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

In the Matter of:	
Federal Express Corporation **d/b/a FedEx Express** 3620 Hacks Cross Road Memphis, TN 38125	17-BIS-0006

Order Relating to Federal Express Corporation d/b/a FedEx Express

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has notified Federal Express Corporation, doing business as FedEx Express, of Memphis, Tennessee ("FedEx"), that it has initiated an administrative proceeding against FedEx 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 Charging Letter to FedEx that alleges that FedEx committed fifty-three violations of the Regulations. Specifically, the charges are:

Charges 1-53 **15 C.F.R. § 764.2 (b): Causing, Aiding or Abetting Exports to Entities on the Entity List without the Required Licenses**

1. On fifty-three occasions between on or about July 1, 2011, and on or about January 19, 2012, FedEx caused, aided or abetted acts prohibited by the Regulations when it facilitated the export of civil aircraft parts and equipment used for electron microscope manufacturing, items subject to the Regulations and classified under Export Control

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2017). The charged violations occurred in 2011-2012. The Regulations governing the violations at issue are found in the 2011-2012 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2017 Regulations set forth the procedures that apply to this matter.

[2] 50 U.S.C. §§ 4601-4623 (Supp. III 2015). 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 15, 2017 (82 Fed. Reg. 39,005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq. (2012)).

Classification Number (ECCN) 9A991 or 7A994 and controlled for Anti-Terrorism ("AT") reasons, or designated as EAR99,[3] and valued in total at approximately $58,091, from the United States to Aerotechnic France SAS ("Aerotechnic") in France, or to the Pakistan Institute for Nuclear Science and Technology ("PINSTECH") in Pakistan, without the required BIS licenses.

2. Aerotechnic is and was at all times pertinent hereto listed on the Entity List, which is set forth in Supplement No. 4 to Part 744 of the Regulations. Aerotechnic was added to the Entity List on June 28, 2011, "based on evidence that [it had] engaged in actions that could enhance the military capability of Iran, a country designated by the U.S. Secretary of State as having repeatedly provided support for acts of international terrorism . . . [and] because [its] overall conduct pose[d] a risk of ongoing EAR violations." 76 Fed. Reg. 37,632 (June 28, 2011).

3. Accordingly, pursuant to Section 744.11 of the Regulations and Aerotechnic's Entity List listing, a license was at all times pertinent hereto required to export any item subject to the Regulations to Aerotechnic, including the AT-controlled and EAR99 civil aircraft parts involved in the Aerotechnic transactions at issue. No license exceptions were available for exports to Aerotechnic, and license applications to export to Aerotechnic were subject to a license review policy of a presumption of denial.

4. PINSTECH is a subordinate entity of the Pakistan Atomic Energy Commission, and has been on the Entity List since November 19, 1998, when it was added to the Entity List along with a number of other Pakistani government (and parastatal and private) entities involved in nuclear or missile activities shortly after Pakistan detonated a nuclear device. 63 Fed. Reg. 64,322 (Nov. 19, 1998). The listing has at all times specifically included the acronym "PINSTECH," which is commonly and widely used in lieu of the entity's full name. *See id.*; 65 Fed Reg. 14,444 (March 17, 2000); 66 Fed. Reg. 50,089 (Oct. 1, 2001); 77 Fed. Reg. 58,006 (Sept. 9, 2012); and 79 Fed. Reg. 55,998 (Sept. 18, 2014).[4]

5. Pursuant to Section 744.11 and PINSTECH's Entity List listing, a license was at all times pertinent hereto required to export any item subject to the Regulations to PINSTECH, including the export of EAR99 laboratory equipment to PINSTECH. No license exceptions were available for exports to PINSTECH, while license applications to export EAR99 items to PINSTECH were subject to a presumption of approval.

6. None of the fifty-three export transactions at issue had the required BIS license. In providing carrier services or both carrier and freight forwarding services in connection

[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).

[4] Many of the other Pakistani entities added to the Entity List on October 19, 1998, were removed on October 1, 2001. *See* 66 Fed. Reg. 50,089 (Oct. 1, 2001). PINSTECH, in contrast, has remained on the Entity List at all times since November 19, 1998.

with these transactions, FedEx used proprietary screening software that failed to flag or detect close matches to the Entity List listings for, as applicable, Aerotechnic and PINSTECH.

