



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

JAN 31 2002

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Sun Microsystems California, Ltd.
66/F Central Plaza
18 Harbour Road
Wan Chai, Hong Kong

Attention: *Daniel Yu*
Managing Director

Dear Mr. Yu:

The Bureau of Export Administration, United States Department of Commerce ("BXA"), has reason to believe that Sun Microsystems California, Ltd. ("Sun Hong Kong") violated the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act"),² on three occasions. Specifically, BXA charges that Sun Hong Kong committed the following violations:

Charge 1 (15 C.F.R §764.2(d) - Conspiracy)

From in or about December 1996 through in or about June 1997, Sun Hong Kong conspired with Sun Microsystems China Ltd.; Automated Systems, Ltd.; and others both known and unknown to BXA to bring about an act prohibited by the Regulations. The purpose of the conspiracy was to export a computer, a Sun E5000 server with an operating capability of approximately 2,700 MTOPS³, an item subject to the Regulations, from the United States to a military end-user in People's Republic of China without a license from the Department of Commerce as required by

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2001). The violation charged occurred in 1997. The Regulations governing the violation are codified at 15 C.F.R. Parts 730-774 (1997). They are substantially the same as the 2001 version of the Regulations which govern the procedural aspects of this case.

² 50 U.S.C. app. §§ 2401-2420 (1994 & Supp. IV 1998), as reauthorized by Act of November 13, 2000, Pub. L. No. 106-508, 114 Stat. 2360. The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (1994 & Supp. IV 1998)) until the Act was reauthorized on November 13, 2000. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bxa/>.

³ "MTOPS" means "million theoretical operations per second."

COPY
RECEIVED
JAN 23 2 37
AMJ DOCKETING CENTER
BALTIMORE, MD



Sun Microsystems California, Ltd.

Charging Letter

Page 2

Section 742.12(b)(3) of the Regulations. To accomplish their purpose, the conspirators made false statements as to the true identity of the end-user of the computer and concealed that true identity ultimately from BXA. Charges 2 and 3 describe two overt acts, among others, committed in furtherance of the conspiracy.

Charge 2 (15 C.F.R §764.2(b) - Causing, Aiding or Abetting a Violation - Exporting to a Military End-User without a License)

On or about February 7, 1997, Sun Hong Kong aided and abetted the export of a computer, a Sun E5000 server with an operating capability of approximately 2,700 MTOPS, an item subject to the Regulations, from the United States to a military end-user in People's Republic of China without a license from the Department of Commerce as required by Section 742.12(b)(3) of the Regulations. In doing so, Sun Hong Kong committed one violation of Section 764.2(b) of the Regulations.

Charge 3 (15 C.F.R. §764.2(b) and (g) - Causing, Aiding or Abetting a Violation - Making a False or Misleading Representation of Material Fact)

On or about March 31, 1997, Sun Hong Kong caused the submission of a false and misleading statement to BXA in the course of an investigation. The statement was that the end-user of the computer in charges 1 and 2 above was "China Scientific Inst. (P.R.C.)" and that the end-use was "city electricity." Those representations were false. The ultimate consignee of the computer was the Changsha Institute of Science and Technology in Changsha, People's Republic of China and the end-use was not city electricity. In doing so, Sun Hong Kong committed one violation of Section 764.2(g) of the Regulations.

The maximum civil penalty allowed by law of \$11,000 per violation;⁴

Denial of export privileges; and/or

Exclusion from practice before BXA.

If Sun Hong Kong 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 Sun Hong Kong defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to Sun Hong Kong.

⁴ Pursuant to the Federal Civil Penalties Adjustment Act of 1990 (28 U.S.C. §2461, note (1994 & Supp. V 1999)), and 15 C.F.R. §6.4(a)(2), the maximum penalty for each violation committed after October 23, 1996 and before November 1, 2000 is \$11,000.

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

In the Matter of:)

Sun Microsystems China, Ltd.)
66/F Central Plaza)
18 Harbour Road)
Wan Chai, Hong Kong,)

Respondent.)

Case No. 02-BXA-06

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Sun Microsystems China Limited, a Hong Kong company, (“Sun China”), and the Bureau of Industry and Security, United States Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(b) of the Export Administration Regulations (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

WHEREAS, BIS has initiated an administrative proceeding against Sun China, case number 02-BXA-06, pursuant to the Act and the Regulations;

WHEREAS, Sun China has received notice of issuance of the charging letter pursuant to

¹ The violations charged occurred in 1997. The Regulations governing the violations are codified at 15 C.F.R. Parts 730-774 (1997). The 1997 Regulations are substantially the same as the 2003 Regulations which govern the procedural aspects of this case.

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 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)), as renewed by the Notice of August 14, 2002 (67 *Fed. Reg.* 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

section 766.3 of the Regulations;

WHEREAS, Sun China has reviewed the 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, Sun China fully understands the terms of this Agreement and the Order of the Assistant Secretary of Commerce for Export Enforcement that will implement this Agreement (“Order”);

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

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

WHEREAS, Sun China neither admits nor denies the allegations contained in the charging letter;

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

WHEREAS, Sun China agrees to be bound by the Order, when entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Sun China, under the Regulations, in connection with the matters alleged in case number 02-BXA-06.
2. BIS and Sun China shall settle the administrative case pending against Sun-China, 02-BXA-06, with civil penalties based upon the following charge:
 1. *One Violation of 15 C.F.R. §764.2(b) - Aiding and Abetting the Export of a High Performance Computer to a Military End-User without the Required BIS License:* On or about February 7, 1997, Sun China aided and abetted

the export of a high performance computer, a Sun E5000 server with an operating capability of approximately 2,700 MTOPS, an item subject to the Regulations, from the United States to a military end-user in the People's Republic of China, the Changsha Institute of Science and Technology, without a license from the Department of Commerce as required by Section 742.12(b)(3) of the Regulations.

2. The following sanctions shall be imposed against Sun China in complete settlement of the alleged violations of the Regulations in case number 02-BXA-06:

- a. Sun China shall be assessed a civil penalty in the amount of \$11,000 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, permission, or privilege granted, or to be granted, to Sun China. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of Sun China's export privileges for a period of one year from the date of imposition of the penalty.

3. For a period of one year from the date of this Order, Sun China will not, directly or indirectly, export, reexport, or transfer in country any items subject to the Regulations, or engage in any other activity with respect to items subject to the Regulations, such as repair or maintenance, if such activity involves the Changsha Institute of Science and Technology (also known as the National University of Defense Technology), 137 Yanwachi Zheng Jie, 410073, Changsha, People's Republic of China, including but not limited to any of its affiliates, departments, and bureaus located at the aforementioned address or elsewhere without prior

written consent from BIS.

4. Subject to the approval of this Agreement pursuant to paragraph 9 hereof, Sun China hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Agreement or the Order, when entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, when entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, when entered.

5. BIS agrees that, upon entry of the Order, it will not initiate any administrative proceeding against Sun China in connection with any violation of the Act or the Regulations arising out of the transactions identified in case number 02-BXA-06.

6. The charging letter, this Agreement, and the Order, when entered, in addition to the record of the case will be available to the public.

7. BIS and Sun China agree that 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(b) of the Regulations, BIS and Sun China agree that they may not use this Agreement in any administrative or judicial proceeding and that the parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

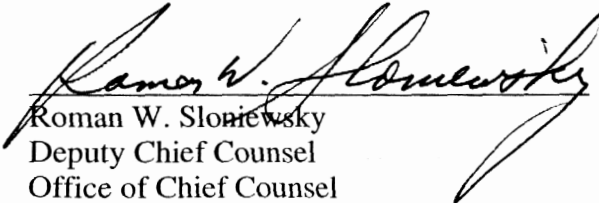
8. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, when entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

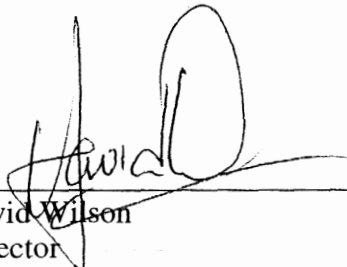
9. This Agreement shall become binding on BIS only when the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

10. Each signatory affirms that he has authority to enter into this 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

SUN MICROSYSTEMS CALIFORNIA LTD


Roman W. Sloniewsky
Deputy Chief Counsel
Office of Chief Counsel
for Industry and Security


David Wilson
Director

Date: 11/14/03

Date: 7/25/03

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

_____)	
In the Matter of:)	
Sun Microsystems China, Ltd.)	Case No. 02-BXA-06
66/F Central Plaza)	
18 Harbour Road)	
Wan Chai, Hong Kong,)	
)	
Respondent.)	
_____)	

ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), initiated an administrative proceeding against Respondent, Sun Microsystems China Limited, a Hong Kong company, (“Sun China”), pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2003)) (“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 charging letter that alleged that Sun China violated the Regulations. BIS and Sun China have entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they have agreed to settle the administrative case pending against Sun China, 02-BXA- 06, with a civil penalty based upon the following charge:

¹ The violation charged occurred in 1997. The Regulations governing the violation are codified at 15 C.F.R. Parts 730-774 (1997). The 1997 Regulations are substantially the same as the 2003 Regulations which govern the procedural aspects of this case.

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.

1. *One Violation of 15 C.F.R. §764.2(b) - Aiding and Abetting the Export of a High Performance Computer to a Military End-User without the Required BIS License:* On or about February 7, 1997, Sun China aided and abetted the export of a high performance computer, a Sun E5000 server with an operating capability of approximately 2,700 MTOPS, an item subject to the Regulations, from the United States to a military end-user in People's Republic of China, the Changsha Institute of Science and Technology, without a license from the Department of Commerce as required by Section 742.12(b)(3) of the Regulations.

BIS and Sun China 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 and conditions of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that Sun China shall pay a civil penalty of \$11,000 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 (1983 and Supp. 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, Sun China 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 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 Sun China. Accordingly, if Sun


China should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Sun China's export privileges for a period of one year from the date of entry of this Order.

FOURTH, for a period of one year from the date of this Order, Sun China will not, directly or indirectly, export, reexport, or transfer in country any items subject to the Regulations, or engage in any other activity with respect to items subject to the Regulations, such as repair or maintenance, if such activity involves the Changsha Institute of Science and Technology (also known as the National University of Defense Technology), 137 Yanwachi Zheng Jie, 410073, Changsha, People's Republic of China, including but not limited to any of its affiliates, departments, and bureaus located at the aforementioned address or elsewhere, without prior written consent from BIS.

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

SIXTH, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022, notifying that office that this case is withdrawn from adjudication, as provided by Section 766.18 of the Regulations.

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.