

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

In the Matter of:

Kleiss & Co. BV  
Scheepmakersstraat 17  
3334 KG Zwijndrecht  
Netherlands

Respondent

ORDER RELATING TO  
KLEISS & CO. BV

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Kleiss & Co. BV, of Zwijndrecht, Netherlands (“Kleiss”), of its intention to initiate an administrative proceeding against Kleiss pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),<sup>1</sup> through the issuance of a Proposed Charging Letter to Kleiss that alleges that Kleiss committed two violations of the Regulations.<sup>2</sup> Specifically, the charges are:

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<sup>1</sup> The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. 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, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The charged violations occurred in 2016 and 2017. The Regulations governing the violations at issue are found in the 2016 and 2017 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2020 Regulations set forth the procedures that apply to this matter.

**Charges 1 & 2      15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation**

On two occasions on or about June 28, 2016 and on or about March 15, 2017, Kleiss ordered, bought, and later concealed details of the export of extruded butyl sealants from the United States on behalf of its Iranian customer with knowledge or reason to know that a violation of the Regulations had occurred, was occurring, or was about to occur in connection with the items. The extruded butyl sealants, valued at approximately \$20,951 in total and designated EAR99, are subject to the Regulations.<sup>3</sup>

Section 560.204 of the Iranian Transactions and Sanctions Regulations (“ITSR”), administered by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), prohibits exports directly or indirectly from the United States to Iran, including transshipments through a third country to Iran.<sup>4</sup> Pursuant to Section 746.7 of the Regulations, no person may export or reexport an item subject to the Regulations if such transaction is prohibited by the ITSR and not authorized by OFAC.<sup>5</sup>

Kleiss had reason to know of the prohibitions on exporting U.S.-origin items to Iran without U.S. Government authorization. Specifically, on or about June 28, 2016, Kleiss & Co. ordered and/or bought extruded butyl sealants from its U.S. supplier for a customer in Iran. The U.S. freight forwarder returned the shipment to the U.S. supplier, explaining to the U.S. supplier and Kleiss that they were unable to ship to Iran directly or indirectly: “We cannot ship any cargo to Iran, directly or indirectly. The primary sanctions are still in place despite the JCPOA [Joint Comprehensive Plan of Action].”

Despite the previous warning from the freight forwarder, on or about September 2, 2016, Kleiss provided its U.S. supplier with new invoices for the order of extruded butyl sealants, originally purchased for its customer in Iran, and stopped by the freight forwarder, listing a new company and address in Dubai, United Arab Emirates (“UAE”). Kleiss removed all references to Iran from the invoices and packing list in an effort to conceal from the freight forwarder and the U.S. Government the ultimate destination of the items. However, the new invoices and packing list provided to the U.S. supplier did not change the invoice number, quantity, or price from the original documents. This order was exported from the United States on or about September 2, 2016.

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<sup>3</sup> “EAR99” is a designation for items subject to the Regulations but not listed on the Commerce Control List. *See* 15 C.F.R. §§ 734.2(a) and 772.1 (2016-2017).

<sup>4</sup> 31 C.F.R. § 560.204 (2016-2017).

<sup>5</sup> 15 C.F.R. § 746.7 (2016-2017).

On or about March 15, 2017, Kleiss ordered, bought, and concealed details regarding a separate shipment of extruded butyl sealants to be exported to Iran via the UAE. In Kleiss' subsequent e-mail correspondence with its U.S. supplier regarding this order, Kleiss stated: "Yes, the [March 2017] material is destined to Iran. Previous time (June 2016) . . . we used a different consignee in Dubai . . . just tell [U.S. Customs] what you knew at the time of shipment: Your customer is Kleiss & Co and destination is Dubai. Our client in Iran is fully informed of the situation." The March 2017 attempted export was stopped by BIS prior to the items leaving the United States.

Kleiss was aware that no U.S. Government authorization had been sought or obtained in connection with these transactions.

By engaging in the above-described conduct, Kleiss committed two violations of Section 764.2(e) of the Regulations.