7. The exporters provided name and address or location information regarding these transactions, via a proprietary FedEx interface/portal exporters can use for scheduling shipments and related transportation and/or forwarding services, that should have enabled FedEx to readily determine that Aerotechnic and PINSTECH were the recipients/consignees and parties on the Entity List. For the exports at issue to Aerotechnic in France, the recipient/consignee was identified by name by the various exporters as "Aerotechnic France" (on forty-three occasions), as "Aerotechnic-France" (on six occasions), or "Aerotechnic" (on three occasions). In addition, the address information matched or nearly matched the address information listed for Aerotechnic on the Entity List, including matching with regard to the street name and building number, the city name, and the postal zip code. Similarly, the recipient/consignee was identified as "PINSTECH" for the export to PINSTECH in Nilore, Islamabad, Pakistan.

8. However, as FedEx knew or should have known, its screening software did not flag a transaction unless the name of the recipient/consignee exactly matched the full name of the entity as found on the Entity List, even where the address information was identical or nearly identical. Thus, most of the Aerotechnic transactions at issue were not flagged only because "SAS" was not included in the name entered by the exporter. "SAS" is simply the acronym for a type of French limited liability company and thus is similar to typically non-differentiating terms such as "Co." and "LLC" and "Corp."

9. The PINSTECH transaction also was not flagged even though the exporter provided that commonly-used acronym, which was part of the Entity List listing.

10. As a result, FedEx transported the items, or on one occasion forwarded and transported the items for shipment from the United States for delivery to listed entities Aerotechnic and PINSTECH in connection with the unlawful unlicensed exports described herein.

11. In so doing, FedEx committed fifty-three violations of Section 764.2(b) of the Regulations.

WHEREAS, BIS and FedEx have entered into a Settlement Agreement pursuant to Section 766.18(b) 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, FedEx shall be assessed a civil penalty in the amount of $500,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

SECOND, 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, FedEx 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, FedEx shall complete external audits of its export controls compliance program covering FedEx fiscal years 2017-2020, that is, from June 1 through May 31 of each applicable FedEx fiscal year. FedEx shall hire an unaffiliated third party consultant with expertise in U.S. export control laws to conduct the external audits of its compliance with U.S. export control laws (including recordkeeping requirements), with respect to all exports or reexports to parties on the BIS Entity List and Denied Persons List that are subject to the Regulations.[5] The results of the audit, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, Miami Field Office, 200 E. Las Olas Blvd., Suite 1800, Fort Lauderdale, FL 33301 ("BIS Miami Field Office"). The first audit shall cover FedEx fiscal years 2017 and 2018, and the related report shall be due to

[5] BIS's Entity List is found at Supplement No. 4 to 15 C.F.R. Part 744. The Denied Persons List can be found on BIS's website at https://www.bis.doc.gov/index.php/the-denied-persons-list.

the BIS Miami Field Office no later than November 30, 2018. The second audit shall cover FedEx fiscal year 2019, and the related report shall be due to the BIS Miami Field Office no later than September 30, 2019. The third audit shall cover FedEx fiscal year 2020, and the related report shall be due to the BIS Miami Field Office no later than September 30, 2020. Said audits shall be in substantial compliance with the Export Compliance Program (ECP) sample audit module and any additional or supplemental direction that BIS may provide, and shall include an assessment of FedEx's compliance with the Regulations. The ECP sample audit module is available on the BIS web site at https://www.bis.doc.gov/index.php/forms-documents/pdfs/1641-ecp/file. In addition, where said audits identify actual or potential violations of the Regulations, FedEx must promptly provide copies of the pertinent invoices, air waybills and other export control documents and supporting documentation to the BIS Miami Field Office.

FOURTH, the full and timely payment of the civil penalty and timely completion of each of the audits and submissions of the audit results as 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 FedEx. Accordingly, if FedEx should fail to pay the civil penalty in a full and timely manner or fail to complete any of the audits and submit the results in a full and timely manner, the undersigned may issue an order denying all of FedEx's export privileges under the Regulations for a period of one year from the date of the failure to make such payment or complete any of the audits and submit the results.

FIFTH, FedEx shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Charging Letter or this Order. The foregoing does not affect FedEx's testimonial obligations in any proceeding,

nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

SIXTH, the 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.

Richard R. Majauskas
Acting Assistant Secretary of Commerce
for Export Enforcement

Issued this 24TH day of April, 2018.

