Exhibit 7

tion such as requiring evacuation has the character of an administrative action, whether this case fulfills the specially required conditions needed in obligation-making suits, and whether the defendant is qualified to be a defendant.

Judges: Yasuyuki Suzuki (presiding)
Yukio Oota
Shuichi Kato

Foreign Trade — Illegal Export — COCOM Rules — Violation of Foreign Exchange and Foreign Trade Control Act

Tokyo District Court, Judgment, 22 March 1988, Case No. *wa*-1547 (1987). *The Hanreijiho* (Judicial Reports) No. 1271, pp. 30 et seq.

The State of Japan v. Toshiba Machine Co., and others

An outline of the defendent Toshiba Machine Co. (hereinafter, "defending company") and the personal histories of the defendents X and Y:

Shibaura Machine Maufacturing Company (established on 18 March 1949) merged with Shibaura Machinary Company on June, 1961. Shibaura Machine changed its trade name to Toshiba Machine Co., and placed its head office in 4-2-11 Ginza, Chuo-ku, Tokyo. The company's business objective was to manufacture and sell machine tools, textile machines, electric machines, electronic machines and their parts. The company is one of the country's leading machine tool manufacturers, and employs about 3,700 workers with a capital stock of ¥7,361,347,140.

Masanobu Hisano worked as the representative director of the defending company from June 1977 to 28 June 1983. Kazuo Iimura took over after Hisano from the date of Hisano's resignation until 15 May 1987. The defending company has the following departments, each in charge of its own functions: the machine tool export department (known as the No. 1 Export Department until 1982), within the overseas headquarters, in charge of exporting machine tools; the machine tool production department, which plans and manufactures the machine tools; the electric control department, in charge of the numerical control device (hereinafter, "NC device").

The defending company began in 1975 exporting machine tools to Communist countries, especially the Soviet Union and Rumania, in order to make up for decreasing demand for machine tools triggered by the Oil Shock. By 1976, the defending company set up an efficient and successful manufacturing plan, "The SR Project," named for the

initials of the two above-mentioned countries. The defendents X and Y both took part in this project.

Exporting to Communist countries as the Soviet Union has the following merits: There is a stable demand under girded by a planned economy; orders are efficiently taken directly from a public corporation; because the other party of the trade is a nation, collection of payment is reliable; and there is less demand for services after the transaction. However, there were disadvantages, as the restriction in conducting the trade, the speciality of contract conditions, regulations under the Coordinating Committee for Export Control (hereinafter, COCOM), and regulations under the Foreign Exchange and Foreign Control Act together with related Cabinet orders and ministerial ordinances (hereinafter, Foreign Exchange Ordinance).

(Facts resulting as crime)

The defendent Toshiba Machine Co., placing its head office at 4-2-11 Ginza, Chuo-ku, Tokyo, is a resident which produces and sells machine tools. The defendent X, director of the machine tool business department, was engaged in manufacturing machine tools. The defendent Y, section chief of the overseas business department, was engaged in selling machine tools. The defendants X and Y have:

1. Conspired with Akihiko Yuasa in exporting cutter heads for the nine-axis propeller milling machine (a numerical control device that operates when a pair of five-axis controlling machines share a single control axis, as a whole machine working as a nine-axis controlling machine) to the Union of Soviet Socialist Republics without obtaining the approval of the Ministry of International Trade and Industry. Although exporting to the Soviet Union requires the consent of the Minister of International Trade and Industry, X and Y shipped 12 cutter heads (manufacturing cost evaluated at ¥23,360,000) without legal exemption and the Minister's consent, from Daikoku wharf, in Tsurumi ward, Yokohama, Kanagawa Prefecture, to the Ilichevsk Bay in the Soviet Union on the 20th of June 1984.

2. Conspired with Yuasa and Toru Suzuki, while aware that the approval of the Minister of International Trade and Industry was necessary for giving technical skills for the usage of nine-axis propeller milling machine and electric calculator, to export to the non-residing All Soviet Public Corporation for Import of Technological Machine around 1 July 1984 the parts for a nine-axis propeller milling machine and computer programs to operate the machine and electronic calculators (parts programming manual, computer programs manual and source program list worth ¥739,000) without legal exemptions and the consent of the Minister. They used Kinya Ikeda, an employee of Mitsui Bussan Co., who did not know of the circumstances, to carry the parts and programs to

the branch office of Wako Koeki Co. in Moscow, through Kazuo Kumagai, then an employee of Wako Koeki Co. Around 6 July 1984, Suzuki delivered and supplied the goods to an employee of a Baltic plant in Leningrad, appointed by All Soviet Public Corporation for Import of Technological Machine, at the above branch office in Moscow. Consequently, they had dealings without the permission of the Minister of International Trade and Industry.

