

UNITED STATES DEPARTMENT OF STATE
BUREAU OF POLITICAL-MILITARY AFFAIRS
WASHINGTON, D.C.

IN THE MATTER OF
FUCHS ELECTRONICS, PTY, LTD.
Gauteng, Republic of South Africa,

RESPONDENT

CONSENT AGREEMENT

This Agreement is made by and between the United States Department of State (the "Department") and Fuchs Electronics (Pty) Ltd. ("Fuchs") pursuant to Section 128.11(b) of the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130) (the "Regulations").

WHEREAS, the Office of Defense Trade Controls, Bureau of Political-Military Affairs, United States Department of State, has notified Fuchs of its intention to initiate an administrative proceeding against Fuchs pursuant to Section 38(e) of the Arms Export Control Act (the "Act") (22 U.S.C. §2778) and Section 127.6 of the Regulations, by issuing a Proposed Charging Letter (Attachment 1);

WHEREAS, Fuchs has reviewed the Proposed Charging Letter and fully understands this Agreement and enters into it voluntarily and with the full knowledge of its rights; and it states that no promises or representations have been made to it by the Department other than the agreements and considerations herein expressed;

WHEREAS, Fuchs, pursuant to a criminal indictment returned on October 30, 1991, in the Eastern District of Pennsylvania, Criminal Number 91-602 (the "Criminal Indictment"), arising out of Grand Jury Matter Number 88-550, has been charged with, inter alia, violations of Section 38 of the Act, Regulations, and other statutes, and intends to enter pleas of guilty to counts 28 through 38 in the Criminal Indictment;

WHEREAS, Fuchs has been denied arms export privileges pursuant to Sections 126.7(a)(1) and (2) of the Regulations (22 C.F.R. 126.7(a)(1) and (2)), see Munitions Exports Involving the Armaments Corporation of South Africa, Ltd., a/k/a/ Armscor and Related Entities and Individuals, 59 Fed. Reg. 33811 (June 30, 1994);

WHEREAS, Fuchs wishes to settle and dispose of the proposed administrative charges by entering into this Agreement;

WHEREAS, the Department and Fuchs agree to be bound by this Agreement and a related administrative order ("Order") (Attachment 2) to be entered by the Assistant Secretary of State for Political-Military Affairs;

Now, WHEREFORE, Fuchs and the Department agree as follows :

Parties

1. The Parties to this Agreement are the Department of State and Fuchs; each of Fuchs' operating divisions and subsidiaries listed in Annex A; and any successors or assignees of such entities (referred to collectively hereinafter as "Fuchs"). Fuchs Electronics, Pty, Ltd. represents that all of its entities engaged in defense trade involving U.S. origin defense articles, services or technical data are listed in Annex A and agrees to update Annex A for a period of five years from the effective date of the Order unless the Department of State waives the requirement for Fuchs to maintain a compliance program under the last sentence of Section 6 of this Agreement, in which case the obligation to update Annex A shall also cease.

Jurisdiction

2. Upon entry of its guilty pleas to counts 28 through 38 in the Criminal Indictment, Fuchs agrees to submit itself to the jurisdiction of the Department for purposes of this Agreement only. This Agreement does not otherwise subject Fuchs to the jurisdiction of the United States. Nothing in this Agreement is intended to divest the Department or the United States of jurisdiction they otherwise may have in the absence of this Agreement.

Statutory Debarment

3. Upon the establishment of an internal compliance program (the "Compliance Program") in accordance with Section 6 of this Agreement, including the completion of the written manual described in Section 6 and the entry of Fuchs' guilty pleas to the Criminal Indictment, Fuchs shall make available \$5.5

million for a program to be established and administered by the Government of the Republic of South Africa to support the effective implementation of the Government of the Republic of South Africa's national export control regime.

4. Fuchs shall be prohibited from participating directly or indirectly in the export from the United States of defense articles or services for which a license or approval is required from the Department under the Act and Regulations. Such prohibition is referred to herein as the "Statutory Debarment". The Statutory Debarment shall become effective on the effective date of the Order. Upon Fuchs' establishment of the Compliance Program described in Section 6 below, including completion of the written manual, and demonstration that the Compliance Program is being implemented, the Department shall suspend the Statutory Debarment of Fuchs, and Fuchs's export privileges shall be reinstated, regardless of whether such establishment and demonstration occur before the end of the one year period beginning on the effective date of the Order. However, nothing in this Agreement shall prevent the Department from imposing or maintaining debarment for any conviction after entry of the guilty pleas to counts 28 through 38 of the Criminal Indictment.