WHEREAS, BIS and Kleiss 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, Kleiss shall be assessed a civil penalty in the amount of \$60,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2012)), 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, Kleiss 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 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 Kleiss.

FOURTH, that for a period of two (2) years from the date of this Order, Kleiss & Co., BV, with a last known address of Scheepmakersstraat 17, 3334 KG Zwijndrecht, Netherlands, and when acting for or on its behalf, its successors, assigns, directors, officers, 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 engaging 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 from 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, 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 ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

SEVENTH, as authorized by Section 766.18(c) of the Regulations, the two-year denial period set forth above shall be suspended during a probationary period of two years under this Order, and shall thereafter be waived, provided that Kleiss has made full and timely payment as set forth above, and has not committed another violation of the Export Control Reform Act of 2018 (“ECRA”),<sup>6</sup> the Regulations, or any order, license, or authorization issued under ECRA or the Regulations. If Kleiss does not make full and timely payment as set forth above or, during the two-year probationary period under this Order, commits another violation of ECRA, the Regulations, or any order, license, or authorization issued under ECRA or the Regulations, the suspension may be modified or revoked by BIS and a denial order (including a two-year denial period) activated against Kleiss. If the suspension is modified or revoked, the activation order may also revoke any BIS licenses in which Kleiss has an interest at the time of the activation order.<sup>7</sup>

EIGHTH, Kleiss shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or this Order or take any position contrary thereto in any public statement. The foregoing does not affect Kleiss’s testimonial

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<sup>6</sup> See note 1, *supra*.

<sup>7</sup> Such a revocation would include licenses existing at the time of the activation order, whether the license had issued before or after ECRA’s enactment on August 13, 2018. See note 1, *supra*.

obligations in any administrative or judicial proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S.

Department of Commerce is not a party.

NINTH, 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  
KURLAND**

Digitally signed by KEVIN  
KURLAND  
Date: 2021.05.03 17:22:38  
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Kevin J. Kurland  
Acting Assistant Secretary of Commerce  
for Export Enforcement

Issued this 3<sup>rd</sup> day of May, 2021.

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

In the Matter of:

Kleiss & Co. BV  
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Respondent

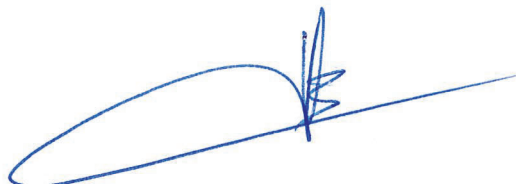
SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Kleiss & Co. BV of Zwijndrecht, Netherlands (“Kleiss”), 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>

WHEREAS, BIS has notified Kleiss of its intentions to initiate an administrative proceeding against Kleiss, pursuant to the Regulations;<sup>2</sup>

<sup>1</sup> The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. 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 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Pub. L. 115-232, 132 Stat. 2208 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The charged violations occurred in 2016 and 2017. The Regulations governing the violations at issue are found in the 2016 and 2017 versions of the Code of Federal Regulations



WHEREAS, BIS has issued a Proposed Charging Letter to Kleiss that alleges that Kleiss committed two violations of the Regulations, specifically:

**Charges 1 & 2      15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation**

On two occasions on or about June 28, 2016 and on or about March 15, 2017, Kleiss ordered, bought, and later concealed details of the export of extruded butyl sealants from the United States on behalf of its Iranian customer with knowledge or reason to know that a violation of the Regulations had occurred, was occurring, or was about to occur in connection with the items. The extruded butyl sealants, valued at approximately \$20,951 in total and designated EAR99, are subject to the Regulations.<sup>3</sup>

Section 560.204 of the Iranian Transactions and Sanctions Regulations (“ITSR”), administered by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), prohibits exports directly or indirectly from the United States to Iran, including transshipments through a third country to Iran.<sup>4</sup> Pursuant to Section 746.7 of the Regulations, no person may export or reexport an item subject to the Regulations if such transaction is prohibited by the ITSR and not authorized by OFAC.<sup>5</sup>

Kleiss had reason to know of the prohibitions on exporting U.S.-origin items to Iran without U.S. Government authorization. Specifically, on or about June 28, 2016, Kleiss & Co. ordered and/or bought extruded butyl sealants from its U.S. supplier, for a customer in Iran. The U.S. freight forwarder returned the shipment to the U.S. supplier, explaining to the U.S. supplier and Kleiss that they were unable to ship to Iran directly or indirectly: “We cannot ship any cargo to Iran, directly or indirectly. The primary sanctions are still in place despite the JCPOA [Joint Comprehensive Plan of Action].”

