

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

In the Matter of:)
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)
Bruker AXS Inc.)
5465 East Cheryl Parkway)
Madison, WI 53711-5373)
)
)

Respondent)

ORDER RELATING TO BRUKER AXS INC.

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

¹ The violations alleged occurred in 2004. The Regulations governing the violation at issue are found in the 2004 version of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2004). The 2009 Regulations govern the procedural aspects of this case.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 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 the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

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

On or about January 10, 2004, Bruker AXS engaged in conduct prohibited by the Regulations when it exported an analytical X-ray instrument, an item subject to the Regulations (“EAR99”),³ from the United States through France to the Karachi CBW Research Institute, University of Karachi’s Husein Ebrahim Jamal Research Institute of Chemistry (“HEJRIC”), in Karachi, Pakistan, without the Department of Commerce license required by Section 744.1 of the Regulations. At all times relevant thereto, HEJRIC was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. In so doing, Bruker AXS committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 C.F.R. §764.2(g)(1)(ii)–Misrepresentation on a Shipper’s Export Declaration Concerning Authority to Export

On or about January 10, 2004, Bruker AXS indirectly made a false or misleading statement to the U.S. Government in connection with the submission of an export control document. Specifically, in connection with the export described in Charge 1 above, Bruker AXS, through its freight forwarder, filed a Shipper’s Export Declaration (“SED”), an export control document as defined in Section 772.1 of the Regulations, with the U.S. Government via the Automated Export System (“AES”) that stated that the instrument qualified for export from the United States as NLR (“No License Required”). This representation was false, as a license from the Department of Commerce was required. In so doing, Bruker AXS committed one violation of Section 764.2(g) of the Regulations.

WHEREAS, BIS and Bruker AXS 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 \$7,500 is assessed against Bruker AXS, 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.

³ EAR 99 is a designation for items subject to the Regulations that are not listed on the Commerce Control list, which is set forth at Supp. No. 1 to part 774 of the EAR. See 15 C.F.R. § 774.1.

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, Bruker AXS 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 Bruker AXS. Accordingly, if Bruker AXS should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Bruker AXS'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 13th day of July, 2009.

UNITED STATES DEPARTMENT OF COMMERCE
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5465 East Cheryl Parkway)
Madison, WI 53711-5373)
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Respondent)

SETTLEMENT AGREEMENT

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

WHEREAS, Bruker AXS 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;

¹ The alleged violations occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004)). The 2009 Regulations establish the procedures that apply to this matter.

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)), 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, BIS has notified Bruker AXS of its intention to initiate an administrative proceeding against, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Bruker AXS that alleged that Bruker AXS committed two violations of the Regulations, specifically:

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

On or about January 10, 2004, Bruker AXS engaged in conduct prohibited by the Regulations when it exported an analytical X-ray instrument, an item subject to the Regulations (“EAR99”),³ from the United States through France to the Karachi CBW Research Institute, University of Karachi’s Husein Ebrahim Jamal Research Institute of Chemistry (“HEJRIC”), in Karachi, Pakistan, without the Department of Commerce license required by Section 744.1 of the Regulations. At all times relevant thereto, HEJRIC was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. In so doing, Bruker AXS committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 C.F.R. §764.2(g)(1)(ii)–Misrepresentation on a Shipper’s Export Declaration Concerning Authority to Export

On or about January 10, 2004, Bruker AXS indirectly made a false or misleading statement to the U.S. Government in connection with the submission of an export control document. Specifically, in connection with the export described in Charge 1 above, Bruker AXS, through its freight forwarder, filed a Shipper’s Export Declaration (“SED”), an export control document as defined in Section 772.1 of the Regulations, with the U.S. Government via the Automated Export System (“AES”) that stated that the instrument qualified for export from the United States as NLR (“No License Required”). This representation was false, as a license from the Department of Commerce was required. In so doing, Bruker AXS committed one violation of Section 764.2(g) of the Regulations.

WHEREAS, Bruker AXS 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;

³ EAR 99 is a designation for items subject to the Regulations that are not listed on the Commerce Control list, which is set forth at Supp. No. 1 to part 774 of the EAR. *See* 15 C.F.R. § 774.1.

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Bruker AXS, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against Bruker AXS 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. Bruker AXS shall be assessed a civil penalty in the amount of \$7,500, 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 Bruker AXS. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Bruker AXS'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, Bruker AXS 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 \$7,500 civil penalty, BIS will not initiate any further administrative proceeding against Bruker AXS 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.

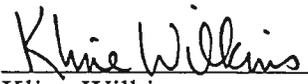
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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

BRUKER AXS INC.



John Sonderman
Acting Director
Office of Export Enforcement



Kline Wilkins
Senior Vice-President

Date: 6/3/09

Date: 6/3/09

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bruker AXS Inc.
5465 East Cheryl Parkway
Madison, WI 53711-5373

*Attention: Kline Wilkins
Senior Vice-President*

Dear Mr. Wilkins:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Bruker AXS Inc. (“Bruker AXS”) has committed 2 violations of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS alleges that Bruker AXS committed the following violations:

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

On or about January 10, 2004, Bruker AXS engaged in conduct prohibited by the Regulations when it exported an analytical X-ray instrument, an item subject to the Regulations (“EAR99”),³ from the United States through France to the Karachi CBW Research Institute, University of Karachi’s Husein Ebrahim Jamal Research Institute of Chemistry (“HEJRIC”), in Karachi, Pakistan, without the Department of Commerce license required by Section 744.1 of the Regulations. At all times relevant thereto, HEJRIC was an organization listed on the Entity

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The violations alleged occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2004). The 2009 Regulations govern the procedural aspects of this case.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of 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)) (“IEEPA”).

³ EAR 99 is a designation for items subject to the Regulations that are not listed on the Commerce Control list, which is set forth at Supp. No. 1 to part 774 of the EAR. See 15 C.F.R. § 774.1.
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List set forth at Supplement No. 4 to Part 744 of the Regulations. In so doing, Bruker AXS committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 C.F.R. §764.2(g)(1)(ii)–Misrepresentation on a Shipper’s Export Declaration Concerning Authority to Export

On or about January 10, 2004, Bruker AXS indirectly made a false or misleading statement to the U.S. Government in connection with the submission of an export control document. Specifically, in connection with the export described in Charge 1 above, Bruker AXS, through its freight forwarder, filed a Shipper’s Export Declaration (“SED”), an export control document as defined in Section 772.1 of the Regulations, with the U.S. Government via the Automated Export System (“AES”) that stated that the instrument qualified for export from the United States as NLR (“No License Required”). This representation was false, as a license from the Department of Commerce was required. In so doing, Bruker AXS committed one violation of Section 764.2(g) of the Regulations.

* * * * *

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

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

Bruker AXS 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. Bruker AXS 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 Bruker AXS have a proposal to settle this case, Bruker AXS should transmit it to the attorney representing BIS named below.

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

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

Parvin R. Huda is the attorney representing BIS in this case; any communications that Bruker AXS may wish to have concerning this matter should occur through her. Ms. Huda may be contacted by telephone at (202) 482-5301.

Sincerely,

Thomas Madigan
Director
Office of Export Enforcement