

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

\_\_\_\_\_  
In the Matter of: )  
 )  
Utech Products, Inc. )  
135 Broadway Street )  
Schenectady, New York 12305 )  
 )  
Respondent )  
\_\_\_\_\_

ORDER RELATING TO UTECH PRODUCTS, INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Utech Products, Inc. (“Utech”) of its intention to initiate an administrative proceeding against Utech 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 Utech that alleged that it committed three violations of the Regulations. Specifically, the charges are:

**Charges 1-3            15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct by Exporting Oscilloscopes to Pakistan Without the Required Licenses**

On three occasions between on or about September 4, 2004 and on or about October 25, 2006, Utech engaged in conduct prohibited by the Regulations by exporting from the United States to Pakistan oscilloscopes, items classified under Export Control Classification Number 3A292, controlled for nuclear nonproliferation reasons, and valued at approximately \$91,000, without

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The charged violations occurred from 2004 through 2006. The Regulations governing the violations at issue are found in the 2004 through 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004-2006)). The 2009 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 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707).

the Department of Commerce licenses required by Section 742.3 of the Regulations. In so doing, Utech committed three violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Utech 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, Utech shall be assessed a civil penalty in the amount of \$125,000. Utech shall pay \$12,500 to the U.S. Department of Commerce within 30 days of the date of the Order. Utech shall pay the remaining \$112,500 to the U.S. Department of Commerce as follows: \$12,500 not later than November 19, 2009; \$12,500 not later than December 1, 2009; \$12,500 not later than January 4, 2010; \$12,500 not later than February 1, 2010; \$12,500 not later than March 1, 2010; \$12,500 not later than April 5, 2010; \$12,500 not later than May 3, 2010; \$12,500 not later than June 1, 2010; and \$12,500 not later than July 5, 2010. Payment shall be made in the manner specified in the attached instructions.

SECOND, Utech shall perform an audit of its internal export controls compliance program within 12 months of the date of entry of the Order. Said audit shall be in substantial compliance with the EMS sample audit module. The EMS sample audit module is available on the BIS web site at [http://www.bis.doc.gov/complianceandenforcement/emcp.htm#emcp\\_assistance](http://www.bis.doc.gov/complianceandenforcement/emcp.htm#emcp_assistance). A copy of said audit shall be transmitted to the Office of Export Enforcement, 1200 South Avenue, Suite 104, Staten Island, NY, 10314, by no later than 12 months from the date of the Order.

THIRD, 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,

Utech 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.

FOURTH, 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 Utech. Accordingly, if Utech should fail to pay the civil penalty in a timely manner, the undersigned may issue an Order denying all of Utech's export privileges under the Regulations for a period of one year from the date of this Order.

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.

  
\_\_\_\_\_  
Kevin Delli-Colli  
Acting Assistant Secretary of Commerce  
for Export Enforcement

Issued this 15<sup>th</sup> day of October, 2009.

UNITED STATES DEPARTMENT OF COMMERCE  
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135 Broadway Street )  
Schenectady, New York 12305 )  
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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Utech Products, Inc. ("Utech") 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 Utech of its intention to initiate an administrative proceeding against it, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a Proposed Charging Letter to Utech that alleged that Utech committed three violations of the Regulations, specifically:

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The charged violations occurred between 2004 and 2006. The Regulations governing the violations at issue are found in the 2004 - 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004-2006)). The 2009 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 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707).

**Charges 1-3                    15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct by  
Exporting Oscilloscopes to Pakistan Without the Required  
Licenses**

On three occasions between on or about September 4, 2004 and on or about October 25, 2006, Utech engaged in conduct prohibited by the Regulations by exporting from the United States to Pakistan oscilloscopes, items classified under Export Control Classification Number 3A292, controlled for nuclear nonproliferation reasons, and valued at approximately \$91,000, without the Department of Commerce licenses required by Section 742.3 of the Regulations. In so doing, Utech committed three violations of Section 764.2(a) of the Regulations.

