

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
LAFAYETTE INSTRUMENT COMPANY, INC.)
3700 Sagamore Parkway North)
P.O. Box 5729)
Lafayette, Indiana 47903,)
)
Respondent)

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (**BXA**), having notified Lafayette Instrument Company, Inc. (Lafayette) of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999)) (the Act),¹ and the Export Administration Regulations (15 C.F.R. Parts 730-774 (1999)) (the **Regulations**),² based on an allegation that

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), and August 10, 1999 (64 **Fed. Reg.** 44101 (August 13, 1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

² The alleged violation occurred in 1994. The Regulations governing that violation are found in the 1994 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1994)). Those Regulations define the violation that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

Lafayette, as licensee on a validated license dated September 25, 1993, which authorized the export of U.S.-origin Factfinder polygraph machines to Hong Kong, but which prohibited the resale, transfer, or reexport of the polygraph machines without prior authorization from the U.S. Government, was responsible for contravention of the license provisions because the polygraph machines were transferred or reexported from Hong Kong to the People's Republic of China on or about January 13, 1994, thereby violating Section 787.2 of the former Regulations by permitting the doing of an act prohibited by the Act, or any regulation, order, or license issued thereunder; and

BXA and Lafayette having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby BXA and Lafayette have agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED,

FIRST, that a civil penalty of \$10,000 is assessed against Lafayette, which shall be paid to the Department of Commerce within 30 days from the date of entry of this Order. 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.A. §§ 3701-37203 (1983 & Supp. 1999)), 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, Lafayette will be assessed, in

addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, ~~that~~ as authorized by Section 11(d) of the Act, 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 licenser License Exception, permission, or privilege granted, or to be granted, to Lafayette. Accordingly, if Lafayette should fail to pay the civil penalty in a timely manner, the undersigned will enter an Order under the authority of Section 11(d) of the Act denying all of Lafayette's export privileges for a period of one year from the date of entry of this Order.

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

This Order is effective immediately.



Amanda DeBusk
Assistant Secretary
for Export Enforcement

Entered this 8th day of Dec, 1999.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
LAFAYETTE INSTRUMENT COMPANY, INC.)
3700 Sagamore Parkway North)
P.O. Box 5729)
Lafayette, Indiana 47903,)
)
Respondent)

SETTLEMENT AGREEMENT

This Agreement is made by and between Lafayette Instrument Company, Inc. (Lafayette) and the Bureau of Export Administration, United States Department of Commerce, pursuant to Section 766.18(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (1999)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999)) (the Act).²

¹ The alleged violation occurred in 1994. The Regulations governing that violation are found in the 1994 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1994)). Those Regulations define the violation that **BXA** alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), and August 10, 1999 (64 **Fed. Reg.** 44101 (August 13, 1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

WHEREAS, the Office of Export Enforcement, Bureau of Export Administration (BXA), has notified Lafayette of its intention to initiate an administrative proceeding against it pursuant to the Act and the Regulations, based on an allegation that Lafayette, as licensee on a validated license dated September 25, 1993, which authorized the export of U.S.-origin Factfinder polygraph machines to Hong Kong, but which prohibited the resale, transfer, or reexport of the polygraph machines without prior authorization from the U.S. Government, was responsible for contravention of the license provisions because the polygraph machines were transferred or reexported from Hong Kong to the People's Republic of China on or about January 13, 1994, thereby violating Section 787.2 of the former Regulations by permitting the doing of an act prohibited by the Act, or any regulation, order, or license issued thereunder;

WHEREAS, Lafayette has reviewed the proposed Charging Letter and is aware of the allegation made against it and the administrative sanctions that could be imposed against it if the allegation is found to be true; it fully understands the terms of this Settlement Agreement and the appropriate Order; it enters into this Settlement Agreement voluntarily and with full knowledge of its rights, and it states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Lafayette neither admits nor denies the allegation contained in the proposed Charging Letter;

WHEREAS, Lafayette and BXA wish to settle and dispose of all matters alleged in the proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Lafayette agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (appropriate Order);

NOW THEREFORE, Lafayette and **BXA** agree as follows:

1. **BXA** has jurisdiction over Lafayette, under the Act and the Regulations, in connection with the matters alleged in the proposed Charging Letter.

