



DEPARTMENT OF COMMERCE

BUREAU OF INDUSTRY AND SECURITY

In the Matter of:)
)
Xun Wang) 11-BIS-0004
No. 30, Lane 3535, Yindu Road)
Shanghai, 201108)
People's Republic of China)
)
and)
)
115 Tobin Clark Drive)
Hillsborough, CA 94010)
)
Respondent)

ORDER RELATING TO XUN WANG

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Xun Wang (“Wang”) of its intention to initiate an administrative proceeding against Wang 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 Wang that, as amended, (“Charging Letter”) alleges that Wang committed one violation of the Regulations. Specifically, the charge is:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2011). The charged violation occurred in 2006 and 2007. The Regulations governing the violation at issue are found in the 2006 and 2007 versions of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2006-2007). The 2011 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 12, 2011 (76 Fed. Reg. 50,661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

Charge 1**15 C.F.R. § 764.2(d) – Conspiracy**

Beginning on or about June 15, 2006, and continuing through on or about March 2007, Xun Wang conspired and acted in concert with others, known and unknown, to bring about an act that constitutes a violation of the Regulations. The purpose of the conspiracy was to bring about the export of epoxy paint and epoxy paint thinner, items subject to the Regulations, to Pakistan, through China, for use in the Chasma 2 nuclear power plant that was under construction in Islamabad, Pakistan, and was a subordinate entity under the ownership and control of the Pakistan Atomic Energy Commission (“PAEC”), an entity that is listed on the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, without the required Department of Commerce license. The Chasma 2 nuclear plant was being constructed for PAEC by China Zhongyuan Engineering Corporation (“Zhongyuan”) with the assistance of subcontractor China Nuclear Industry Huaxing Construction Co. Ltd. (“Huaxing”). The epoxy paint and thinner were designated as EAR99³ items and were certified as meeting industry standards for “Level 1” use in a nuclear reactor and core. Pursuant to Section 744.1 and Supplement No. 4 to Part 744 of the Regulations, a Department of Commerce license was required before these items could be exported or reexported to the PAEC or any PAEC subordinate nuclear power plant.

On or about June 8, 2006, Wang, at the time Managing Director of PPG Paints Trading (Shanghai) Co., Ltd. (“PPG Paints Trading”), learned that PPG’s application for a U.S. export license to export the items to the PAEC’s Chasma 2 plant had been denied. On or about June 15, 2006, Wang and other representatives of PPG Paints Trading met with Huaxing to discuss the denial of the license and whether PPG Paints Trading would be able to supply Huaxing with U.S.-origin PPG epoxy paint and thinner. During this meeting, Wang and Huaxing developed and agreed upon a scheme under which PPG Paints Trading would supply the PPG epoxy paint and thinner to Huaxing for use in the PAEC facility despite the lack of a U.S. export license. Under this scheme, a third-party Chinese distributor would be added to the transaction to facilitate obtaining the items from PPG and the transshipment of the items to Pakistan after their arrival in China. This transaction structure was designed to avoid the shipment of the items from the United States directly to the PAEC’s Chasma 2 facility in Pakistan and the U.S. license requirement for such an export. Thereafter, the conspirators, including Xun Wang, took and/or directed actions in furtherance of the conspiracy, including, inter alia, selecting a third party in China to serve as the intermediary party in the transaction and arranging for the delivery of the items to China from PPG in the United States.

In so doing, Wang committed one violation of Section 764.2(d) of the Regulations.

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) (2011).

WHEREAS, BIS and Wang 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, Wang shall be assessed a civil penalty in the amount of \$250,000. Wang shall pay \$50,000 to the U.S. Department of Commerce within 30 days of the date of the Order. Wang shall pay the U.S. Department of Commerce \$50,000 not later than April 30, 2012; \$50,000 not later than July 30, 2012; and \$50,000 not later than October 30, 2012. Payment of the remaining \$50,000 shall be suspended for a period of five years from the date of the Order, and thereafter shall be waived, provided that during the five-year payment probationary period under the Order, Wang has committed no violation of the Act, or any regulation, order, license or authorization issued thereunder and has made full and timely payment of \$200,000 as set forth above.

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, Wang 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 full and timely payment of the civil penalty in accordance with the payment schedule 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 Wang.

FOURTH, that for a period of ten (10) years from the date of entry of the Order, Xun Wang, with last known addresses of No. 30, Lane 3535, Yindu Road, Shanghai, 201108, People's Republic of China, and 115 Tobin Clark Drive, Hillsborough, CA 94010, and when acting for or on her behalf, her successors, assigns, representatives, agents, or employees (hereinafter collectively referred to as "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FIFTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item

subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

SIXTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

SEVENTH, that, as authorized by Section 766.18(c) of the Regulations, the ten-year denial period set forth above shall be active for a period of five years from the date

of the Order. The remaining five years of the denial period shall be suspended, and shall thereafter be waived at the conclusion of the ten-year denial period, provided that Wang has made full and timely payment of the civil penalty as set forth above and has committed no other violation of the Act or any regulation, order, license or authorization issued thereunder during the ten-year denial period. If Wang does not make full and timely payment of the civil penalty or commits another violation, the suspension may be modified or revoked by BIS.

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

NINTH, that this Order shall be served on Wang and on BIS, and shall be published in the *Federal Register*.

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 16 day of November, 2011.

[FR Doc. 2011-30222 Filed 11/22/2011 at 8:45 am; Publication Date: 11/23/2011]