

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

\_\_\_\_\_  
In the Matter of: )  
 )  
Vytran LLC )  
1400 Campus Drive West )  
Morganville, New Jersey 07751 )  
 )  
Respondent )  
\_\_\_\_\_

ORDER RELATING TO VYTRAN LLC

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Vytran LLC (“Vytran”) of its intention to initiate an administrative proceeding against Vytran pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),<sup>2</sup> through the issuance of a Proposed Charging Letter to Vytran that alleges that Vytran committed one violation of the Regulations. Specifically, the charge is:

**Charge 1 15 C.F.R. §764.2(a) - Unlicensed Export to an Entity List Organization in China**

On or about January 26, 2010, Vytran engaged in conduct prohibited by the Regulations when it exported a large-diameter precision cleaver and accessories, items subject to the Regulations and designated EAR99,<sup>3</sup> and valued at approximately \$15,048, from the United States to the Chinese

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2011). The charged violation occurred in 2010. The Regulations governing the violation at issue are found in the 2010 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2010)). The 2011 Regulations set forth 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)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 Fed. Reg. 50,661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

<sup>3</sup> EAR99 is a designation for items subject to the Regulations that are not listed on the Commerce Control list, which is set forth at Supplement No. 1 to Part 774 of the EAR. 15 C.F.R. § 774.1 (2010).

Academy of Engineering Physics (“CAEP”) in China through a Chinese intermediate consignee, without the Department of Commerce license required by Section 744.1 of the Regulations. At all times relevant thereto, CAEP was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. In doing so, Vytran committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Vytran 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 Vytran shall be assessed a civil penalty in the amount of \$28,000, which shall be paid to the U.S. Department of Commerce within 30 days of 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 any payment is not made in full by the due date set forth herein, Vytran 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.

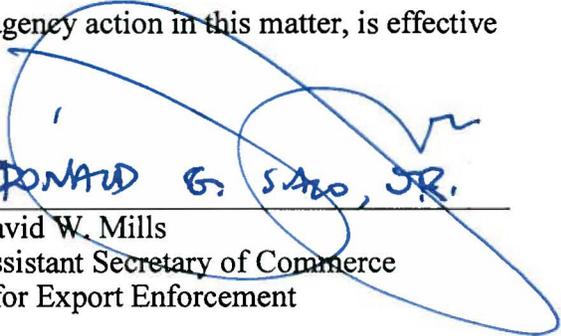
THIRD, that Vytran’s export controls compliance manager shall complete an export controls compliance training program on the regulations within six months of issuance of this Order. Before the compliance manager attends the training program, Vytran shall notify the Office of Export Enforcement, Special Agent in Charge of the New York Office, of the course it has selected. No later than seven months from the date of issuance of this Order, Vytran shall submit a certification of attendance from the training provider to the Office of Export Enforcement, 1200 South Avenue, Room 104, Staten Island, New York 10314.

FOURTH, that the full and timely payment of the civil penalty in accordance with the payment schedule set forth above, and the timely completion of the training program and submission of the certification of attendance set forth above, are hereby made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Vytran. Accordingly, if Vytran should fail to pay the civil penalty in a timely manner or fail to complete the training program and submit the certification of attendance in a timely manner, the undersigned may issue an Order denying all of Vytran's export privileges under the Regulations for a period of one year from, respectively, the date the penalty payment is due or the date by which the certification of attendance is to be submitted.

FIFTH, 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.

Acting  
For:

  
DONALD G. SATO, JR.

David W. Mills  
Assistant Secretary of Commerce  
for Export Enforcement

Issued this 1st day of September, 2011.

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

In the Matter of: )  
 )  
Vytran LLC )  
1400 Campus Drive West )  
Morganville, New Jersey 07751 )  
 )  
Respondent )

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Vytran LLC (“Vytran”) 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 (the “Regulations”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).<sup>2</sup>

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

WHEREAS, BIS has issued a Proposed Charging Letter to Vytran that alleges that Vytran committed one violation of the Regulations, specifically:

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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 (2011). The charged violation occurred in 2010. The Regulations governing the violation at issue are found in the 201 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2010)). The 2011 Regulations set forth 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)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 Fed. Reg. 50,661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

**Charge 1      15 C.F.R. §764.2(a) - Unlicensed Export to an Entity List  
Organization in China**

On or about January 26, 2010, Vytran engaged in conduct prohibited by the Regulations when it exported a large-diameter precision cleaver and accessories, items subject to the Regulations and designated EAR99,<sup>3</sup> and valued at approximately \$15,048, from the United States to the Chinese Academy of Engineering Physics ("CAEP") in China through a Chinese intermediate consignee, without the Department of Commerce license required by Section 744.1 of the Regulations. At all times relevant thereto, CAEP was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. In doing so, Vytran committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, Vytran 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, Vytran 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, Vytran enters into this Agreement voluntarily and with full knowledge of its rights after having consulted with counsel;

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

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

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

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

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<sup>3</sup> EAR99 is a designation for items subject to the Regulations that are not listed on the Commerce Control list, which is set forth at Supplement No. 1 to Part 774 of the EAR. 15 C.F.R. § 774.1 (2010).

