

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

\_\_\_\_\_  
In the Matter of: )  
 )  
MTI Corporation )  
860 South 19<sup>th</sup> Street )  
Richmond, California 94804 )  
 )  
Respondent )  
\_\_\_\_\_

ORDER RELATING TO MTI CORPORATION

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified MTI Corporation (“MTI”), of its intention to initiate an administrative proceeding against MTI pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2010)) (the “Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),<sup>2</sup> through issuance of a proposed charging letter to MTI that alleged that MTI committed one violation of the Regulations. Specifically, this charge is:

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<sup>1</sup> The violation alleged occurred in 2008. The Regulations governing the violation at issue are found in the 2008 version of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2008). The 2010 Regulations govern the procedural aspects of this case.

<sup>2</sup> 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 13, 2009 (74 Fed. Reg. 41,325 (Aug. 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701*et seq.*) (2000)).

**Charge 1 15 C.F.R. § 764.2(c) – Attempted Unlicensed Export to an Entity List Organization in India**

On or about September 2, 2008, MTI attempted to engage in a violation of the Regulations when it attempted to export a bench-top muffle furnace, an item subject to the Regulations and designated as EAR99,<sup>3</sup> and valued at approximately \$18,140, from the United States to Solid State Physics Laboratory (“SSPL”), in Delhi, India, without the Department of Commerce license required by Section 744.1 of the Regulations. At all times relevant hereto, SSPL was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. In so doing, MTI committed one violation of Section 764.2(c) of the Regulations.

WHEREAS, BIS and MTI 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;

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$20,000 is assessed against MTI. MTI shall pay \$5,000 to the U.S. Department of Commerce no later than August 2, 2010.

Thereafter, MTI shall pay \$3,000 to the U.S. Department of Commerce not later than September 1, 2010; \$3,000 not later than October 1, 2010; \$3,000 not later than November 1, 2010; \$3,000 not later than December 1, 2010 and \$3,000 not later than January 3, 2011. 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

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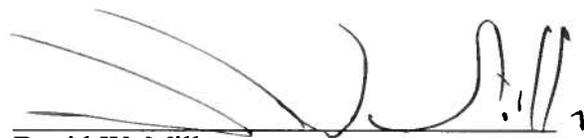
<sup>3</sup> EAR99 is a designation for items subject to the Regulations that are not listed on the Commerce Control list, which is set forth at Supplement No. 1 to Part 774 of the EAR. 15 C.F.R. § 774.1.

not made by the due date specified herein, MTI 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 MTI. Accordingly, if MTI should fail to pay the civil penalty in a timely manner, the undersigned may issue an Order denying all of MTI's export privileges for a period of one year from the date of issuance 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.



David W. Mills  
Assistant Secretary of Commerce  
for Export Enforcement

Issued this 30 day of June, 2010.

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

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860 South 19<sup>th</sup> Street )  
Richmond, California 94804 )  
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Respondent )  
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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between MTI Corporation (“MTI”) 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 (2010)) (the “Regulations”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),<sup>2</sup>

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

<sup>1</sup> The violation alleged to have been committed occurred in 2008. The Regulations governing the violation at issue are found in the 2008 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2008)). The 2010 Regulations establish the procedures that apply to this matter.

<sup>2</sup> 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 13, 2009 (74 Fed. Reg. 41,325 (Aug. 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701*et seq.*)(2000) (“IEEPA”). The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.

WHEREAS, BIS has issued a proposed charging letter to MTI that alleged that MTI committed one violation of the Regulations, specifically:

**Charge 1      15 C.F.R. § 764.2(c) – Attempted Unlicensed Export to an Entity List Organization in India**

On or about September 2, 2008, MTI attempted to engage in a violation of the Regulations when it attempted to export a bench-top muffle furnace, an item subject to the Regulations and designated as EAR99,<sup>3</sup> and valued at approximately \$18,140, from the United States to Solid State Physics Laboratory (“SSPL”), in Delhi, India, without the Department of Commerce license required by Section 744.1 of the Regulations. At all times relevant hereto, SSPL was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. In so doing, MTI committed one violation of Section 764.2(c) of the Regulations.

WHEREAS, MTI has reviewed the proposed charging letter and is aware of the allegation made against it and the administrative sanctions which could be imposed against it if the allegation is found to be true;

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

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

WHEREAS, MTI neither admits nor denies the allegation contained in the proposed charging letter;

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

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

WHEREAS, the Parties agree to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over MTI, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against MTI in complete settlement of the alleged violation of the Regulations relating to the transaction detailed in the proposed charging letter:

a. MTI shall be assessed a civil penalty in the amount of \$20,000.

MTI shall pay \$5,000 to the U.S. Department of Commerce no later than August 2, 2010. Thereafter, MTI shall pay \$3,000 to the U.S. Department of Commerce not later than September 1, 2010; \$3,000 not later than October 1, 2010; \$3,000 not later than November 1, 2010; \$3,000 not later than December 1, 2010 and \$3,000 not later than January 3, 2011.

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 MTI. Failure to make timely payment of the civil penalty in accordance with the payment schedule set forth above may result in the denial of all of MTI'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, MTI 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. Upon issuance of the Order and timely payment of the \$20,000 civil penalty, BIS will not initiate any further administrative proceedings against MTI in connection with any violation of the Act or the Regulations arising out of the transaction identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if issued, available to the public.

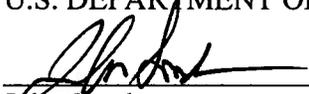
6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No oral 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

  
\_\_\_\_\_  
John Sonderman  
Acting Director  
Office of Export Enforcement

MTI CORPORATION

  
\_\_\_\_\_  
Xiaoping Jiang  
President

Date: 6/29/2010

Date: June 28, 2010

PROPOSED CHARGING LETTER

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

MTI Corporation  
860 South 19th Street  
Richmond, California 94804

*Attention: Xiaoping Jiang, Ph.D.  
President*

Dear Dr. Jiang,

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

**Charge 1      15 C.F.R. § 764.2(c) – Attempted Unlicensed Export to an Entity List Organization in India**

On or about September 2, 2008, MTI attempted to engage in a violation of the Regulations when it attempted to export a bench-top muffle furnace, an item subject to the Regulations and designated as EAR99,<sup>3</sup> and valued at approximately \$18,140, from the United States to Solid State Physics Laboratory (“SSPL”), in Delhi, India, without the Department of Commerce license required by Section 744.1 of the Regulations. At all times relevant hereto, SSPL was an organization listed on the Entity List set forth at

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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 (2010). The violation alleged occurred in 2008. The Regulations governing the violation at issue are found in the 2008 version of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2008). The 2010 Regulations govern the procedural aspects of this case.

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

<sup>3</sup> EAR99 is a designation for items subject to the Regulations that are not listed on the Commerce Control list, which is set forth at Supplement No. 1 to Part 774 of the EAR. 15 C.F.R. § 774.1 (2008).

Supplement No. 4 to Part 744 of the Regulations. In so doing, MTI committed one violation of Section 764.2(c) of the Regulations.

\* \* \* \* \*

Accordingly, MTI is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation, or twice the value of the transaction that is the basis of the violation;<sup>4</sup>
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

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

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

MTI is further notified that under the Small Business Regulatory Enforcement Flexibility ACT, MTI 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, MTI's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

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

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

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

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

Parvin Huda is the attorney representing BIS in this case; and communications that MTI may wish to have concerning this matter should occur through her. Ms. Huda may be contacted by telephone at (202) 482-4804.

Sincerely,

John Sonderman  
Acting Director  
Office of Export Enforcement