Held: A fine of 2 million yen for the defendent, Toshiba Machine Co. An imprisonment of 10 months for the defendent X, and a prison term of 1 year for the defendent Y. The defendents X and Y will each be placed on probation for three years from this date of the court's decision.

Upon grounds stated below:

(Application of Law)

1. Criminal Law Article 60; Article 73, clause 1, Article 70 clauses 29; Article 48 clause 1 of the Foreign Exchange and Foreign Trade Control Act before its revision by Article 8 of the additional clause from 1987 Law No. 89; Article 1 clause 1 no. 1, table 1 clause 115 of Export Trade Control Ordinance before its revision by Article 5 of additional clause from 1987 Cabinet Order No. 373; provided that at the time of the act the same rules of Export Trade Control Ordinance before its revision applies, by the 1985 Cabinet Order No. 7.

2. Criminal Law Article 60; Article 73 clause 1, Article 70 clause 20, Article 25 clause 2 of Foreign Exhcange and Foreign Trade Control Act before its revision, by Article 8 of the additional clause from 1987 Law No. 89; Article 17 clause 2, clause 15 and 20 of the table of Foreign Exchange Control Ordinance (Export Trade Control Ordinance, table no. 1 clause 115); provided that at the time of the act, Article 18 clause 1 no. 4 of Foreign Exchange Control Ordinance before its revision, by the 1987 Cabinet Order No. 373, and Article 9 of Ministerial Ordinance concerning the Control of Invisible Trade, before its revision by the 1985 Ministerial Ordinance of the Ministry of International Trade and Industry No. 4 (table clause 4, table 1 clause 115 and 165 of Export Trade Control Ordinance before its revision, by the 1985 Ministerial Ordinance No. 7) apply.

(Reasons for Penalty)

1. This case deals with the defending company, the country's top manufacturer of large-sized vessels, and its technical skills, in violation of COCOM rules and Foreign Exchange Law. As a result, a grave situation has ensured, for it has had bad effects on the nation's diplomacy, trade policy, and economic activities, and on its objectives to sincerely keep word with friendly countries and to secure free trade through interna-

tional cooperation.

2. Meanwhile, the defendents testified as though the parts concerned in this cases were ordinary parts, of simple contents and technical skills. Moreover, they claimed that for this exports, they had no idea or kowledge of obtaining approval from the Minister of International Trade and Industry. In the examination, the evidence generally indicates that exporting the above parts and technical skills resulted under the following circumstances: Previously, 4 metal machine tools (worth about ¥4,125 million) were exported to the Soviet Union, in violation of COCOM rules and the Foreign Exchange Law. After Soviet engineers conducted an inspection of the tools, they made claims on them, and the company inevitably had to supply them with, the parts for the above machine tool and a modified software of techniques for its operation.

Although prosecution has not been instituted in this case, due to the fact that the statute of limitation has run out concerning the export of a metal machine tool, we cannot separate the above closely connected circumstances from the case. As stated before, the defendents confidentially produced and designed the Numerical Control device to be remodeled and installed into a fine-axis control machine later in the Soviet Union. During the exporting of machines, the company designed the machine into a lather for which there is no official restriction of export to the Soviet Union, by attaching a two-axis numerically controlled machine tool, and received the non-corresponding certification of the Minister of International Trade and Industry. Therefore, the fact that from the beginning they realized that the metal machine tools in this case, required by the Soviets, were in violation of the COCOM rules and the Foreign Exchange Law; and they knew that while exporting cutter heads, the parts for machine tool and the modified softwares, they were already remodeled with the NC device and in operation in the Soviet Union, with the cooperation of Kongsberg; and although the defendents (especially X) did not have knowledge or understanding on each law and article, as revealed in the testimony of their investigation; it is natural to consider that the defendents certainly realized that the export was in violation of the COCOM rules. Even from a more lenient perspective, the defendents, being the top managers of a company that manufactures machines and sells them to the Soviet Union, exporting goods in this case without examining the regulated items and referring to the Minister of International Trade and Industry, cannot avoid blame for their carelessness. It may be concluded that we cannot dismiss this case as a mere violation of procedures from ignorance of law on trifling exports of cargo and technical skills.

