

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

In the Matter of:)
)
Infineon Technologies Industrial Power, Inc.)
1050 Rote 22 West)
Lebanon, NJ 08833)
)
)
Respondent)

ORDER RELATING TO INFINEON TECHNOLOGIES INDUSTRIAL POWER

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has initiated an administrative proceeding against Infineon Technologies Industrial Power, Inc. (“Infineon”), pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),² through issuance of a charging letter to Infineon that alleged that Infineon committed three violations of the Regulations. Specifically:

Charges 1-3: 15 C.F.R. §764.2(a) – Export of Items to Chile without a License.

On three occasions, on or about February 2, 2005, on or about February 9, 2006, and on or about June 5, 2006, Infineon engaged in conduct prohibited by the Regulations when it

¹ The violations alleged to have been committed occurred between 2005-2006. The Regulations governing the violations at issue are found in the 2005-2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005-2006)). The 2008 Regulations establish the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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 most recently by the Notice of July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)).

exported certain switching devices to Chile without the export licenses required by the Regulations. This equipment was classified as 3A228 under the Regulations, and its export to Chile required a license pursuant to Section 742.3 of the Regulations. In exporting these items to Chile without the required export license, Infineon committed three violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Infineon have 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

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$70,000 is assessed against Infineon, 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, Infineon 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 Infineon. Accordingly, if Infineon should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Infineon'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.



Kevin Delli-Colli
Acting Assistant Secretary of Commerce
for Export Enforcement

Entered this 11th day of march, 2009.

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

In the Matter of:)
)
Infineon Technologies Industrial Power, Inc.)
1050 Rote 22 West)
Lebanon, NJ 08833)
)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by Infineon Technologies Industrial Power, Inc. (“Infineon”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),²

¹ The violations alleged to have been committed between 2005-2006. The Regulations governing the violations at issue are found in the 2005-2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005-2006)). The 2008 Regulations establish the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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 most recently by the Notice of July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)).

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WHEREAS, BIS has initiated an administrative proceeding against Infineon, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a charging letter to Infineon that alleged that Infineon is liable for three violations of the Regulations, specifically:

Charges 1-3: 15 C.F.R. §764.2(a) – Export of Items to Chile without a License.

On three occasions, on or about February 2, 2005, on or about February 9, 2006, and on or about June 5, 2006, Infineon engaged in conduct prohibited by the Regulations when it exported certain switching devices to Chile without the export licenses required by the Regulations. This equipment was classified as 3A228 under the Regulations, and its export to Chile required a license pursuant to Section 742.3 of the Regulations. In exporting these items to Chile without the required export license, Infineon committed three violations of Section 764.2(a) of the Regulations.

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Infineon, under the Regulations, in connection with the matters alleged in the charging letter.
2. The following sanction shall be imposed against Infineon in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the charging letter:
 - a. Infineon shall be assessed a civil penalty in the amount of \$70,000, all of 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 Infineon. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Infineon'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, Infineon 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 any 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.

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4. Upon entry of the Order and timely payment of the \$70,000 civil penalty, BIS will not initiate any further administrative proceeding against Infineon in connection with any violation of the Act or the Regulations arising out of the transactions identified in the charging letter.

5. BIS will make the 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

Thomas Madigan
Thomas Madigan
Director
Office of Export Enforcement

Date: March 6, 2009

INFINEON TECHNOLOGIES
INDUSTRIAL POWER, INC.

Mario Campello
Mario Campello
President
Infineon Technologies Industrial Power, Inc.

Date: February 25th, 2009

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Infineon Technologies Industrial Power, Inc.
1050 Rote 22 West
Lebanon, NJ 08833

Attn: *Thomas Spreen*
Operations Manager

Dear Mr. Spreen:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Infineon Technologies Industrial Power, Inc. (“Infineon”), a Delaware corporation and wholly-owned subsidiary of Infineon Technologies North America Corp., has committed three violations of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that Infineon committed the following violations:

Charges 1-3: 15 C.F.R. §764.2(a) – Export of Items to Chile without a License.

On three occasions, on or about February 2, 2005, on or about February 9, 2006, and on or about June 5, 2006, Infineon engaged in conduct prohibited by the Regulations when it exported certain switching devices to Chile without the export licenses required by the Regulations. This equipment was classified as 3A228 under the Regulations, and its export to Chile required a license pursuant to Section 742.3 of the Regulations. In

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2008). The violations charged occurred in 2005-2006. Regulations governing the violations at issue are found in the 2005 and 2006 versions of the Code of Federal Regulations. See 15 C.F.R. Parts 730-774 (2005-06). The 2008 Regulations govern the procedural aspects of this case.

² 50 U.S.C. app. §§ 2401- 2420 (2000). Since August 21, 2001 the Act has been in lapse. However, 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 July 23, 2008 (73 Fed. Reg. 43,603 (Jul. 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 - 1706 (Westlaw 2008) (“IEEPA”). The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.

exporting these items to Chile without the required export license, Infineon committed three violations of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, Infineon 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 up to \$250,000 per violation;³
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Infineon 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. *See* 15 C.F.R. §§ 766.6 and 766.7 (2008). If Infineon defaults, the Administrative Law Judge may find the charges alleged in this letter to be true without a hearing or further notice to Infineon. 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.

Infineon 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. *See* 15 C.F.R. § 766.6 (2008). Infineon is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. 15 C.F.R. §§ 766.3(a) and 766.4 (2008).

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2008). Should Infineon have a proposal to settle this case, Infineon's representative should transmit it through the attorney representing BIS, who is named below.

Infineon is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Infineon may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Infineon'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

³ *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

Infineon Technologies Industrial Power
Proposed Charging Letter
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40 S. Gay Street
Baltimore, Maryland 21202-4022

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

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

Camille M. Caesar is the attorney representing BIS in this case; any communications that Infineon may wish to have concerning this matter should occur through her. Ms. Caesar may be contacted by telephone at (202) 482-2288.

Sincerely,

Thomas Madigan
Director
Office of Export Enforcement