Despite the previous warning from the freight forwarder, on or about September 2, 2016, Kleiss provided its U.S. supplier with new invoices for the order of extruded butyl sealants, originally purchased for its customer in Iran, and stopped by the freight forwarder, listing a new company and address in Dubai, United Arab Emirates (“UAE”). Kleiss removed all references to Iran from the invoices and packing list in an effort to conceal from the freight forwarder and the U.S.

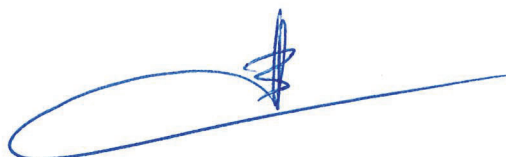
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(15 C.F.R. Parts 730-774). The 2020 Regulations set forth the procedures that apply to this matter.

<sup>3</sup> “EAR99” is a designation for items subject to the Regulations but not listed on the Commerce Control List. *See* 15 C.F.R. §§ 734.2(a) and 772.1 (2016-2017).

<sup>4</sup> 31 C.F.R. § 560.204 (2016-2017).

<sup>5</sup> 15 C.F.R. § 746.7 (2016-2017).





Government the ultimate destination of the items. However, the new invoices and packing list provided to the U.S. supplier did not change the invoice number, quantity, or price from the original documents. This order was exported from the United States on or about September 2, 2016.

On or about March 15, 2017, Kleiss ordered, bought, and concealed details regarding a separate shipment of extruded butyl sealants to be exported to Iran via the UAE. In Kleiss' subsequent e-mail correspondence with its U.S. supplier regarding this order, Kleiss stated: "Yes, the [March 2017] material is destined to Iran. Previous time (June 2016) . . . we used a different consignee in Dubai . . . just tell [U.S. Customs] what you knew at the time of shipment: Your customer is Kleiss & Co and destination is Dubai. Our client in Iran is fully informed of the situation." The March 2017 attempted export was stopped by BIS prior to the items leaving the United States.

Kleiss was aware that no U.S. Government authorization had been sought or obtained in connection with these transactions.

By engaging in the above-described conduct, Kleiss committed two violations of Section 764.2(e) of the Regulations.

WHEREAS, Kleiss 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, Kleiss fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement, or appropriate designee, will issue if he approves this Agreement as the final resolution of this matter;

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

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

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

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

2. The following sanctions shall be imposed against Kleiss:

a. Kleiss shall be assessed a civil penalty in the amount of \$60,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions.

b. The full and 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, license exception, permission, or privilege granted, or to be granted, to Kleiss.

c. For a period of two (2) years from the date of the Order, Kleiss & Co., BV, with a last known address of Scheepmakersstraat 17, 3334 KG Zwijndrecht, Netherlands, and when acting for or on its behalf, its successors, assigns, directors, officers, 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:

- i. Applying for, obtaining, or using any license, license exception, or export control document;
- ii. 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 engaging in any other activity subject to the Regulations; or
- iii. 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 from any other activity subject to the Regulations.
- d. BIS agrees that, as authorized by Section 766.18(c) of the Regulations, the 2-year denial period set forth in Paragraph 2.c shall be suspended during a probationary period of two years under the Order, and shall thereafter be waived, provided that Kleiss has made full and timely payment in accordance with Paragraph 2.a above, and has not committed another violation of the Export Control Reform Act of 2018 (“ECRA”),<sup>6</sup> the Regulations, or any order, license or authorization issued under ECRA or the Regulations. If Kleiss does not make full and timely payment in accordance with Paragraph 2.a above, or during the two-

