited by the Regulations when it exported a Model iE33 ultrasound medical device, an item subject to the Regulations,<sup>3</sup> from the United States through the Netherlands to Cuba without the license required by Section 746.2 of the Regulations. In exporting this item to Cuba without the required license, PENAC committed one violation of Section 764.2(a) of the Regulations.

**Charge 2                    15 C.F.R. §764.2(a) – Exporting without a license.**

On or about October 25, 2005, PENAC engaged in conduct prohibited by the Regulations when it exported a Jet Stream Workspace Cardiology Workstation medical device, an item subject to the Regulations,<sup>4</sup> from the United States through the Netherlands to Cuba without the license required by Section 746.2 of the Regulations. In exporting this item to Cuba without the required license, PENAC committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, BIS and PENAC 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 \$9,000 is assessed against PENAC, 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.

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

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<sup>3</sup> This item was classified as EAR99, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2005).

<sup>4</sup> This item was classified as EAR99, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2005).

as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, PENAC 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 PENAC. Accordingly, if PENAC should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of PENAC'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

Entered this 26<sup>th</sup> day of May, 2009.

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

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Andover, MA 01810 )  
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Respondent )  
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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by Philips Electronics North America Corporation (“PENAC”), 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”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),<sup>2</sup>

<sup>1</sup> The violations alleged to have been committed in 2005. The Regulations governing the violations at issue are found in the 2005 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005)). The 2009 Regulations establish the procedures that apply to this matter.

<sup>2</sup> 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 July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)).

WHEREAS, PENAC filed a voluntary self-disclosure with BIS's Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

WHEREAS, BIS has notified PENAC 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 PENAC that alleged that PENAC committed two violations of the Regulations, specifically:

**Charge 1                    15 C.F.R. §764.2(a) – Exporting without a license.**

On or about March 24, 2005, PENAC engaged in conduct prohibited by the Regulations when it exported a Model iE33 ultrasound medical device, an item subject to the Regulations,<sup>3</sup> from the United States through the Netherlands to Cuba without the license required by Section 746.2 of the Regulations. In exporting this item to Cuba without the required license, PENAC committed one violation of Section 764.2(a) of the Regulations.

**Charge 2                    15 C.F.R. §764.2(a) – Exporting without a license.**

On or about October 25, 2005, PENAC engaged in conduct prohibited by the Regulations when it exported a Jet Stream Workspace Cardiology Workstation medical device, an item subject to the Regulations,<sup>4</sup> from the United States through the Netherlands to Cuba without the license required by Section 746.2 of the Regulations. In exporting this item to Cuba without the required license, PENAC committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, PENAC 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;

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<sup>3</sup> This item was classified as EAR99, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2005).

<sup>4</sup> This item was classified as EAR99, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2005).

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over PENAC, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against PENAC 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. PENAC shall be assessed a civil penalty in the amount of \$9,000, all of 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 PENAC.

Failure to make timely payment of the civil penalty set forth above may result in the denial of all of PENAC'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, PENAC 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; and (c) 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 \$9,000 civil penalty, BIS will not initiate any further administrative proceeding against PENAC in connection with any violation of the Act or the Regulations arising out of the transactions identified in the voluntary self-disclosure and 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.

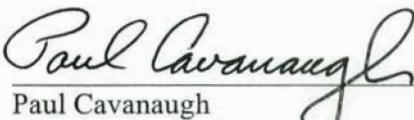
8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

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

  
\_\_\_\_\_  
Thomas Madigan  
Director  
Office of Export Enforcement

PHILIPS ELECTRONICS NORTH  
AMERICA CORPORATION

  
\_\_\_\_\_  
Paul Cavanaugh  
Vice President of Tax, Customs, and Export  
Control

Date: May 7, 2009

Date: April 30, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Philips Electronics North America Corporation  
3000 Minuteman Road  
Building One, MS 109  
Andover, MA 01810

*Attn: Paul Cavanaugh  
Vice President of Tax, Customs, and Export Control*

Dear Mr. Cavanaugh:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Philips Electronics North America Corporation, of New York, NY (“PENAC”), has committed two violations of the Export Administration Regulations (the “Regulations”),<sup>1</sup> which issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).<sup>2</sup> Specifically, BIS charges that PENAC committed the following violations:

**Charge 1                      15 C.F.R. §764.2(a) – Exporting without a license.**

On or about March 24, 2005, PENAC engaged in conduct prohibited by the Regulations when it exported a Model iE33 ultrasound medical device, an item subject to the Regulations,<sup>3</sup> from the United States through the Netherlands to Cuba without the license required by Section 746.2 of the Regulations. In exporting this item to Cuba without the required license, PENAC committed one violation of Section 764.2(a) of the Regulations.

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<sup>1</sup> 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 2005. The Regulations governing the violation at issue are found in the 2005 version of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2005). The 2009 Regulations govern the procedural aspects of this case.

<sup>2</sup> 50 U.S.C. app. §§ 2401- 2420 (2000). 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 July 23, 2008 (73 Fed. Reg. 43,603, July 25, 2008), has continued the Regulations in effect under International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”).

<sup>3</sup> This item was classified as EAR99, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2005).

**Charge 2                      15 C.F.R. §764.2(a) – Exporting without a license.**

On or about October 25, 2005, PENAC engaged in conduct prohibited by the Regulations when it exported a Jet Stream Workspace Cardiology Workstation medical device, an item subject to the Regulations,<sup>4</sup> from the United States through the Netherlands to Cuba without the license required by Section 746.2 of the Regulations. In exporting this item to Cuba without the required license, PENAC committed one violation of Section 764.2(a) of the Regulations.

\* \* \* \* \*

Accordingly, PENAC 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;<sup>5</sup>
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If PENAC 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 (2009). If PENAC defaults, the Administrative Law Judge may find the charge alleged in this letter to be true without a hearing or further notice to PENAC. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty based on the charge in this letter.

PENAC 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 (2009). PENAC is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. 15 C.F.R. §§ 766.3(a) and 766.4 (2009).

PENAC is additionally notified that under the Small Business Regulatory Enforcement Flexibility Act, it may be eligible for assistance from the Office of the National

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<sup>4</sup> This item was classified as EAR99, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2005).

<sup>5</sup> *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

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. *See* 15 C.F.R. § 766.18 (2009). Should PENAC have a proposal to settle this case, PENAC's representative should transmit it through the attorney representing BIS, who is named below.

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

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

Charles Wall is the attorney representing BIS in this case; any communications that PENAC may wish to have concerning this matter should occur through him. Mr. Wall may be contacted by telephone at (202) 482-8046.

Sincerely,

Thomas Madigan  
Director  
Office of Export Enforcement