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

In the Matter of:	
Federal Express Corporation d/b/a FedEx Express 3620 Hacks Cross Road Memphis, TN 38125	17-BIS-0006
Respondent	

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Federal Express Corporation, doing business as FedEx Express, of Memphis, Tennessee ("FedEx"), and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively, the "Parties"), pursuant to Section 766.18(b) 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 initiated an administrative proceeding against FedEx pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a Charging Letter to FedEx that alleges that FedEx committed fifty-three violations of the Regulations, specifically:

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2017). The charged violations occurred in 2001-2012. The Regulations governing the violations at issue are found in the 2011-2012 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2011-2012)). The 2017 Regulations set forth the procedures that apply to this matter.

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Charges 1-53 **15 C.F.R. § 764.2 (b): Causing, Aiding or Abetting Exports to Entities on the Entity List without the Required Licenses**

1. On fifty-three occasions between on or about July 1, 2011, and on or about January 19, 2012, FedEx caused, aided or abetted acts prohibited by the Regulations when it facilitated the export of civil aircraft parts and equipment used for electron microscope manufacturing, items subject to the Regulations and classified under Export Control Classification Number (ECCN) 9A991 or 7A994 and controlled for Anti-Terrorism ("AT") reasons, or designated as EAR99,[1] and valued in total at approximately $58,091, from the United States to Aerotechnic France SAS ("Aerotechnic") in France, or to the Pakistan Institute for Nuclear Science and Technology ("PINSTECH") in Pakistan, without the required BIS licenses.

2. Aerotechnic is and was at all times pertinent hereto listed on the Entity List, which is set forth in Supplement No. 4 to Part 744 of the Regulations. Aerotechnic was added to the Entity List on June 28, 2011, "based on evidence that [it had] engaged in actions that could enhance the military capability of Iran, a country designated by the U.S. Secretary of State as having repeatedly provided support for acts of international terrorism . . . [and] because [its] overall conduct pose[d] a risk of ongoing EAR violations." 76 Fed. Reg. 37,632 (June 28, 2011).

3. Accordingly, pursuant to Section 744.11 of the Regulations and Aerotechnic's Entity List listing, a license was at all times pertinent hereto required to export any item subject to the Regulations to Aerotechnic, including the AT-controlled and EAR99 civil aircraft parts involved in the Aerotechnic transactions at issue. No license exceptions were available for exports to Aerotechnic, and license applications to export to Aerotechnic were subject to a license review policy of a presumption of denial.

4. PINSTECH is a subordinate entity of the Pakistan Atomic Energy Commission, and has been on the Entity List since November 19, 1998, when it was added to the Entity List along with a number of other Pakistani government (and parastatal and private) entities involved in nuclear or missile activities shortly after Pakistan detonated a nuclear device. 63 Fed. Reg. 64,322 (Nov. 19, 1998). The listing has at all times specifically included the acronym "PINSTECH," which is commonly and widely used in lieu of the entity's full name. *See id.*; 65 Fed Reg. 14,444 (March 17, 2000); 66 Fed. Reg. 50,089 (Oct. 1, 2001); 77 Fed. Reg. 58,006 (Sept. 9, 2012); and 79 Fed. Reg. 55,998 (Sept. 18, 2014).[2]

5. Pursuant to Section 744.11 and PINSTECH's Entity List listing, a license was at all times pertinent hereto required to export any item subject to the Regulations to PINSTECH, including the export of EAR99 laboratory equipment to PINSTECH. No license exceptions were available for exports to PINSTECH, while license applications to export EAR99 items to PINSTECH were subject to a presumption of approval.

6. None of the fifty-three export transactions at issue had the required BIS license. In providing carrier services or both carrier and freight forwarding services in connection with

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[2] Many of the other Pakistani entities added to the Entity List on October 19, 1998, were removed on October 1, 2001. *See* 66 Fed. Reg. 50,089 (Oct. 1, 2001). PINSTECH, in contrast, has remained on the Entity List at all times since November 19, 1998.

these transactions, FedEx used proprietary screening software that failed to flag or detect close matches to the Entity List listings for, as applicable, Aerotechnic and PINSTECH.