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<sup>6</sup> See note 1, *supra*.





year probationary period of the Order commits another violation of ECRA, the Regulations, or any order, license or authorization issued under ECRA or the Regulations, the suspension may be modified or revoked by BIS and a denial order (including a two-year denial period) activated against Kleiss. If the suspension is modified or revoked, the activation order may also revoke any BIS licenses in which Kleiss has an interest at the time of the activation order.<sup>7</sup>

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, Kleiss hereby waives all rights to further procedural steps in this matter (unless this Agreement—or the Order, if issued—is violated, which may result in further action as described in this Agreement), 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. Kleiss 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 collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until Kleiss pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement.

4. Kleiss shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter

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<sup>7</sup> Such a revocation would include licenses existing at the time of the activation order, whether the license had issued before or after ECRA's enactment on August 13, 2018. *See* Note 1, *supra*.

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or the Order. The foregoing does not affect Kleiss's testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a above, BIS will not initiate any further administrative proceeding against Kleiss in connection with any violation of the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

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, or appropriate designee, 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. This Agreement constitutes and contains the entire agreement and understanding among the parties, and the terms of this Agreement or the Order, if issued, may not be varied or otherwise altered or affected by any agreement, understanding, representation, or interpretation not contained in this Agreement; 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, or appropriate designee, approves it by

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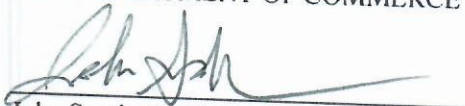
issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

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

10. If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

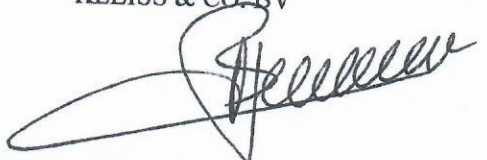
11. Each signatory affirms that he/she has authority to enter into this Settlement Agreement and to bind his/her respective party to the terms and conditions set forth herein.

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



John Sonderman  
Director of Export Enforcement

KLEISS & CO. BV



Leo Van Beugen  
Managing Director

Date: 5/3/2021

Date: April 28, 2021

Reviewed and approved by:



Staci Yablon, Esq.  
Winston & Strawn LLP  
Counsel for Kleiss & Co. BV

Date: April 28, 2021



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Bureau of Industry and Security**  
**Office of Export Enforcement**  
1401 Constitution Avenue, Suite 4508  
Washington, DC 20230

PROPOSED CHARGING LETTER

REGISTERED MAIL – RETURN RECEIPT REQUESTED

Kleiss & Co. BV  
Scheepmakersstraat 17  
3334 KG Zwijndrecht  
The Netherlands

*Attention: Leo Van Beugen, Managing Director*

Dear Mr. Van Beugen:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Kleiss & Co. BV (“Kleiss”), has committed two violations of the Export Administration Regulations (the “Regulations”).<sup>1</sup> Specifically, BIS alleges that Kleiss committed the following violations:<sup>2</sup>

**Charges 1 & 2      15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation**

On two occasions on or about June 28, 2016 and on or about March 15, 2017, Kleiss ordered, bought, and later concealed details of the export of extruded butyl sealants from the United States on behalf of its Iranian customer with knowledge or reason to know that a violation of the

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<sup>1</sup> The Regulations originally issued pursuant to the Export Administration Act (50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“EAA” or “the Act”). 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 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.* (2012)) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Pub. L. 115-232, 132 Stat. 2208 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The violations alleged occurred in 2016 and 2017. The Regulations governing the violations at issue are found in the 2016-2017 version of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2016-2017). The 2020 Regulations govern the procedural aspects of this case.