5. The Department agrees, as soon as possible after the effective date of the Order, to rescind its notice of June 30, 1994, 59 Fed. Reg. 33811, which expressed the policy to deny export license applications and other requests for approval directly or indirectly involving Fuchs. Upon reinstatement of Fuchs' export privileges, the Department shall issue an appropriate Federal Register notice, which shall serve to advise the Bureau of Alcohol, Tobacco and Firearms that it is no longer the policy of the Department to deny licenses, other approvals, exports and imports of defense articles and defense services.

Compliance Program

6. Fuchs agrees that it shall establish and implement a Compliance Program within 180 days of the effective date of the Order that is approved by the Government of the Republic of South Africa and that is mutually acceptable to the Parties. The Compliance Program shall apply to the use or transfer after the effective date of the Order of United States origin defense articles, services and technical data that may have been or may in the future be exported or otherwise transferred to Fuchs. The Compliance Program shall be administered by Fuchs with provisions for full transparency and verifiability to enable the Department to determine to its satisfaction that the Compliance Program has been fully implemented. The Compliance Program shall contain provisions for:

(a) adoption of a compliance manual that addresses the handling of United States-origin defense articles, services or technical data, and that requires all employees of Fuchs to follow such compliance procedures;

(b) a transparent and verifiable process for assessing the performance of Fuchs in implementing the Compliance Program, which shall include:

(i) provisions for Fuchs to share appropriate records concerning defense articles, services or technology of United States origin; and

(ii) provisions for arranging and facilitating visits by Department officials to Fuchs; and

(c) appointment by Fuchs within 60 days of the effective date of the Order of an impartial and independent ombudsman who may be a citizen of the Republic of South Africa. The ombudsman may, at the ombudsman's initiative, conduct inquiries and investigations regarding suspected violations of the Act and the Regulations. Fuchs shall cooperate fully with the ombudsman and shall bear the reasonable expenses related to the ombudsman. The ombudsman shall prepare a written evaluation report on the implementation of the Compliance Program and on any specific inquiries and investigations every six months, for as long as the obligation to maintain the Compliance Program remains in effect. The Compliance Program shall contain appropriate provisions regarding providing copies of the reports to the Department, the Government of the Republic of South Africa and Fuchs. Beginning two years from the effective date of the Order, Fuchs may request that the Department waive the requirement of the ombudsman.

The obligation to maintain the Compliance Program under this Section shall remain in effect for a period of five years unless, upon request by Fuchs and after consultation by the Department with the Government of the Republic of South Africa, it is waived by the Department after three years.

Civil Penalty

7. Fuchs shall be assessed a civil penalty equal to fifty percent of the fine imposed against Fuchs as a result of the guilty plea (this sum being in addition to that made available to the South African Government pursuant to Section 3). Payment of this civil penalty by Fuchs shall be suspended unless and until the Department--

- (a) determines, during the period in which the obligation to maintain the Compliance Program under Section 6 is in effect, that Fuchs is not fully adhering to the Compliance Program, or
- (b) determines that Fuchs is not otherwise complying with this Agreement.

If the Department makes such a determination under paragraphs (a) or (b), Fuchs shall pay such civil penalty to the Department and the Department may lift the suspension of the Statutory Debarment. If the Department determines that Fuchs has completed and performed all its obligations under the Compliance Program and this Agreement, the penalty shall be excused.

