

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

In the Matter of:)
)
Cymer, Inc.)
17075 Thornmint Court)
San Diego, CA 92127)
)
Respondent.)
_____)

ORDER RELATING TO CYMER, INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Cymer, Inc. (“Cymer”) of its intention to initiate an administrative proceeding against Cymer pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005)) (“Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),² by issuing a proposed

¹ The violations charged occurred in 1999 through 2004. The Regulations governing the violations at issue are found in the 1999 - 2004 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999 - 2004)). The 2005 Regulations establish the procedures that apply to this matter.

² 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 August 3, 2000 (3 C.F.R., 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 by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) 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 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005, (70 Fed. Reg. 45273 (August 5, 2005)), has continued the Regulations in effect under IEEPA.

charging letter to Cymer that alleged that Cymer committed five violations of the Regulations, Specifically, the charges are:

1. *Two Violations of 15 C.F.R. § 764.2(a) - Deemed exports to foreign nationals from Russia and the People's Republic of China:* Beginning in or around August 2001 and extending until in or around July 2004, Cymer engaged in conduct prohibited by the Regulations when it released Deep Ultra Violet light source technology, an item subject to the Regulations, to foreign nationals from Russia and the People's Republic of China (PRC) without the required BIS licenses. These actions were deemed to be exports under Section 734.2 of the Regulations. The technology was controlled under Export Control Classification Number 3E001 and a license was required under Section 742.4 of the Regulations for its export to Russia and the PRC.
2. *Two Violations of 15 C.F.R. § 764.2(a) – Exports to Taiwan without a license:* On or about December 16, 1999 and on or about April 14, 2000, Cymer engaged in conduct prohibited by the Regulations when it exported a Deep Ultra Violet light source, an item subject to the Regulations, to Taiwan without the required BIS license. The light sources exported on these two occasions were classified under Export Control Classification Number 3B001 and their export to Taiwan required BIS licenses under Section 742.4 of the Regulations.
3. *One Violation of 15 C.F.R. § 764.2(g) - False Statement to the U.S. Government:*

On or about December 16, 1999, Cymer made or caused to be made a false statement to the U.S. Government in connection with an export subject to the Regulations. Specifically, Cymer stated on a Shipper's Export Declaration that a shipment of a Deep Ultra Violet light source to Taiwan could ship "NLR." This was a false statement because "NLR" indicates that no license is required when in fact the light source was classified under Export Control Classification Number 3B001 and did require a license for export to Taiwan.

WHEREAS, BIS and Cymer 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:

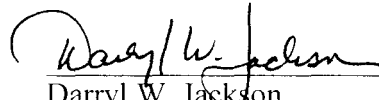
FIRST, that a civil penalty of \$19,250 be assessed against Cymer, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

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, Cymer 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 timely payment of the civil penalty set forth above hereby be 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 Cymer. Accordingly, if Cymer should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Cymer'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, which constitutes the final agency action in this matter, is effective immediately.



Darryl W. Jackson
Assistant Secretary of
Commerce for Export Enforcement

Entered this 24th day of October 2005.

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

In the Matter of:)
)
Cymer, Inc.)
17075 Thornmint Court)
San Diego, CA 92127)
)
Respondent.)
_____)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Cymer, Inc. (“Cymer”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005)) (“Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),²

¹ The violations charged occurred in 1999 through 2004. The Regulations governing the violations at issue are found in the 1999 - 2004 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999 - 2004)). The 2005 Regulations establish the procedures that apply to this matter.

² 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 August 3, 2000 (3 C.F.R., 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 by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) 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 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005, (70 Fed. Reg. 45273 (August 5, 2005)), has continued the Regulations in effect under IEEPA.

WHEREAS, Cymer filed a voluntary self-disclosure with BIS's Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

WHEREAS, BIS has notified Cymer of its intention to initiate an administrative proceeding against Cymer, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Cymer that alleged that Cymer committed five violations of the Regulations, specifically the charges are:

1. *Two Violations of 15 C.F.R. § 764.2(a) - Deemed exports to foreign nationals from Russia and the People's Republic of China:* Beginning in or around August 2001 and extending until in or around July 2004, Cymer engaged in conduct prohibited by the Regulations when it released Deep Ultra Violet light source technology, an item subject to the Regulations, to foreign nationals from Russia and the People's Republic of China (PRC) without the required BIS licenses. These actions were deemed to be exports under Section 734.2 of the Regulations. The technology was controlled under Export Control Classification Number 3E001 and a license was required under Section 742.4 of the Regulations for its export to Russia and the PRC.

2. *Two Violations of 15 C.F.R. § 764.2(a) – Exports to Taiwan without a license:* On or about December 16, 1999 and on or about April 14, 2000, Cymer engaged in conduct prohibited by the Regulations when it exported a Deep Ultra Violet light source, an item subject to the Regulations, to Taiwan without the required BIS

license. The light sources exported on these two occasions were classified under Export Control Classification Number 3B001 and their export to Taiwan required BIS licenses under Section 742.4 of the Regulations.