Regulations had occurred, was occurring, or was about to occur in connection with the items. The extruded butyl sealants, valued at approximately \$20,951 in total and designated EAR99, are subject to the Regulations.<sup>3</sup>

Section 560.204 of the Iranian Transactions and Sanctions Regulations (ITSR), administered by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"), prohibits exports directly or indirectly from the United States to Iran, including transshipments through a third country to Iran.<sup>4</sup> Pursuant to Section 746.7 of the Regulations, no person may export or reexport an item subject to the Regulations if such transaction is prohibited by the ITSR and not authorized by OFAC.<sup>5</sup>

Kleiss had reason to know of the prohibitions on exporting U.S.-origin items to Iran without U.S. Government authorization. Specifically, on or about June 28, 2016, Kleiss & Co. ordered and/or bought extruded butyl sealants from its U.S. supplier for a customer in Iran. The U.S. freight forwarder returned the shipment to the U.S. supplier, explaining the U.S. supplier and Kleiss that they were unable to ship to Iran directly or indirectly: "We cannot ship any cargo to Iran, directly or indirectly. The primary sanctions are still in place despite the JCPOA [Joint Comprehensive Plan of Action]."

Despite the previous warning from the freight forwarder, on or about September 2, 2016, Kleiss provided its U.S. supplier with new invoices for the order of extruded butyl sealants, originally purchased for its customer in Iran, and stopped by the freight forwarder, listing a new company and address in Dubai, United Arab Emirates ("UAE"). Kleiss removed all references to Iran from the invoices and packing list in an effort to conceal from the freight forwarder and the U.S. Government the ultimate destination of the items. However, the new invoices and packing list provided to the U.S. supplier did not change the invoice number, quantity, or price from the original documents. This order was exported from the United States on or about September 2, 2016.

On or about March 15, 2017, Kleiss ordered, bought, and concealed details regarding a separate shipment of extruded butyl sealants to be exported to Iran via the UAE. In Kleiss' subsequent e-mail correspondence with its U.S. supplier regarding this order, Kleiss stated: "Yes, the [March 2017] material is destined to Iran. Previous time (June 2016) . . . we used a different consignee in Dubai . . . just tell [U.S. Customs] what you knew at the time of shipment: Your customer is Kleiss & Co and destination is Dubai. Our client in Iran is fully informed of the situation." The March 2017 attempted export was stopped by BIS prior to the items leaving the United States.

Kleiss was aware that no U.S. Government authorization had been sought or obtained in connection with these transactions.

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<sup>3</sup> "EAR99" is a designation for items subject to the Regulations but not listed on the Commerce Control List. *See* 15 C.F.R. §§ 734.2(a) and 772.1 (2016-2017).

<sup>4</sup> 31 C.F.R. § 560.204 (2016-2017).

<sup>5</sup> 15 C.F.R. § 746.7 (2016-2017).

By engaging in the above-described conduct, Kleiss committed two violations of Section 764.2(e) of the Regulations.

\* \* \* \* \*

Accordingly, Kleiss is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions including,<sup>6</sup> but not limited to, any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$311,562 per violation,<sup>7</sup> or twice the value of the transaction that is the basis of the violation;<sup>8</sup>
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

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

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

Kleiss is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Kleiss may be eligible for assistance from the Office of the National Ombudsman of the Small

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<sup>6</sup> The alleged violations occurred prior to August 13, 2018, the date of enactment of the ECRA. Consequently, the potential sanctions are provided for in the International Emergency Economic Powers Act. In situations involving alleged violations that occurred on or after August 13, 2018, the potential sanctions are specified in Section 1760(c) of the ECRA.

<sup>7</sup> *See* 15 C.F.R. §§ 6.3(c)(4), 6.4. This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015. *See* 86 Fed. Reg. 1,764 (Jan.10, 2021) (adjusting for inflation the maximum civil monetary penalty under IEEPA from \$307, 922 to \$311,562 effective January 15, 2021).

<sup>8</sup> *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat.1011 (2007).

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, Kleiss' 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 Kleiss' answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Gregory Michelsen and Kimberly Hsu  
Room H-3839  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Gregory Michelsen and Kimberly Hsu are the attorneys representing BIS in this case; any communications that Kleiss may wish to have concerning this matter should occur through them. Mr. Michelsen and Ms. Hsu may be contacted by telephone at (202) 482-5301.

Sincerely,

John Sonderman  
Director  
Office of Export Enforcement