2. BXA and Lafayette agree that the following sanction shall be imposed against Lafayette in complete settlement of the alleged violation of the Act and the former Regulations set forth in the proposed Charging Letter:

- a. Lafayette shall be assessed a civil penalty in the amount of \$10,000, which shall be paid to the Department of Commerce within 30 days from the date of entry of the appropriate Order.
- b. As authorized by Section **11(d)** of the Act, the timely payment of the civil penalty agreed to in paragraph 2a. 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 Lafayette. Failure to make timely payment of the civil penalty set forth above shall result in

the denial of all of Lafayette's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.

3. Lafayette agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 7 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the appropriate Order, when entered), including, without limitation, any right: (a) to an administrative hearing regarding the allegations in the proposed Charging Letter; (b) to request a refund of any civil penalty paid pursuant to this Settlement Agreement and the appropriate Order, when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

4. BXA agrees that, upon entry of an appropriate Order, it will not initiate any administrative proceeding against Lafayette in connection with any violation of the Act or the Regulations arising out of the transaction identified in the proposed charging letter.

5. Lafayette understands that BXA will make the proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered, available to the public.

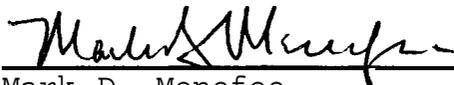
6. BXA and Lafayette agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not issued

by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and Lafayette agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that the parties shall not be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a **decision** and order issued after a full administrative hearing on the record.

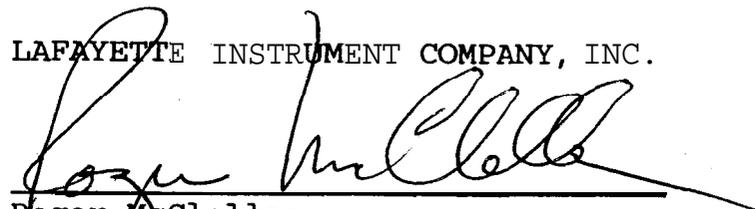
BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE.



Mark D. Menefee
Director
Office of Export Enforcement

Date: 11/22/99

LAFAYETTE INSTRUMENT COMPANY, INC.



Roger McClellan
President

Date: 11/12/99



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UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, DC. 20230

Lafayette Instrument Company, Inc.
3700 Sagamore Parkway North
P.O. Box 5729
Lafayette, Indiana 47903

Attention: Roger McClellan
President

Dear Mr. McClellan:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described below, Lafayette Instrument Company, Inc. (Lafayette) has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the **Regulations**),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. **app. §§ 2401-2420** (1991 & Supp. 1999)) (the **Act**).²

Facts constituting the violation:

Charge 1

On or about September 25, 1993, Lafayette obtained a validated license from BXA that authorized the export of U.S.-origin Factfinder polygraph machines to Hong Kong. The license that authorized the export contained a provision that no resale, transfer, or reexport of the polygraph machines from Hong Kong could be effected without prior authorization from the U.S. Government. As the licensee on the validated license, Lafayette was responsible, pursuant to Sections 786.1(a) and 787.9 of the

¹ The alleged violation occurred in 1994. The Regulations governing that violation are found in the 1994 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1994)). Those Regulations define the violation that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), and August 10, 1999 (64 **Fed. Reg.** 44101 (August 13, 1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).



former Regulations, for due performance of all the license's terms and provisions, including the provision that no resale, transfer, or reexport would occur without authorization. In contravention of that license provision, however, on or about January 13, 1994 the polygraph machines were transferred or reexported from Hong Kong to the People's Republic of China. BXA alleges that, by permitting the doing of an act prohibited by the Act, or any regulation, order, or license issued thereunder, Lafayette violated Section 787.2 of the former Regulations.

Accordingly, Lafayette 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 \$10,000 per violation (see Section 764.3(a) (1) of the Regulations);

Denial of export privileges (see Section 764.3(a) (2) of the Regulations) ; and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If Lafayette fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7 of the Regulations.

Lafayette is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer. Lafayette is also entitled to be represented by counsel, and to seek a settlement of the charges.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, Lafayette's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In

addition, a copy of Lafayette's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Lorie B. Whitaker, **Esq.**" below the address. Ms. Whitaker may be contacted by telephone at (202) 482-5311.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

Enclosure