3. Thus, in considering this whole case, it is seen that the defending company drove ahead in its business, suppressing negative opinions with the consent and instructions of the executives. In order to cover up the illegal export attempt, it has taken advantage of the Ministry of International Trade and Industry (MITI) officials, who assume that truth

is written in all the application forms except in special cases, and of their trust in a big trading company when investigating export permits. After Kumagai, of Wako Koeki Co., disclosed this case to the COCOM, all those involved in the illegal sales agreed to destroy documents concerning the exports and conspired to submit a fake report to the MITI. Moreover, the defending company has delayed the government's taking proper measures against it. Consequently, suspicion grew in democratic nations such as the United States toward our country, and the illegal export discredited this nation in East-West trade relations. Therefore, the blame on the defending company is unavoidable.

4. Naturally, there is nothing to blame when a private corporation seeks profits from free, positive trade activities. These economic activities contributed to the development of our country. However, corporation activities ignoring the morale and the rules of international society must be controlled. The defendents testified that the COCOM rules and the Foreign Exchange Law are indistinct, and that interpretation and application of these rules are far more lenient in the European countries. If so, as a big company with voices they should have urged the government to clarify the Foreign Exchange Law and, with a dignified stance, demand the government to claim deregulation of COCOM rules in the diplomatic arena. A leading corporation should not be misled by immediate profit, rather it should choose the righteous way, acting properly even when making a detour.

5. On the other hand, in view of the motivation in the circumstance up to this case, we should take into consideration the following: At the defending company, exports to the Communist countries were anticipated for covering a business slack, and the Soviet officials proposed the exporting procedures for evading COCOM rules and the Foreign Exchange Law, while Norway's Kongsberg actively cooperated. The defending company had no intention of applying the metal machine tool for military usage, and there has been no proof that this transaction has interferred with international peace and security. Also, by this case, the defending company has been subjected to administrative measures on illegal exports to Communist countries, with a loss of business and social sanctions; furthermore, preventative measures against recurrence of a similar crime are being taken.

The defendents X and Y both took part in this case of crime, but there are sympathetic circumstances we should take note of. The defendents followed their superiors' instructions and had not personal aim for profits. X, having a negative opinion about the act, merely followed business instructions of his boss, participating in the technical area when the fundamental plans for the illegal export was established. Y, then the manager of exports to Communist countries, had become concerned about decreasing orders from the Soviet Union, problem he has to meet. For only the defendents who followed company instructions to be punished would be unfair, while other personnel

related to the case will merely leave the office. The defendents have already been subjected to a sanction of physical restraint and suspension from office.

Judges: Toshio Yonezawa (presiding)
Takashi Nagai
Kentaro Tani

Crashing of a U.S. Spotter Plane — Complaint by Injured Residents against the Two U.S. Pilots and the State (Japan) — Reparations for Injuries and Damages Done — Complaint against the State Accepted Based on Article 2 of the Special Civil Law Act

Yokohama District Court, Judgment, 4 March 1987, Case No. *wa*-20965 (1980). *The Hanreijiho* (Judicial Reports) No. 1225, pp. 45 et seq.

X1, X2, X3, X4 v. Y1, Y2, Y3

On 27 September 1977, a U.S. Marine Corps RF4B Phantom spotter plane, with chief pilot Y1, and pilot Y2 on board, soon after taking off from Atsugi Base in Kanagawa Prefecture, caught fire and crashed in a residential area of Yokohama (2310 Edacho, Midori-ku). Y1 and Y2 were able to escape just before the crash, using parachutes, but as a result of the crash several houses were entirely and partially destroyed by fire, three residents were killed and six were injured. X1, who suffered third-degree burns on most of her body from the crash, together with her husband X2 and her two children X3 and X4, filed a civil suit against Y1 and Y2 and the State (Y3) demanding reparation for damages to movable properties such as furniture and *ex gratia* payment, totaling ¥140,721,329. The plaintiff (X1, X2, X3, X4) claimed that Y1 and Y2 had acted in violation of their obligations to inspect the plane before takeoff (based on Article 709 of the Civil Law Act) and that Y3 was responsible for the following: (1) flaw in the establishment and management of Atsugi Base (based on Article 2, paragraph 1 of the State Tort Liability Act), (2) negligence of the airport control personnel at the time of takeoff (based on Aticle 1, paragraph 1 of the State Tort Liability Act), (3) negligence of the ground crew for jets who installed the support of the left engine, which was the cause of the Phantom plane crash (based on Article 1 of the Special Civil Law Act), (4) defects of the Phantom plane (based on Article 2 of the Special Civil Law Act), and (5) negligence of Y1, Y2, Y3 (based on Article 1 of the Special Civil Law Act). Against this claim, Y1 and Y2, members of the U.S. armed forces, maintained that the suit was legally inappropriate because they were not subject to the civil jurisdiction of the courts of Japan for accidents committed in the performance of their official duties. Further-