3. *One Violation of 15 C.F.R. § 764.2(g) - False Statement to the U.S. Government:*
On or about December 16, 1999, Cymer made or caused to be made a false statement to the U.S. Government in connection with an export subject to the Regulations. Specifically, Cymer stated on a Shipper's Export Declaration that a shipment of a Deep Ultra Violet light source to Taiwan could ship "NLR." This was a false statement because "NLR" indicates that no license is required when in fact the light source was classified under Export Control Classification Number 3B001 and did require a license for export to Taiwan.

WHEREAS, Cymer has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

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

WHEREAS, Cymer enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Cymer neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Cymer wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Cymer agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Cymer, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against Cymer in complete settlement of the violations of the Regulations relating to the transactions specifically detailed in the voluntary self-disclosure and the proposed charging letter:

a. Cymer shall be assessed a civil penalty in the amount of \$19,250 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.

b. The 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 Cymer. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Cymer's export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Cymer hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a)

an administrative hearing regarding the allegations in the proposed charging letter filed against Cymer relating to this investigation; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$19,250 civil penalty, BIS will not initiate any further administrative proceeding against Cymer in connection with any violation of the Act or the Regulations arising out of the transactions detailed in the proposed charging letter and voluntary self-disclosure.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

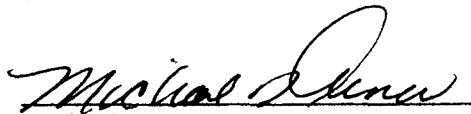
6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. 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, if entered, 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 approves it by entering 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. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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



Michael D. Turner
Director
Office of Export Enforcement

CYMER, INCORPORATED.



Robert P. Akins
Chief Executive Officer

Date: 10/19/05

Date: 10/17/05

DRAFT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Cymer, Inc.
17075 Thornmint Court
San Diego, CA 92127

*Attn: Mr. Robert P. Akins
Chief Executive Officer*

Dear Mr. Akins:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has reason to believe that Cymer, Inc. (“Cymer”), of San Diego, CA, has committed five violations of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979 (the “Act”).² Specifically, BIS charges that Cymer committed the following violations:

Charges 1-2 (15 C.F.R. § 764.2(a) – deemed exports to foreign nationals from Russia and the People’s Republic of China.)

Beginning in or around August 2001 and extending until in or around July 2004, Cymer engaged in conduct prohibited by the Regulations when it released Deep Ultra Violet light source technology, an item subject to the Regulations, to foreign nationals from Russia and the People’s Republic of China (PRC) without the required BIS licenses. These actions were deemed to be exports under Section 734.2 of the Regulations. The technology was controlled under Export Control Classification Number 3E001 and a license was required under Section 742.4 of the Regulations for its export to Russia and the PRC.

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2005). The violations charged occurred in 1999 through 2004. The Regulations governing the violations at issue are found in the 1999 - 2004 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999 - 2004)). The 2005 Regulations establish the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401- 2420 (2000). 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 August 3, 2000 (3 C.F.R., 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 by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. 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 6, 2004 (69 *Fed. Reg.* 48763, August 10, 2004), continues the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.

In releasing the technology to foreign nationals from Russia and the PRC, Cymer committed two violations of Section 764.2(a) of the Regulations.

Charge 3-4 (15 C.F.R. § 764.2(a) – exports to Taiwan without a license.)

On or about December 16, 1999 and on or about April 14, 2000, Cymer engaged in conduct prohibited by the Regulations when it exported a Deep Ultra Violet light source, an item subject to the Regulations, to Taiwan without the required BIS license. The light sources exported on these two occasions were classified under Export Control Classification Number 3B001 and their export to Taiwan required BIS licenses under section 742.4 of the Regulations. In exporting these items without BIS licenses, Cymer committed two violations of Section 764.2(a) of the Regulations.

Charge 5 (15 C.F.R. § 764.2(g) – false statement to the U.S. Government.)

On or about December 16, 1999, Cymer made or caused to be made a false statement to the U.S. Government in connection with an export subject to the Regulations. Specifically, Cymer stated on a Shipper's Export Declaration that a shipment of a Deep Ultra Violet light source to Taiwan could ship "NLR." This was a false statement because "NLR" indicates that no license is required when in fact the light source was classified under Export Control Classification Number 3B001 and did require a license for export to Taiwan. In making this false statement, Cymer committed one violation of Section 764.2(g) of the Regulations.

Accordingly, Cymer 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 \$11,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Cymer 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. (Regulations, Sections 766.6 and 766.7). If Cymer defaults, the Administrative Law Judge may find the charges alleged in this

³ See 15 C.F.R. §6.4(a)(4) (2005).

Cymer, Inc.
Proposed Charging Letter
Page 3

letter to be true without hearing or further notice to Cymer. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each charge in this letter.

Cymer 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. (Regulations, Section 766.6). Cymer is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Cymer have a proposal to settle this case, Cymer or its representative should transmit the offer to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Cymer's 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 Cymer's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Charles Wall, Esq.
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Charles Wall is representing BIS in this case; any communications that Cymer may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Michael D. Turner
Director
Office of Export Enforcement