7. The exporters provided name and address or location information regarding these transactions, via a proprietary FedEx interface/portal exporters can use for scheduling shipments and related transportation and/or forwarding services, that should have enabled FedEx to readily determine that Aerotechnic and PINSTECH were the recipients/consignees and parties on the Entity List. For the exports at issue to Aerotechnic in France, the recipient/consignee was identified by name by the various exporters as "Aerotechnic France" (on forty-three occasions), as "Aerotechnic-France" (on six occasions), or "Aerotechnic" (on three occasions). In addition, the address information matched or nearly matched the address information listed for Aerotechnic on the Entity List, including matching with regard to the street name and building number, the city name, and the postal zip code. Similarly, the recipient/consignee was identified as "PINSTECH" for the export to PINSTECH in Nilore, Islamabad, Pakistan.

8. However, as FedEx knew or should have known, its screening software did not flag a transaction unless the name of the recipient/consignee exactly matched the full name of the entity as found on the Entity List, even where the address information was identical or nearly identical. Thus, most of the Aerotechnic transactions at issue were not flagged only because "SAS" was not included in the name entered by the exporter. "SAS" is simply the acronym for a type of French limited liability company and thus is similar to typically non-differentiating terms such as "Co." and "LLC" and "Corp."

9. The PINSTECH transaction also was not flagged even though the exporter provided that commonly-used acronym, which was part of the Entity List listing.

10. As a result, FedEx transported the items, or on one occasion forwarded and transported the items for shipment from the United States for delivery to listed entities Aerotechnic and PINSTECH in connection with the unlawful unlicensed exports described herein.

11. In so doing, FedEx committed fifty-three violations of Section 764.2(b) of the Regulations.

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

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

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

WHEREAS, FedEx neither admits nor denies the allegations contained in the Charging Letter; and

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

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

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

2. The following sanctions shall be imposed against FedEx:

a. FedEx shall be assessed a civil penalty in the amount of $500,000, the payment of which shall be made 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. FedEx shall complete external audits of its export controls compliance program covering its fiscal years 2017 through 2020, that is, from June 1 through May 31 of each applicable FedEx fiscal year. FedEx shall hire an unaffiliated third party consultant with expertise in U.S. export control

laws to conduct the external audits of its compliance with U.S. export control laws (including recordkeeping requirements), with respect to exports or reexports to parties on BIS's Entity List and Denied Persons List that are subject to the Regulations.[5] The results of the audits, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, Miami Field Office, 200 E. Las Olas Blvd., Suite 1800, Fort Lauderdale, FL 33301 ("BIS Miami Field Office"). The first audit shall cover FedEx fiscal years 2017 and 2018, and the related report shall be due to the BIS Miami Field Office no later than November 30, 2018. The second audit shall cover FedEx fiscal year 2019, and the related report shall be due to the BIS Miami Field Office no later than September 30, 2019. The third audit shall cover FedEx fiscal year 2020, and the related report shall be due to the BIS Miami Field Office not later than September 30, 2020.

Said audits shall be in substantial compliance with the Export Compliance Program (ECP) sample audit module, and any additional or supplemental direction that BIS may provide, and shall include an assessment of FedEx's compliance with the Regulations. The ECP sample audit module is available on the BIS web site at https://www.bis.doc.gov/index.php/forms-documents/pdfs/1641-ecp/file.

In addition, where said audits identify actual or potential violations of the Regulations, FedEx shall promptly provide copies of the pertinent invoices,

[5] BIS's Entity List is found at Supplement No. 4 to 15 C.F.R. Part 744. The Denied Persons List can be found on BIS's website at https://www.bis.doc.gov/index.php/the-denied-persons-list.

air waybills and other export control documents and supporting documentation to the BIS Miami Field Office.

c. The full and timely payment of the civil penalty as agreed to in Paragraph 2.a and timely completion of each of the audits and submissions of the audit results as agreed to in Paragraph 2.b 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 FedEx. Failure to make full and timely payment of the civil penalty or complete any of the audits and submit the results in a full and timely manner may result in the denial of all of FedEx's export privileges under the Regulations for a period of one year from the date of the failure to make such payment or complete any of the audits and submit the results.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, FedEx 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. FedEx also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date

of the Order until the later of the date FedEx pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement, or has completed all of the audits and submitted the results agreed to in Paragraph 2.b.

4. FedEx shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Charging Letter or the Order. The foregoing does not affect FedEx's testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a and completion and submission of all of the audits as set forth in Paragraph 2.b, BIS will not initiate any further administrative proceeding against FedEx in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Charging Letter.

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(b) 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. If the Order issues, BIS will make the Charging Letter, this Agreement, and the Order available to the public.

