

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

In the Matter of:

University of Massachusetts at Lowell
600 Suffolk Street
215 Wannalancit Mill
Lowell, MA 01854

Respondent

ORDER RELATING TO
UNIVERSITY OF MASSACHUSETTS AT LOWELL

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified the University of Massachusetts at Lowell (“UML”), of its intention to initiate an administrative proceeding against UML pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),² through the issuance of a Proposed Charging Letter to UML that alleges that UML committed two violations of the Regulations. Specifically, the charges are:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2012). The charged violations occurred in 2007. The Regulations governing the violations at issue are found in the 2007 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012 Regulations set forth 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)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 and Supp. IV 2010).

**Charges 1-2 15 C.F.R. §764.2(a) –Export of Atmospheric Testing Device
and Related Antennae and Cables to a Listed Entity in
Pakistan Without the Required License**

On two occasions, on or about September 1, 2007, and on or about October 6, 2007, UML, through its Center for Atmospheric Research, engaged in conduct prohibited by the Regulations when it exported items subject to the Regulations from the United States to the Pakistan Space and Upper Atmosphere Research Commission (“SUPARCO”) without the Department of Commerce license required by Section 744.11 and Supplement No. 4 to Part 744 of the Regulations. Specifically, on or about September 1, 2007, UML exported antennae and cables valued at \$12,480 and designated as EAR99³ to SUPARCO, an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. On or about October 6, 2007, UML exported an atmospheric testing device valued at \$191,870 and designated EAR99 to SUPARCO. SUPARCO has been on the Entity List since November 1998 through a rule published in the *Federal Register* regarding certain entities in India and Pakistan, including SUPARCO, that were “determined to be involved in nuclear or missile activities.”⁴ At all times relevant hereto, SUPARCO remained on the Entity List. In so doing, UML committed two violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and UML 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, UML shall be assessed a civil penalty in the amount of \$100,000, all of which shall be suspended for a period of two years from the date of this Order, and thereafter shall be waived, provided that during this two-year probationary period, UML has committed no violation of the Act, or any regulation, order, license, or authorization

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) (2012).

⁴ *India and Pakistan Sanctions and Other Measures*, 63 Fed. Reg. 64,322 (Nov. 19, 1998).

issued thereunder. If UML commits a violation of the Act or of any regulation, order, license, or authorization issued thereunder during this two-year probationary period, the suspension may be revoked by BIS and the penalty made due and owing immediately in its entirety.

SECOND, that the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes final agency action in this matter, is effective immediately.



David W. Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 15 day of March, 2013.

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

In the Matter of:

University of Massachusetts at Lowell
600 Suffolk Street
215 Wannalancit Mill
Lowell, MA 01854

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between the University of Massachusetts at Lowell (“UML”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).²

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

WHEREAS, BIS has issued a Proposed Charging Letter to UML that alleges that UML committed two 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 (2012). The charged violations occurred in 2007. The Regulations governing the violations at issue are found in the 2007 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012 Regulations set forth 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)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 and Supp. IV 2010).

Charges 1-2 15 C.F.R. §764.2(a) –Export of Atmospheric Testing Device and Related Antennae and Cables to a Listed Entity in Pakistan Without the Required License

On two occasions, on or about September 1, 2007, and on or about October 6, 2007, UML, through its Center for Atmospheric Research, engaged in conduct prohibited by the Regulations when it exported items subject to the Regulations from the United States to the Pakistan Space and Upper Atmosphere Research Commission (“SUPARCO”) without the Department of Commerce license required by Section 744.11 and Supplement No. 4 to Part 744 of the Regulations. Specifically, on or about September 1, 2007, UML exported antennae and cables valued at \$12,480 and designated as EAR99³ to SUPARCO, an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. On or about October 6, 2007, UML exported an atmospheric testing device valued at \$191,870 and designated EAR99 to SUPARCO. SUPARCO has been on the Entity List since November 1998 through a rule published in the *Federal Register* regarding certain entities in India and Pakistan, including SUPARCO, that were “determined to be involved in nuclear or missile activities.”⁴ At all times relevant hereto, SUPARCO remained on the Entity List. In so doing, UML committed two violations of Section 764.2(a) of the Regulations.