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over Vytran, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanctions shall be imposed against Vytran in complete settlement of the alleged violation of the Regulations relating to the transaction specifically detailed in the Proposed Charging Letter:
  - a. Vytran shall be assessed a civil penalty in the amount of \$28,000, which shall be paid to the U.S. Department of Commerce within 30 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions.
  - b. Vytran's export controls compliance manager shall complete an export compliance training program on the Regulations within six months of the issuance of this Order. Before Vytran's compliance manager attends the training program, Vytran shall notify the Office of Export Enforcement, Special Agent in Charge of the New York Office, of the course that it has selected. No later than seven months from the date of issuance of this Order, Vytran shall submit a certification of attendance from the training provide to the Office of Export Enforcement, 1200 South Avenue, Room 104, Staten Island, New York 10314.
  - c. The full and timely payment of the civil penalty in accordance with the payment schedule agreed to in Paragraph 2.a above, and the timely completion of the training program and submission of the certification of attendance agreed to in Paragraph 2.b above, are hereby made conditions to the granting, restoration, or

continuing validity of any export license, permission, or privilege granted, or to be granted, to Vytran. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Vytran's export privileges for a period of one year from the date on which the payment is due. Failure to complete the training program and submit the certification of attendance agreed to in Paragraph 2.b above within the deadline established in that Paragraph also may result in the denial of all of Vytran's export privileges for a period of one year from the date on which the certification of attendance is to be submitted.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Vytran 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. Vytran also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, for the time period from the date of the Order, if issued, until the later of the date Vytran pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement or the date Vytran submits the certification of attendance agreed to in Paragraph 2.b of this Agreement, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter, or in connection with collection of the civil penalty or enforcement of the Agreement and Order, if issued.

4. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a above, and timely completion of the training program and submission of the certification of attendance as set forth in Paragraph 2.b above, BIS will not initiate any further administrative proceeding against Vytran in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in 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

  
\_\_\_\_\_  
Douglas R. Hassebrock  
Director  
Office of Export Enforcement

Date: 30 August, 2011

VYTRAN LLC

  
\_\_\_\_\_  
Jean-Michel Pelaprat  
President and Chief Executive Officer

Date: 26 August, 2011

PROPOSED CHARGING LETTER

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Vytran LLC  
1400 Campus Drive West  
Morganville, New Jersey 07751

*Attention: Jean-Michel Pelaprat  
President and Chief Executive Officer*

Dear Mr. Pelaprat,

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Vytran LLC (“Vytran”) of Morganville, New Jersey, has committed one violation of the Export Administration Regulations (the “Regulations”),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).<sup>2</sup> Specifically, BIS alleges that Vytran committed the following violation:

**Charge 1      15 C.F.R. §764.2(a) - Unlicensed Export to an Entity List  
Organization in China**

On or about January 26, 2010, Vytran engaged in conduct prohibited by the Regulations when it exported a large-diameter precision cleaver and accessories, items subject to the Regulations and designated EAR99,<sup>3</sup> and valued at approximately \$15,048, from the United States to the Chinese Academy of Engineering Physics (“CAEP”) in China through a Chinese intermediate consignee, without the Department of Commerce license required by Section 744.1 of the Regulations. At all times relevant thereto, CAEP was an

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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 (2011). The violation alleged occurred in 2010. The Regulations governing the violation at issue are found in the 2010 version of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2010). The 2011 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 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 12, 2010 (75 Fed. Reg. 50,681 (Aug. 16, 2010)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.* (2000)).

<sup>3</sup> EAR99 is a designation for items subject to the Regulations that are not listed on the Commerce Control list, which is set forth at Supplement No. 1 to Part 774 of the EAR. 15 C.F.R. § 774.1 (2010).

organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. In doing so, Vytran committed one violation of Section 764.2(a) of the Regulations.

\* \* \* \* \*

Accordingly, Vytran 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>4</sup>
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

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

Vytran 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. Vytran 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(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Vytran have a proposal to settle this case, Vytran should transmit it to the attorney representing BIS named below.

Vytran is further notified that under the Small Business Regulatory Enforcement Flexibility ACT, Vytran 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 U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Vytran's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

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<sup>4</sup> *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

Vytran LLC  
Proposed Charging Letter  
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U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

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

Chief Counsel for Industry and Security  
Attention: Thea D. R. Kendler  
Room H-3327  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Thea Kendler is the attorney representing BIS in this case; and communications that Vytran may wish to have concerning this matter should occur through her. Ms. Kendler may be contacted by telephone at (202) 482- 5058.

Sincerely,

Douglas R. Hassebrock  
Director  
Office of Export Enforcement