10. 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

John T. Masterson, Jr.
Chief Counsel for Industry and Security

Date: April 23, 2018

FEDERAL EXPRESS CORPORATION

Steven H. Taylor
Vice President of Regulatory Affairs
Federal Express Corporation

Date: April 18, 2018

Reviewed and approved by:

Christopher R. Wall, Esq.
Pillsbury, Winthrop, Shaw, Pittman LLP
Counsel for Federal Express Corporation

Date: April 18, 2018

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Office of Export Enforcement
1401 Constitution Avenue, Suite 4508
Washington, DC 20230

DEC 14 2017

CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Federal Express Corporation
d/b/a FedEx Express
3620 Hacks Cross Road
Memphis, TN 38125

Attn: Steven H. Taylor
Vice President of Regulatory Affairs

Dear Mr. Taylor:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Federal Express Corporation, doing business as FedEx Express, of Memphis, Tennessee ("FedEx"), has committed fifty-three (53) violations of the Export Administration Regulations (the "EAR" or "Regulations"),[1] which issued under the authority of the Export Administration Act of 1979, as amended (the "Act").[2] Specifically, BIS charges the following violations:

Charges 1-53 **15 C.F.R. § 764.2 (b): Causing, Aiding or Abetting Exports to Entities on the Entity List without the Required Licenses**

1. As described in further detail in the attached Schedule of Violations, which is incorporated herein by reference, on fifty-three occasions between on or about July 1, 2011, and on or about January 19, 2012, FedEx caused, aided or abetted acts prohibited by the Regulations when it facilitated the export of civil aircraft parts and equipment used for electron microscope manufacturing, items subject to the Regulations and classified under Export Control Classification Number (ECCN) 9A991 or 7A994 and controlled for Anti-Terrorism ("AT")

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2017). The charged violations occurred in 2011-2012. The Regulations governing the violations at issue are found in the 2011 and 2012 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2011-12)). The 2017 Regulations set forth the procedures that currently apply to this matter.

[2] 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (available at http://uscode.house.gov). 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 15, 2017 (82 Fed. Reg. 39,005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq., (2012)).

reasons, or designated as EAR99,[3] and valued in total at approximately $58,091, from the United States to Aerotechnic France SAS ("Aerotechnic") in France, or to the Pakistan Institute for Nuclear Science and Technology ("PINSTECH") in Pakistan, without the required BIS licenses.

2. Aerotechnic is and was at all times pertinent hereto listed on the Entity List, which is set forth in Supplement No. 4 to Part 744 of the Regulations. Aerotechnic was added to the Entity List on June 28, 2011, "based on evidence that [it had] engaged in actions that could enhance the military capability of Iran, a country designated by the U.S. Secretary of State as having repeatedly provided support for acts of international terrorism . . . [and] because [its] overall conduct pose[d] a risk of ongoing EAR violations." 76 Fed. Reg. 37,632 (June 28, 2011).

3. Accordingly, pursuant to Section 744.11 of the Regulations and Aerotechnic's Entity List listing, a license was at all times pertinent hereto required to export any item subject to the Regulations to Aerotechnic, including the AT-controlled and EAR99 civil aircraft parts involved in the Aerotechnic transactions at issue. No license exceptions were available for exports to Aerotechnic, and license applications to export to Aerotechnic were subject to a license review policy of a presumption of denial.

4. PINSTECH is a subordinate entity of the Pakistan Atomic Energy Commission, and has been on the Entity List since November 19, 1998, when it was added to the Entity List along with a number of other Pakistani government (and parastatal and private) entities involved in nuclear or missile activities shortly after Pakistan detonated a nuclear device. 63 Fed. Reg. 64,322 (Nov. 19, 1998). The listing has at all times specifically included the acronym "PINSTECH," which is commonly and widely used in lieu of the entity's full name. *See id.*; 65 Fed Reg. 14,444 (March 17, 2000); 66 Fed. Reg. 50,089 (Oct. 1, 2001); 77 Fed. Reg. 58,006 (Sept. 9, 2012); and 79 Fed. Reg. 55,998 (Sept. 18, 2014).[4]

5. Pursuant to Section 744.11 and PINSTECH's Entity List listing, a license was at all times pertinent hereto required to export any item subject to the Regulations to PINSTECH, including the export of EAR99 laboratory equipment to PINSTECH. No license exceptions were available for exports to PINSTECH, while license applications to export EAR99 items to PINSTECH were subject to a presumption of approval.

