

Dated: May 5, 2004.

**Dennis Puccinelli,**

*Executive Secretary.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

Docket No. 01-BXA-18

#### Action Affecting Export Privileges; Charlie Kuan

In the Matter of: Charlie Kuan, 2541 Robin Court, Union City, California 94587, Respondent

#### Order

The Bureau of Industry and Security, United States Department of Commerce ("BIS") having initiated an administrative proceeding against Charlie Kuan, the former President of Suntek Microwave Inc., ("Kuan") pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730-774 (2003)) ("Regulations"),<sup>1</sup> and section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000;)) ("Act"),<sup>2</sup> based on the charging letter issued to Kuan that alleged that Kuan committed 17 violations of the regulations. Specifically, the charges are:

1. *One violation of 15 CFR 787A.2—Aiding and Abetting an Unlicensed Export:* On or about December 1, 1996, Kuan aided and abetted the unlicensed

<sup>1</sup> The regulations governing the violations at issue are found in the 1996, 1997, 1998, 1999 and 2000 versions of the Code of Federal Regulations (15 CFR parts 768-799 (1996), as amended (61 FR 12714, March 25, 1996) (hereinafter "the former Regulations")), and 15 CFR parts 768-799 (1997, 1998, 1999 and 2000). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 CFR part 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR parts 730-774, effective April 24, 1996. The 2003 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2003 (3 CFR., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA.

export of detector log video amplifiers, items subject to the former Regulations and classified under ECCN 3A001.b.4.a, by authorizing the procurement of the detector log video amplifiers by Silicon Valley Scientific Instruments Corporation (SVSIC) from Suntek Microwave, Inc. (Suntek) who then exported them to the People's Republic of China (PRC) without a validated license as required by Section 771A.1 of the former Regulations.

2. *One violation of 15 CFR 764.2(e)—Transfer of Controlled Commodity Knowing That It Will be Exported Without a License:* On or about January 27, 1997, Kuan authorized the procurement of detector log video amplifiers, items subject to the Regulations and classified under ECCN 3A001.b.4.a, by SVSIC from Suntek knowing or having reason to know that SVSIC would export them to the PRC without a license as required by Sections 742A.4 and 742.5 of the Regulations.

3. *Nine Violations of 15 CFR 764.2(b)—Aiding and Abetting an Unlicensed Export:* From on or about November 1996 through on or about April 2000, Kuan arranged for the entrance of citizens of the PRC, not citizens or permanent resident aliens of the United States, into the United States, knowing or having reason to know that Suntek then would release the U.S.-origin technology classified under ECCN 3E001 to them without the licenses required under Sections 742.4 and 742.5 of the Regulations.

4. *One Violation of 15 CFR 764.2(a)—False Statements on License Application:* On or about July 25, 1997, Suntek filed an application for a license with BIS to export detector log video amplifiers to the PRC. On the application, Suntek stated that the purchaser, intermediate consignee, ultimate consignee, and end-user were China Electronic Science & Technical University when, in fact, China Electronic Science & Technical University was not the purchaser, intermediate consignee, ultimate consignee, or end-user. Kuan certified on the license application that all information contained therein was true and correct when, in fact, Kuan knew or had reason to know that the information contained therein was false.

5. *Five Violations of 15 CFR 764.2(e)—Exporting Without Licenses:* On or about February 4, 1998, February 26, 1998, April 28, 1998, May 7, 1998, and June 8, 1998, Kuan authorized the sales and exports of detector log video amplifiers, items subject to the Regulations and classified under ECCN 3A001.b.4.a, by Suntek from the United

States to the PRC. At the time Kuan authorized the exports, Kuan knew or had reason to know that no licenses were obtained for the exports as required under Sections 742.4 and 742.5 of the Regulations.