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

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

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

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

WHEREAS, Utech 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 Utech, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanction shall be imposed against Utech in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Proposed Charging Letter:

a. Utech shall be assessed a civil penalty in the amount of \$125,000. Utech shall pay \$12,500 to the U.S. Department of Commerce within 30 days of the date of the Order. Utech shall pay the remaining \$112,500 to the U.S. Department of Commerce as follows: \$12,500 not later than November 9, 2009; \$12,500 not later than December 1, 2009; \$12,500 not later than January 4, 2010; \$12,500 not later than February 1, 2010; \$12,500 not later than March 1, 2010; \$12,500 not later than April 5, 2010; \$12,500 not later than May 3, 2010; \$12,500 not later than June 1, 2010; and \$12,500 not later than July 5, 2010. Payment shall be made in the manner specified in the attached instructions.

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 Utech. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Utech's export privileges for a period of one year from the date of imposition of the penalty.

c. That Utech shall perform an audit of its internal export controls compliance program within 12 months of the date of the Order. Said audit shall be in substantial compliance with the EMS sample audit module. The EMS

sample audit module is available on the BIS web site at

[http://www.bis.doc.gov/complianceand enforcement/emcp.htm#emcp\\_assistance](http://www.bis.doc.gov/complianceand enforcement/emcp.htm#emcp_assistance).

A copy of said audit shall be transmitted to the Office of Export Enforcement, 1200 South Avenue, Suite 104, Staten Island, NY, 10314, by no later than 12 months from the date of the Order.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Utech 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.

4. BIS agrees that, upon issuance of the Order, it will not initiate any further administrative proceeding against Utech 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.

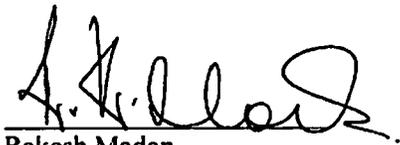
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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

  
Thomas Madigan

Director  
Office of Export Enforcement

Date: 10/15, 2009

  
Rakesh Madan

President  
Utech Products, Inc.

Date: 10/13, 2009

PROPOSED CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Utech Products, Inc.  
135 Broadway Street  
Schenectady, New York 12305

Attn: *Mr. Rakesh Madan*  
President

Dear Mr. Madan:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Utech Products, Inc. (“Utech”), of Schenectady, New York, has committed three violations 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 charges that Utech committed the following violations:

**Charges 1-3                    15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct by Exporting Oscilloscopes to Pakistan Without the Required Licenses**

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on three occasions between on or about September 4, 2004 and on or about October 25, 2006, Utech engaged in conduct prohibited by the Regulations by exporting from the United States to Pakistan oscilloscopes, items classified under Export Control Classification Number 3A292, controlled for nuclear nonproliferation reasons, and valued at approximately \$91,000, without the Department of Commerce licenses required by Section 742.3 of the Regulations. In so doing, Utech committed three violations of Section 764.2(a) of the Regulations.

\*       \*       \*       \*       \*

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The charged violations occurred from 2004 through 2006. The Regulations governing the violations at issue are found in the 2004 through 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004-2006)). The 2009 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 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707).

Accordingly, Utech 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>3</sup>
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

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

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

Utech is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Utech 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, Utech'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

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<sup>3</sup> *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

Utech Products, Inc.  
Proposed Charging Letter  
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In addition, a copy of Utech's answer must be served on BIS at the following address:

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

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

Sincerely,



Thomas Madigan  
Director  
Office of Export Enforcement

<b>Utech Propose Charging Letter Schedule of Violations</b>					
<b>Charge Number</b>	<b>Date of Export</b>	<b>Description of Commodity</b>	<b>ECCN</b>	<b>Total Value</b>	<b>Violation</b>
1	9/4/2004	TDS3052B Tektronix oscilloscopes	3A292	\$69,975	15 C.F.R. § 764.2(a)
2	10/29/2005	TDS3032B Tektronix oscilloscope	3A292	\$6,400	15 C.F.R. § 764.2(a)
3	10/25/2006	TDS5054B Tektronix oscilloscopes	3A292	\$14,900	15 C.F.R. § 764.2(a)