6. None of the fifty-three export transactions at issue had the required BIS license. In providing carrier services or both carrier and freight forwarding services in connection with these transactions, FedEx used proprietary screening software that failed to flag or detect close matches to the Entity List listings for, as applicable, Aerotechnic and PINSTECH.

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[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).

[4] Many of the other Pakistani entities added to the Entity List on October 19, 1998, were removed on October 1, 2001. *See* 66 Fed. Reg. 50,089 (Oct. 1, 2001). PINSTECH, in contrast, has remained on the Entity List at all times since November 19, 1998.

7. The exporters provided name and address or location information regarding these transactions, via a proprietary FedEx interface/portal exporters can use for scheduling shipments and related transportation and/or forwarding services, that should have enabled FedEx to readily determine that Aerotechnic and PINSTECH were the recipients/consignees and parties on the Entity List. For the exports at issue to Aerotechnic in France, the recipient/consignee was identified by name by the various exporters as "Aerotechnic France" (on forty-three occasions), as "Aerotechnic-France" (on six occasions), or "Aerotechnic" (on three occasions). In addition, the address information matched or nearly matched the address information listed for Aerotechnic on the Entity List, including matching with regard to the street name and building number, the city name, and the postal zip code. Similarly, the recipient/consignee was identified as "PINSTECH" for the export to PINSTECH in Nilore, Islamabad, Pakistan.

8. However, as FedEx knew or should have known, its screening software did not flag a transaction unless the name of the recipient/consignee exactly matched the full name of the entity as found on the Entity List, even where the address information was identical or nearly identical. Thus, most of the Aerotechnic transactions at issue were not flagged only because "SAS" was not included in the name entered by the exporter. "SAS" is simply the acronym for a type of French limited liability company and thus is similar to typically non-differentiating terms such as "Co." and "LLC" and "Corp."

9. The PINSTECH transaction also was not flagged even though the exporter provided that commonly-used acronym, which was part of the Entity List listing.

10. As a result, FedEx transported the items, or on one occasion forwarded and transported the items for shipment from the United States for delivery to listed entities Aerotechnic and PINSTECH in connection with the unlawful unlicensed exports described herein.

11. In so doing, FedEx committed fifty-three violations of Section 764.2(b) of the Regulations.

* * * *

Accordingly, FedEx 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 $289,238 per violation[5] or twice the value of the transaction that is the basis of the violation;[6]

- Denial of export privileges;

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[5] *See* 15 C.F.R. § 6.4(b)(4). This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015. *See also* 81 Fed. Reg. 9532 (Dec. 28, 2016).

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

- Exclusion from practice before BIS.; and/or

- Any other liability, sanction, or penalty available under law.

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

FedEx 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. FedEx 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 FedEx have a proposal to settle this case, FedEx or its representative should transmit it to the attorney representing BIS named below.

FedEx is further notified that under the Small Business Regulatory Enforcement Flexibility Act, FedEx 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, FedEx'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 FedEx's answer must be served on BIS at the following address:

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

Gregory Michelsen is the attorney representing BIS in this case; any communications that FedEx may wish to have concerning this matter should occur through him. Mr. Michelsen may be contacted by telephone at (202) 482-5301.

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement

FedEx Schedule of Violations						
Violation	**Export Date**	**Commodity**	**Value**	**ECCN**	**End-user, Country**	**Violation**
1	7/1/2011	Aircraft parts - Halogen Lamp	$196.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)
2	7/1/2011	Aircraft parts - Grooved coupling clamp	$1,548.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)
3	7/1/2011	Aircraft parts - Nickel Alloy Bolt	$2,244.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)
4	7/1/2011	Aircraft parts - Machine Screw	$142.29	EAR99	Aerotechnic France SAS, France	§764.2 (b)
5	7/1/2011	Aircraft parts - Nut Plate Rivet	$1,866.01	EAR99	Aerotechnic France SAS, France	§764.2 (b)
6	7/5/2011	Aircraft parts - Self Locking Hex Nut	$212.43	EAR99	Aerotechnic France SAS, France	§764.2 (b)
7	7/6/2011	Aircraft parts - Tapered Roller Bearing	$201.95	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
8	7/6/2011	Aircraft parts - Grooved coupling clamp	$192.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)
9	7/6/2011	Aircraft parts - Titanium bolt	$73.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)
10	7/6/2011	Aircraft parts - Self Locking Hex Nut	$192.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)
11	7/7/2011	Aircraft parts - Leaf Spring	$1,062.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
12	7/7/2011	Aircraft parts - Flareless Tube Cap	$457.35	EAR99	Aerotechnic France SAS, France	§764.2 (b)

FedEx Schedule of Violations						
13	7/7/2011	Aircraft parts - Metal Crimp Splice	$25.92	EAR99	Aerotechnic France SAS, France	§764.2 (b)
14	7/8/2011	Aircraft parts - Packing Rubber O-Ring	$83.84	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
15	7/8/2011	Aircraft parts - Tapered Roller Bearing	$272.16	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
16	7/8/2011	Aircraft parts - Solid Rivet	$260.18	EAR99	Aerotechnic France SAS, France	§764.2 (b)
17	7/12/2011	Aircraft parts - Machine Screw	$151.06	EAR99	Aerotechnic France SAS, France	§764.2 (b)
18	7/15/2011	Aircraft parts - Trailing Retainer	$66.96	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
19	7/18/2011	Aircraft parts - Igniter	$697.32	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
20	7/18/2011	Aircraft parts - Relay	$455.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
21	7/19/2011	Aircraft parts - Microphone	$411.24	EAR99	Aerotechnic France SAS, France	§764.2 (b)
22	7/19/2011	Aircraft parts - Toggle Switch	$93.76	EAR99	Aerotechnic France SAS, France	§764.2 (b)
23	7/21/2011	Aircraft parts - Gasket - Igniter Plug	$607.20	EAR99	Aerotechnic France SAS, France	§764.2 (b)
24	7/22/2011	Aircraft parts - Igniter	$2,932.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
25	7/22/2011	Aircraft parts - Guide Tube	$323.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)

FedEx Schedule of Violations						
26	7/25/2011	Aircraft parts - Bearing	$173.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
27	7/26/2011	Aircraft parts - Knob Control	$80.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
28	7/26/2011	Aircraft parts - Protruding Head Bolt	$50.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)
29	7/26/2011	Aircraft parts - removal tool	$627.30	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
30	7/28/2011	Aircraft parts - Indicator	$1,300.00	7A994	Aerotechnic France SAS, France	§764.2 (b)
31	8/2/2011	Aircraft parts - Antenna	$770.90	7A994	Aerotechnic France SAS, France	§764.2 (b)
32	8/4/2011	Aircraft parts - Air check valves	$2,730.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
33	8/11/2011	Aircraft parts - Ballast	$4,690.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
34	8/11/2011	Aircraft parts - Food Trays	$1,500.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
35	8/30/2011	Aircraft parts - Hose	$510.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
36	9/8/2011	Aircraft parts - Cap assembly	$677.84	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
37	9/8/2011	Aircraft parts - Relay	$8,963.03	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
38	9/9/2011	Aircraft parts - Compressed gas cylinder adapter	$586.08	9A991.d	Aerotechnic France SAS, France	§764.2 (b)

FedEx Schedule of Violations						
39	9/9/2011	Aircraft parts - Power Receptacle Connector	$121.24	EAR99	Aerotechnic France SAS, France	§764.2 (b)
40	9/15/2011	Aircraft parts - Mounting Seal	$1,080.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
41	9/21/2011	Aircraft parts - Preformed O-Ring	$144.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)
42	9/21/2011	Aircraft parts - Pipe	$200.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
43	9/22/2011	Aircraft parts - Bearings	$554.18	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
44	9/22/2011	Aircraft parts - Antenna	$624.00	7A994	Aerotechnic France SAS, France	§764.2 (b)
45	9/23/2011	Aircraft parts - Blind Rivets	$940.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)
46	9/23/2011	Aircraft Parts - Extraction Tool	$565.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)
47	9/27/2011	Aircraft parts - Cable Assembly	$295.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
48	9/30/2011	Aircraft parts - Pressure Switch	$5,000.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
49	10/5/2011	Aircraft parts - Aluminum washers	$50.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)
50	10/10/2011	Aircraft parts - Seal	$114.84	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
51	10/11/2011	Aircraft parts - Machine Screw	$50.00	EAR99	Aerotechnic France SAS, France	§764.2 (b)

FedEx Schedule of Violations						
52	10/28/2011	Aircraft parts - Filter	$800.00	9A991.d	Aerotechnic France SAS, France	§764.2 (b)
53	1/19/2012	Equipment for electron microscope manufacturing	$10,127.96	EAR99	Pakistan Institute of Nuclear Science and Technology (PINSTECH)	§764.2 (b)