8. Fuchs represents to the Department that the Government of the Republic of South Africa has authorized Fuchs to enter into and comply with this Agreement. The Department acknowledges that Fuchs may be required to obtain the approval of the Government of the Republic of South Africa to take certain actions requested or required by the Department. In the event that the Government of the Republic of South Africa, because of its determination of what is required by its national security interests, does not permit or authorize an action by Fuchs that is requested or required by the Department and that Fuchs would otherwise take, Fuchs shall advise the Department, which shall consult with the Government of the Republic of South Africa for the purpose of resolving the matter. If representatives of the two governments are unable to resolve the matter satisfactorily, the Department may seek further consideration of the national security determination through appropriate channels. It is recognized that the ultimate arbiter of what is required by South African national security interests is the Minister of Defense, who has pledged the maximum cooperation permitted under South African law and contemplated by this Agreement. If, following consultation under this Section, the Government of the Republic of South Africa continues to withhold its permission or authorization for an action that Fuchs would otherwise take, the failure by Fuchs to take such action shall not constitute a breach by it of this Agreement. Nevertheless, the Department --

- (a) may proceed under Section 7 to lift the suspension of the Statutory Debarment; but
- (b) shall not require Fuchs to pay a civil penalty under Section 7, except that nothing in this Section shall preclude the Department from requiring Fuchs to pay a civil penalty as a condition for subsequent suspension of the Statutory Debarment;

and the last sentence of Section 7 shall not apply.

Waivers

9. Fuchs agrees that, upon entry of the guilty pleas by Fuchs to the Criminal Indictment, it waives all rights to further procedural steps in the matter, including an administrative hearing pursuant to Section 128 of the Regulations, (except with respect to any alleged violations of this Agreement).

10. The Department agrees that it will not initiate any administrative proceedings under Part 128 of the Regulations against Fuchs based on any acts, omissions, or conduct occurring on or before the date of the Plea Agreement (a) that relate directly or indirectly to any allegation contained in the Criminal Indictment, or (b) that relate directly or indirectly to any transaction that was examined, considered, or encompassed by Grand Jury Investigation 88-550 in the Eastern District of Pennsylvania, including, but not limited to, evidence presented to that Grand Jury concerning such transactions.

Miscellaneous

11. Fuchs understands that the Department will make this Agreement and its Order, when effective, available to the public.

12. This Agreement is for settlement purposes only and is part of a global settlement between Fuchs and the United States in order to settle and dispose of all matters alleged in or related to the Indictment and the Grand Jury Investigation. Fuchs neither admits nor denies any of the allegations in the Proposed Charging Letter. The Department and Fuchs agree that, if--

- (a) the United States District Court, Eastern District of Pennsylvania, does not enter Fuchs' guilty pleas to counts 28 through 38 in the Criminal Indictment,
- (b) the Agreement is not approved by the Assistant Secretary of State for Political-Military Affairs, or
- (c) the Order is not entered by the Assistant Secretary of State for Political-Military Affairs,

then the Agreement shall be null and void and not otherwise binding on the Parties, neither party may use this Agreement in any administrative or judicial proceeding, and neither party shall be bound by the settlement terms contained in this Agreement in any subsequent administrative or judicial proceeding. Neither Fuchs nor the Department shall otherwise seek judicial review or otherwise contest the validity of the Agreement or the Order.

13. 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, when entered, nor shall this Agreement serve to bind, constrain or otherwise limit any action by any other agency or department of the United States with respect to the facts and circumstances addressed herein.

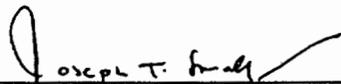
14. This Agreement and the Order shall be effective on the date of entry of the guilty pleas by Fuchs to the Criminal Indictment, except that the provisions of Section 12 shall be effective upon signature of the Agreement by both Parties.

15. As evidenced in the corporate resolutions and officer certificates attached hereto as Annex B, Fuchs affirms that it intends the Agreement to be binding and that its signatory has authority to enter into the Agreement on behalf of Fuchs Electronics, Pty, Ltd. and on behalf of each of the entities listed in Annex A.

U.S. DEPARTMENT OF STATE

FUCHS ELECTRONICS (Pty)
LTD.


Eric D. Newsom
Acting Assistant Secretary
for Political-Military
Affairs

By: 
Authorized Representative
for Fuchs Electronics
(Pty) Ltd.

Date: 1/24/97

Date: 1-24-97

ANNEX A

Fuchs Electronics (Pty) Ltd. does not have any subsidiaries. However, it manages the Fuchs Electronics Division of Reunert Limited. This division shall be considered an operating division of Fuchs Electronics (Pty) Ltd. for purposes of the Consent Agreement.