BIS and Kuan having 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 the terms of the Settlement Agreement having been approved by me; *It is therefore ordered:*

*First*, that a civil penalty of \$187,000 is assessed against Kuan, which shall be paid to the U.S. 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. 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, Kuan 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*, for a period 20 years from the date of entry of the Order, Charlie Kuan, 2541 Robin Court, Union City, California 94587, when acting for or on behalf of Kuan, his assigns, representatives, agents, or employees ("Denied Person") may not participate, directly or indirectly, 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.

Fourth, 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.

Fifth, 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 a 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.

Sixth, that this order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that, as authorized by Section 766.18(c) of the Regulations, the civil penalty set forth above shall be suspended in its entirety for one year from the date of this Order, and shall thereafter be waived, provided that during the period of suspension, Kuan

has committed no violation of the Act or any regulation, order or license issued thereunder.

Eighth, that the charging letter, the Settlement Agreement, and this Order, in addition to the record of the case, shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 6th day of May 2004.

**Julie L. Myers,**

*Assistant Secretary of Commerce for Export Enforcement.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

[Docket No. 01-BXA-19]

#### Action Affecting Export Privileges; Suntek Microwave, Inc.

In the Matter of: Suntek Microwave, Inc., 8698 Thornton Avenue, Newark, California 94560, Respondent

#### Order

The Bureau of Industry and Security, United States Department of Commerce ("BIS") having initiated an administrative proceeding against Suntek Microwave, Inc. ("Suntek") pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730-774 (2003)) ("Regulations"),<sup>1</sup> and section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act"),<sup>2</sup> based on

<sup>1</sup> The Regulations governing the violations at issue are found in the 1996, 1997, 1998, 1999 and 2000 versions of the Code of Federal Regulations, (15 CFR parts 768-799 (1996), as amended (61 FR 12714, March 25, 1996) (hereinafter "the former Regulations")), and 15 CFR parts 768-799 (1997, 1998, 1999 and 2000)). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 CFR parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized the Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR parts 730-774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BIS alleges occurred. The 2003 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through

the charging letter issued to Suntek that alleged that Suntek committed 25 violations of the Regulations.

Specifically, the charges are:

1. *One Violation of 15 CFR 787A.2—Aiding and Abetting a Violation—Aiding and Abetting an Unlicensed Export:* On or about December 1, 1996, Suntek aided and abetted the unlicensed export of detector log video amplifiers, items subject to the Regulations, by selling them to Silicon Valley Scientific Instruments Corporation (SVSIC) who then exported them to the Peoples Republic of China (PRC) without a validated license as required by Section 771A.1 of the former Regulations.

2. *One Violation of 15 CFR 764.2(e)—Acting with Knowledge—Transfer of Controlled Commodity Knowing That It Will be Exported Without a License:* On or about January 27, 1997, Suntek transferred detector log video amplifiers to SVSIC knowing or having reason to know that SVSIC would export them to the PRC without a license as required by Sections 742.4 and 742.5 of the Regulations. SVSIC subsequently exported the detector log video amplifiers to the PRC.

3. *Nine Violations of 15 CFR 764.2(a)—Engaging in Prohibited Conduct—Release of U.S.-Origin Technology to Foreign Nationals in the United States:* From on or about November 1996 through on or about April 2000, Suntek released U.S.-origin technology subject to the former Regulations and the Regulations to citizens of the PRC, not citizens or permanent resident aliens of the United States, without licenses from BIS. Suntek's release of the technology within the United States to citizens of the PRC constituted exports under 734.2(b) of the Regulations and required licenses under Sections 742.4 and 742.5 of the Regulations.

4. *Four Violations of 15 CFR 764.2(g)—Misrepresentation and Concealment of Facts—False Statements on License Application:* On or about July 25, 1997, Suntek filed an application for a license with BIS to export detector log video amplifiers to the PRC. On the application, Suntek stated that the purchaser, intermediate consignee, ultimate consignee, and end-user were China Electronic Science & Technical University when, in fact, China Electronic Science & Technical University was not the purchaser,

Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003), has continued the Regulations in effect under IEEPA.