

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

In the Matter of:)
)
Toll Global Forwarding (USA) Inc.)
150-15 183rd Street)
Springfield Gardens, NY 11413)
)
Respondent)

ORDER RELATING TO TOLL GLOBAL FORWARDING (USA) INC.

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

Charge 1 15 C.F.R. § 764.2(b): Causing, Aiding and Abetting an Act Prohibited by the Regulations

On one occasion on or about October 22, 2009, Toll Global caused, aided, and abetted an act prohibited by the Regulations. Specifically, Toll Global, acting as a freight forwarder, arranged

¹ 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 2009. The Regulations governing the violation at issue are found in the 2009 version of the Code of Federal Regulations, 15 C.F.R. Parts 730-774. The 2011 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 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.*).

for the export of electronic components designated as EAR99 items,³ subject to the Regulations and valued at \$6,041, from the United States to Solid State Physics Lab, an entity in India that is listed on BIS's Entity List set forth in Supplement No. 4 to Part 744 of the Regulations. Toll Global's actions caused, aided and abetted the export of the electronic components without the Department of Commerce licenses required pursuant to Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, Toll Global committed one violation of Section 764.2(b) of the Regulations.

WHEREAS, BIS and Toll Global 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, Toll Global shall be assessed a civil penalty in the amount of \$27,000. Toll Global shall pay the amount in full 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.

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, Toll Global 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 full and 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 Toll Global. Accordingly, if Toll Global should fail to pay the civil penalty in a full and timely manner, the undersigned may issue

³ EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2009).

an Order denying all of Toll Global's export privileges under the Regulations for a period of one year from the date of failure to make such payment.

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.



David W. Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 23 day of September, 2011.

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

In the Matter of:)
)
Toll Global Forwarding (USA) Inc.)
150-15 183rd Street)
Springfield Gardens, NY 11413)
)

Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Toll Global Forwarding (USA) Inc. (“Toll Global”) 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”),¹ issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).²

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

WHEREAS, BIS has issued a Proposed Charging Letter to Toll Global that alleged that Toll Global committed one violation of the Regulations, specifically:

¹ 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 2009. The Regulations governing the violation at issue are found in the 2009 version of the Code of Federal Regulations, 15 C.F.R. Parts 730-774. The 2011 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 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(b): Causing, Aiding and Abetting an Act
Prohibited by the Regulations**

On one occasion on or about October 22, 2009, Toll Global caused, aided, and abetted an act prohibited by the Regulations. Specifically, Toll Global, acting as a freight forwarder, arranged for the export of electronic components designated as EAR99 items,³ subject to the Regulations and valued at \$6,041, from the United States to Solid State Physics Lab, an entity in India that is listed on BIS's Entity List set forth in Supplement No. 4 to Part 744 of the Regulations. Toll Global's actions caused, aided and abetted the export of the electronic components without the Department of Commerce licenses required pursuant to Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, Toll Global committed one violation of Section 764.2(b) of the Regulations.

WHEREAS, Toll Global has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

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

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

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

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

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

³ EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2009).

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

1. BIS has jurisdiction over Toll Global, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanction shall be imposed against Toll Global in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Proposed Charging Letter:
 - a. Toll Global shall be assessed a civil penalty in the amount of \$27,000. Toll Global shall pay the amount in full 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. The full and 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 Toll Global. Failure to make full and timely payment of the civil penalty set forth above may result in the denial of all of Toll Global's export privileges under the Regulations for one year from the date of the failure to make such payment.
3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Toll Global 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. Toll Global 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 date Toll Global pays in full the civil penalty agreed to in paragraph 2.a of this Agreement, in connection with any violations 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. Upon full and timely payment of the civil penalty as set forth in paragraph 2.a above, BIS will not initiate any further administrative proceeding against Toll Global 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.

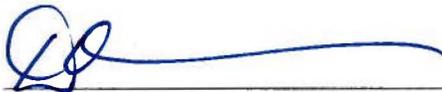
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or

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.

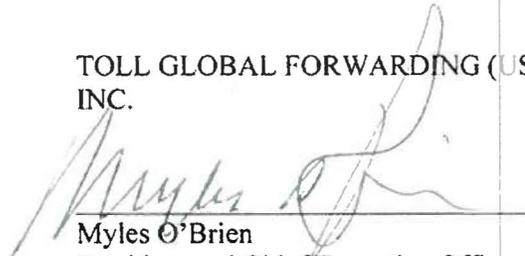
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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



Douglas R. Hassebrock
Director
Office of Export Enforcement

TOLL GLOBAL FORWARDING (USA)
INC.



Myles O'Brien
President and Chief Executive Officer
Toll Global Forwarding (USA) Inc.

Date: September 23, 2011

Date: September 22, 2011

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Toll Global Forwarding (USA) Inc.
150-15 183rd Street
Springfield Gardens, NY 11413

*Attention: Myles O'Brien
President and Chief Executive Officer*

Dear Mr. O'Brien:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Toll Global Forwarding (USA) Inc., of Rosedale, New York ("Toll Global"), has committed one violation 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 Specifically, BIS charges that Toll Global committed the following violation:

Charge 1 15 C.F.R. § 764.2(b): Causing, Aiding and Abetting an Act Prohibited by the Regulations

On one occasion on or about October 22, 2009, Toll Global caused, aided, and abetted an act prohibited by the Regulations. Specifically, Toll Global, acting as a freight forwarder, arranged for the export of electronic components designated as EAR99 items,³ subject to the Regulations and valued at \$6,041, from the United States to Solid State Physics Lab, an entity in India that is listed on BIS's Entity List set forth in Supplement No. 4 to Part 744 of the Regulations. Toll Global's actions caused, aided and abetted the export of the electronic components without the Department of Commerce licenses required pursuant to Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, Toll Global committed one violation of Section 764.2(b) of the Regulations.

* * * * *

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2011). The violation charged occurred in 2009. The Regulations governing the violation at issue are found in the 2009 version of the Code of Federal Regulations. See 15 C.F.R. Parts 730-774 (2009). The 2011 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. However, the President, though 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 International Emergency Economic Powers Act (50 U.S.C. § 1701 *et seq.*).

³ EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2009).

Accordingly, Toll Global 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;⁴
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Toll Global fails to answer the charge 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 (2011). If Toll Global defaults, the Administrative Law Judge may find the charge alleged in this letter to be true without a hearing or further notice to Toll Global. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty based on the charge in this letter.

Toll Global 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. *See* 15 C.F.R. § 766.6 (2011). Toll Global 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 (2011).

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

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2011). Should Toll Global have a proposal to settle this case, Toll Global or its 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, Toll Global'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 Toll Global's answer must be served on BIS at the following address:

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

Toll Global Forwarding (USA) Inc.
Proposed Charging Letter
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Chief Counsel for Industry and Security
Attention: Thea D. R. Kendler, Esq.
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Thea Kendler is the attorney representing BIS in this case; any communications that Toll Global may wish to have concerning this matter should occur through her. Ms. Kendler may be contacted by telephone at (202) 482-5301.

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement