



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

DRAFT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sun Microsystems, Inc.
4150 Network Circle
Santa Clara, CA 95054

Attention: *Scott McNealy*
Chairman

Dear Mr. McNealy:

The Bureau of Industry and Security, United States Department of Commerce ("BIS") has reason to believe that Sun Microsystems, Inc. ("Sun") 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 one occasion. Specifically, BIS charges that Sun committed the following violation:

Charge 1 (15 C.F.R. §764.2(a) - Failure to Comply with Condition of BIS Export License)

On or about June 26, 2002, BIS issued an export license, license number D295080, to Sun that authorized the export of a computer and peripheral equipment to Syria. These items were subject to the Regulations and covered by export control classification number 4A994. This export license included a condition that required "[a]fter the first shipment is made against this license, send one copy of your Shipper's Export Declaration, or Automated Export System (AES) record, Bill of Lading or Airway Bill to the Department of Commerce...." Despite

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The charged violation occurred in 2002. The Regulations governing the charged violation are found in the 2002 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002)). The 2003 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 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 extended by the Notice of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA.



exporting under this license, Sun did not file the required documents with the Department of Commerce. By not complying with this license condition, Sun committed one violation of section 764.2(a) of the Regulations.

Accordingly, Sun 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;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

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

Sun is further notified that it is entitled to an agency hearing on the record if Sun files a written demand for one with its answer. (Regulations, Section 766.6). Sun 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 Sun have a proposal to settle this case, Sun or its representative should transmit the offer 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, Sun'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

³ See 15 C.F.R. §6.4(a)(2).

Sun Microsystems
Charging Letter
Page 3

DRAFT

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

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

Melissa B. Mannino is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through her. She 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:)
)
Sun Microsystems, Inc.)
4150 Network Circle)
Santa Clara, CA 95054,)
)
Respondent.)
_____)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Sun Microsystems, Inc. (“Sun”), 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 charged violation occurred in 2002. The Regulations governing the charged violation are found in the 2002 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002)). The 2003 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 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 extended by the Notice of August 7, 2003 (68 *Fed. Reg.*

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

WHEREAS, BIS has issued a proposed charging letter to Sun that alleged that Sun committed one violation of the Regulations, specifically:

One violation of 15 C.F.R. §764.2(a) - Failure to Comply with Condition of BIS Export License: On or about June 26, 2002, BIS issued an export license, license number D295080, to Sun that authorized the export of a computer and peripheral equipment to Syria. These items were subject to the Regulations and covered by export control classification number 4A994. This export license included a condition that required “[a]fter the first shipment is made against this license, send one copy of your Shipper’s Export Declaration, or Automated Export System (AES) record, Bill of Lading or Airway Bill to the Department of Commerce....” Despite exporting under this license, Sun did not file the required documents with the Department of Commerce. By not complying with this license condition, Sun committed one violation of section 764.2(a) of the Regulations;

WHEREAS, Sun 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;

47833, August 11, 2003)), has continued the Regulations in effect under IEEPA.

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Sun, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against Sun in complete settlement of the violation of the Regulations set forth in the proposed charging letter:
 - a. Sun shall be assessed a civil penalty in the amount of \$5,000 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. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of Sun'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, Sun 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; and (c) 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 Sun 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

SUN MICROSYSTEMS, INC.



Mark D. Menefee
Director
Office of Export Enforcement



Steve McGowan
Chief Financial Officer

Date: 11/13/03

Date: 4/13/03 (MGM)

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

In the Matter of:)
)
Sun Microsystems, Inc.)
4150 Network Circle)
Santa Clara, CA 95054,)
)
Respondent.)
_____)

ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), having notified Sun Microsystems, Inc., 4150 Network Circle, Santa Clara, CA, 95054 (“Sun”) of its intention to initiate an administrative proceeding against Sun, 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 Sun that Sun committed one violation 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.

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The charged violation occurred in 2002. The Regulations governing the charged violation are found in the 2002 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002)). The 2003 Regulations establish the procedures that apply to this matter.

One violation of 15 C.F.R. §764.2(a) - Failure to Comply with Condition of BIS Export

License: On or about June 26, 2002, BIS issued an export license, license number D295080, to Sun that authorized the export of a computer and peripheral equipment to Syria. These items were subject to the Regulations and covered by export control classification number 4A994. This export license included a condition that required “[a]fter the first shipment is made against this license, send one copy of your Shipper’s Export Declaration, or Automated Export System (AES) record, Bill of Lading or Airway Bill to the Department of Commerce....” Despite exporting under this license, Sun did not file the required documents with the Department of Commerce. By not complying with this license condition, Sun committed one violation of section 764.2(a) of the Regulations; and

BIS and Sun 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 \$5,000 is assessed against Sun, which Sun shall pay 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.

Order
Sun Microsystems, Inc.
Page 3 of 3

§§ 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, Sun 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 Sun. Accordingly, if Sun should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Sun'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.