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

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

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

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) (2012).

⁴ *India and Pakistan Sanctions and Other Measures*, 63 Fed. Reg. 64,322 (Nov. 19, 1998).

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

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

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

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

a. UML shall be assessed a civil penalty in the amount of \$100,000, all of which shall be suspended for a period of two years from the date of entry of the Order and thereafter shall be waived, provided that during this two-year probationary period, UML has committed no violation of the Act, or any regulation, order, license, or authorization issued thereunder. If UML commits such a violation during the probationary period, the suspension may be revoked by BIS and the penalty made due and owing immediately in its entirety.

3. Subject to the approval of this Agreement pursuant to Paragraph 7 hereof, UML 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. UML 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 Proposed Charging Letter or in connection with the enforcement of this Agreement and the Order, if issued, for a period of two years from the date of the Order.

4. If the Order is entered and UML does not commit any violation of the Act or any regulation, order, license, or authorization issued thereunder during the two-year probationary period described above, BIS will not initiate any further administrative proceeding against UML in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter, except with regard to a violation of this Agreement.

5. 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.


6. 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.

7. 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.

8. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

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

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



Douglas R. Hassebrock
Director of Export Enforcement

UNIVERSITY OF MASSACHUSETTS AT
LOWELL

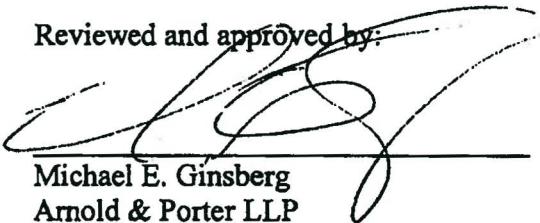


Joanne Yestramski
Vice Chancellor for Finance and Operations

Date: 12 MAR 13

Date: March 1, 2013

Reviewed and approved by:



Michael E. Ginsberg
Arnold & Porter LLP
Counsel for University of Massachusetts at
Lowell

Date: 3/4/2013

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

University of Massachusetts at Lowell
600 Suffolk Street
215 Wannalancit Mill
Lowell, MA 01854

*Attention: Julie Chen
Vice Provost for Research*

Dear Ms. Chen:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that the University of Massachusetts at Lowell (“UML”) located in Lowell, Massachusetts, has committed two violations of the Export Administration Regulations (the “Regulations”),¹ which issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that UML committed the following violations:

Charges 1-2 15 C.F.R. §764.2(a) –Export of Atmospheric Testing Device and Related Antennae and Cables to a Listed Entity in Pakistan Without the Required License

On two occasions, on or about September 1, 2007, and on or about October 6, 2007, UML, through its Center for Atmospheric Research, engaged in conduct prohibited by the Regulations when it exported items subject to the Regulations from the United States to the Pakistan Space and Upper Atmosphere Research Commission (“SUPARCO”) without the Department of Commerce license required by Section 744.11 and Supplement No. 4 to Part 744 of the Regulations. Specifically, on or about September 1, 2007, UML exported antennae and cables

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² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

valued at \$12,480 and designated as EAR99³ to SUPARCO, an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. On or about October 6, 2007, UML exported an atmospheric testing device valued at \$191,870 and designated EAR99 to SUPARCO. SUPARCO has been on the Entity List since November 1998 through a rule published in the *Federal Register* regarding certain entities in India and Pakistan, including SUPARCO, that were “determined to be involved in nuclear or missile activities.”⁴ At all times relevant hereto, SUPARCO remained on the Entity List. In so doing, UML committed two violations of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, UML 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;⁵
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

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

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

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) (2012).

⁴ *India and Pakistan Sanctions and Other Measures*, 63 Fed. Reg. 64,322 (Nov. 19, 1998).

⁵ *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, UML'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 UML'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 UML may wish to have concerning this matter should occur through her. Ms. Huda may be contacted by telephone at (202) 482-5301.

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement