



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

DRAFT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

TLC Precision Wafer Technology
1411 West River Road N.
Minneapolis, MN 55411

Attention: *Dr. Timothy Childs*
President

Dear Dr. Childs:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that TLC Precision Wafer Technology ("TLC") 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"). Specifically, BIS charges that TLC committed the following violations:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The current version of the Regulations govern the procedural aspects of this case. The violations charged occurred during 1998 and 1999. The Regulations governing the violations at issue are found in the 1998 and 1999 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1998-1999)). The Regulations were issued pursuant to the Export Administration Act of 1979 ("Act"), 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 issued on 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 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)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003), 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/>.



Charge 1 (15 C.F.R. § 742.4(a) and § 764.2(a) - Engaging in Prohibited Conduct - Export of Epitaxial Wafers to Brazil Without the Required License)

On or about October 25, 1998, TLC exported or caused to be exported an aluminum gallium arsenide/gallium arsenide epitaxial wafer, an item subject to the Regulations and described in Export Control Classification Number (ECCN) 3C001² from the United States to Brazil in a shipment intended for the Universidade Estadual De Campinas in Sao Paolo, Brazil. TLC made this shipment without a license from the Department of Commerce, as required by Section 742.4(a) of the Regulations. In doing so, TLC committed one violation of Section 764.2(a) of the Regulations.

Charge 2 (15 C.F.R. § 742.4(a) and § 764.2(a) - Engaging in Prohibited Conduct - Export of Epitaxial Wafers to Israel Without the Required License)

On or about March 31, 1998, TLC exported or caused to be exported two gallium arsenide/gallium aluminum arsenide epitaxial wafers, items subject to the Regulations and described in ECCN 3C001, from the United States to the Jerusalem College of Technology in Jerusalem, Israel. TLC made this shipment, valued at \$3,500, without a license from the Department of Commerce, as required by Section 742.4(a) of the Regulations. In doing so, TLC committed one violation of Section 764.2(a) of the Regulations.

Charge 3 (15 C.F.R. § 758.3 and § 764.2(a) - Engaging in Prohibited Conduct - Failure to Submit Shipper's Export Declaration Regarding Export of Epitaxial Wafers to Israel)

On or about March 31, 1998, TLC failed to submit or cause to have submitted a Shipper's Export Declaration (SED) for the above-referenced export to the Jerusalem College of Technology in Jerusalem, Israel, as required by Section 758.3 of the Regulations. In so doing, TLC committed one violation of Section 764.2(a) of the Regulations.

Charge 4 (15 C.F.R. § 764.2(g) - Misrepresentation of Material Fact - False Statement on Shipper's Export Declaration Concerning Authority to Export Oscillator Chips to Israel)

On or about May 16, 1999, TLC submitted or caused to be submitted a SED regarding the export to Zvi Nativ, Rafael in Haifa, Israel, of 12 Ka-Band MMIC oscillator chips at a value of approximately \$4254. Item 22 of this SED stated that the ECCN applicable to the exported items

² The ECCN's for various items are set out in the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the Regulations.

was 3A001.b.4, when in fact the applicable ECCN was 3A001.b.2. By submitting or causing to be submitted the SED containing this false statement, TLC committed one violation of 15 C.F.R. § 764.2(g).

Charge 5 (15 C.F.R. § 764.2(g) - Misrepresentation of Material Fact - False Statement on Shipper's Export Declaration Concerning Authority to Export Oscillator Chips to Israel)

On or about May 16, 1999, TLC filed or caused to be filed a SED regarding the export described in Charge 4 above. Item 21 ("Validated License No./General License Symbol") of this SED stated that the shipment was "NLR" ("no license required"), when in fact there was a license requirement for this shipment (although the "GBS" license exception could have been claimed). By submitting or causing to be submitted the SED containing this false statement, TLC committed one violation of 15 C.F.R. § 764.2(g).

Accordingly, TLC 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 TLC 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 TLC defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to TLC. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

TLC is further notified that it is entitled to an agency hearing on the record if TLC files a written demand for one with its answer. (Regulations, Section 766.6.) TLC 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.)

³ See the Federal Civil Penalties Adjustment Act of 1990 (28 U.S.C. § 2461, note (2000)) and 15 C.F.R. § 6.4(a)(2).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18.) Should you have a proposal to settle this case, you or your representative should transmit it to me through 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, TLC's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

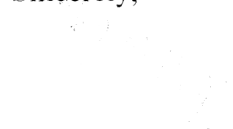
U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of TLC's answer must be served on BIS at the following address:

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

Philip D. Golrick is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,


Mark D. Menefee
Director
Office of Export Enforcement

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

In the Matter of:)
)
TLC Precision Wafer Technology)
1411 West River Road N.)
Minneapolis, MN 55411)
)
Respondent.)
_____)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, TLC Precision Wafer Technology (“TLC”), and the Bureau of Industry and Security, United States 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 (2003)) (“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 Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred from 1998 to 1999. The Regulations governing the violations at issue are found in the 1998-1999 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1998-1999)). The Regulations define the violations that BIS alleges occurred and 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 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 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA.

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

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

1. *One Violation of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Exporting Without the Required License:* On or about October 25, 1998, TLC exported an aluminum gallium arsenide/gallium arsenide epitaxial wafer, an item subject to the Regulations and described in Export Control Classification Number (ECCN) 3C001 from the United States to Brazil. TLC made this shipment without a license from the Department of Commerce, as required by Section 742.4(a) of the Regulations.
2. *One Violation of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Exporting Without the Required License:* On or about March 31, 1998, TLC exported two gallium arsenide/gallium aluminum arsenide epitaxial wafers, items subject to the Regulations and described in ECCN 3C001, from the United States to Israel. TLC made this shipment without a license from the Department of Commerce, as required by Section 742.4(a) of the Regulations.
3. *One Violation of 15 C.F.R. § 764.2(a) - Failure to Submit Shipper's Export Declaration (SED):* On or about March 31, 1998, TLC failed to submit or cause to have submitted a SED for the above-referenced export to Israel, as required by Section 758.3 of the Regulations.

4. *Two Violations of 15 C.F.R. § 764.2(g) - False Statements on SED:* On or about May 16, 1999, TLC submitted or caused to be submitted a SED regarding the export to Israel of 12 Ka-Band MMIC oscillator chips. Item 22 of this SED stated that the ECCN applicable to the exported items was 3A001.b.4, when in fact the applicable ECCN was 3A001.b.2. Item 21 (“Validated License No./General License Symbol”) of this SED stated that the shipment was “NLR” (“no license required”), when in fact there was a license requirement for this shipment (although the “GBS” license exception could have been claimed). By submitting or causing to be submitted the SED containing these two false statements, TLC committed two violations of 15 C.F.R. § 764.2(g);

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

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

WHEREAS, TLC states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

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

2. The following sanction shall be imposed against TLC in complete settlement of the violations of the Regulations set forth in the proposed charging letter:

- a. TLC shall be assessed a civil penalty in the amount of \$35,000, which shall be paid to the U.S. Department of Commerce as follows. TLC shall pay \$15,000 to the U.S. Department of Commerce within 30 days from the date of entry of the Order. Payment of the remaining \$20,000 shall be suspended for a period of one year from the date of entry of the Order and thereafter shall be waived, provided that during the period of suspension, TLC has committed no violation of the Act, or any regulation, order, or license issued by BIS, and has made the payment of \$15,000 described above in a timely manner.
- 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, permission, or privilege granted, or to be granted, to TLC. Failure to

make timely payment of the civil penalty set forth above shall result in the denial of all of TLC'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, Respondent 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; (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 civil penalty in accordance with paragraph 2.a above, BIS will not initiate any further administrative proceeding against TLC in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

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 United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BIS 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.

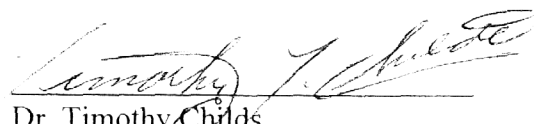
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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

TLC PRECISION WAFER TECHNOLOGY



Mark D. Menefee
Director
Office of Export Enforcement



Dr. Timothy Childs
President

Date: 11/4/03

Date: 10/28/03

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

In the Matter of:)
)
TLC Precision Wafer Technology)
1411 West River Road N.)
Minneapolis, MN 55411)
)
Respondent.)

ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), having notified TLC Precision Wafer Technology, 1411 West River Road N., Minneapolis, MN 55411 (“TLC”) of its intention to initiate an administrative proceeding against TLC, pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),¹ and the Export Administration Regulations (15 C.F.R. Parts 730-774 (2003)) (“Regulations”),² based on allegations in a proposed charging letter issued to TLC that TLC committed five violations of the Regulations, specifically:

¹ 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 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 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA.

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applicable ECCN was 3A001.b.2. Item 21 (“Validated License No./General License Symbol”) of this SED stated that the shipment was “NLR” (“no license required”), when in fact there was a license requirement for this shipment (although the “GBS” license exception could have been claimed). By submitting or causing to be submitted the SED containing these two false statements, TLC committed two violations of 15 C.F.R. § 764.2(g); and

BIS and TLC having 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 the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

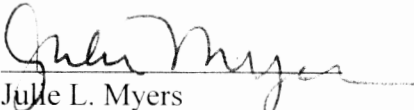
FIRST, that a civil penalty of \$35,000 is assessed against TLC, which TLC shall pay to the U.S. Department of Commerce as follows. TLC shall pay \$15,000 to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment of the remaining \$20,000 shall be suspended for a period of one year from the date of entry of this Order and thereafter shall be waived, provided that during the period of suspension, TLC has committed no violation of the Act, or any regulation, order, or license issued by BIS, and has made the payment of \$15,000 described above in a timely manner. 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, TLC shall 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 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 TLC. Accordingly, if TLC should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of TLC'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.


Julie L. Myers
Assistant Secretary of Commerce
for Export Enforcement

Entered this 15th day of December 2003.