



E591-1  
UNITED STATES DEPARTMENT OF COMMERCE  
Bureau of Export Administration  
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

IBM East Europe/Asia, Ltd.  
18 Bakhrushina Street  
Moscow 113054  
Russia

Dear Sir/Madam:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described below, IBM East Europe/Asia, Ltd. (IEEA) has violated the Export Administration Regulations (15 C.F.R. Parts 730-774 (1993)) (EAR, or the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act).

Facts constituting violations:

Charges 1-16

In mid-1996, IEEA began negotiations to sell 16 RS/6000 Model 7013-591 computers, each with a Composite Theoretical Performance (CTP) of 275.8 MTOPS and classified on the Commerce Control List under ECCN 4A000, to the Russian company Ofort, which represented the ultimate destination to be another Russian company, Pangea, for use in the petroleum sector. Both Ofort and Pangea are Russian affiliate companies of Jet InfoSystems, a Russian company that IEEA knew had acted as agent for the Russian Federal Nuclear Center with regard to the purchase of other computers for the Russian nuclear laboratory Arzamas-16. The RS/6000 Model 7013-591 computers were manufactured abroad, but were "subject to the EAR" as defined in Section 734.3 of the Regulations. IEEA knew that the computers were subject to the Regulations and that they could not be sold for use by Arzamas-16 in nuclear explosive activities, including research on or development, design, manufacture, construction, testing or maintenance of any nuclear explosive device, or components or subsystems of such a device.

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The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices on August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)) (IEEPA).



In September 1996, IEEA sold 16 RS/6000 Model 7013-591 computers to Ofort, and arranged for their export from Germany to Ofort's shipping agent in The Netherlands. On or after October 3, 1996, the computers were reexported by the shipping agent in The Netherlands to Arzamas-16 in Russia without any party having applied for or obtained the license that was required by Section 744.2(a)(1) of the Regulations for the export of computers subject to the EAR for a nuclear end-use in Russia. BXA alleges that IEEA had sufficient knowledge of the circumstances of this transaction for IEEA to be held accountable under the Regulations for the failure to apply for and obtain a license, and that, by engaging in conduct prohibited by or contrary to the Act, the Regulations, or any order, license or authorization issued thereunder, IEEA violated Section 764.2(a) of the Regulations in connection with each of the 16 computers.

#### Charge 17

During 1996, IEEA also negotiated to sell an RS/6000 Scalable Powerparallel System, Model 9076-308 computer with a CTP of 4,300 MTOPS, which was classified on the Commerce Control List under ECCN 4A003, to the Russian company Ofort, which represented that the end-use was for its own commercial research applications. Ofort is a Russian affiliate company of Jet InfoSystems, a Russian company that IEEA knew had acted as agent for the Russian Federal Nuclear Center with regard to the purchase of other computers for the Russian nuclear laboratory Arzamas-16. The RS/6000 Model 9076-308 computer was manufactured abroad, but was "subject to the EAR" as defined in Section 734.3 of the Regulations. IEEA knew that the computer was subject to the Regulations, and knew that License Exception CTP was not available under Section 740.7(d)(3) of the Regulations for delivery of such a computer to a military end-user such as Arzamas-16 and that such a computer could not be supplied for nuclear end-uses prohibited by Section 744.2(a)(1) of the Regulations.

In November 1996, IEEA sold the RS/6000 Scalable Powerparallel System, Model 9076-308 computer to Ofort. In early December 1996, Jet InfoSystems, without informing IEEA, generated an invoice to Arzamas-16 reflecting its sale of one RS/6000 Model 9076-308 computer to Arzamas 16. In late December 1996, IEEA arranged for the export of the computer from Germany to Ofort's shipping agent in The Netherlands. In February 1997, the computers were reexported by the shipping agent from the Netherlands to Russia. According to the shipping documents, the computers were destined for delivery to Arzamas-16. No party to the transaction applied for or obtained the license that was required by Sections 742.12(a) and 742.12(b)(3) of the Regulations. BXA alleges that IEEA had sufficient knowledge of the circumstances of this transaction for IEEA to be held accountable under the Regulations for the failure to apply for

and obtain a license, and that, by engaging in conduct prohibited by or contrary to the Act, the Regulations, or any order, license or authorization issued thereunder, IEEA violated Section 764.2(a) of the Regulations in connection with the RS/6000 Model 9076-308 computer.

BXA alleges that IEEA violated Section 764.2(a) in connection with each of the 16 RS/6000 Model 7013-591 computers, as well as in connection with the RS/6000 Model 9076-308 computer, for a total of 17 violations of the Regulations.

Accordingly, IEEA 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 \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If IEEA fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

IEEA is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer. It is also entitled to be represented by counsel and to seek a settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required

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The maximum civil penalty allowed by law under the Export Administration Act for violations involving national security is \$100,000. The maximum civil penalty allowed by law during periods when the Regulations are continued in effect by Executive Order under the IEPA is \$10,000 through October 22, 1996, and \$11,000 for any violation committed on or after October 23, 1996 (15 C.F.R. § 6.4(a)(3) (1998)).

under the Regulations, in connection with the matters set forth in this letter. Accordingly, IEEA's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of IEEA's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Lorie B. Whitaker, Esq." below the address. Ms. Whitaker may be contacted by telephone at (202) 482-5311.

Sincerely,

Mark D. Menefee  
Acting Director  
Office of Export Enforcement

Enclosures



WHEREAS, IEEA has reviewed the proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed if the allegations are found to be true; it fully understands the terms of this Settlement Agreement; it enters into this Settlement Agreement voluntarily and with full knowledge of its rights, and it states that no promises or representations have been made to it other than the agreements and considerations expressed herein;

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

WHEREAS, IEEA wishes to settle and dispose of all the matters alleged in the proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, IEEA agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (appropriate Order);

Now Therefore, IEEA and BXA agree as follows:

1. BXA has jurisdiction over IEEA, under the Act and the Regulations, in connection with the matters alleged in the proposed Charging Letter.

2. BXA and IEEA agree that the following sanctions shall be imposed against IEEA in complete settlement of all alleged violations of the Act and the Regulations arising out of the transactions set forth in the proposed Charging Letter:

a. IEEA shall be assessed a civil penalty in the amount of \$171,000, which shall be paid in accordance with the

instructions provided, within 30 days of the date of entry of the appropriate Order.

- b. For a period of two years from the date of entry of an appropriate Order, IEEA and all of its successors or assigns, and all of its officers, representatives, agents, and employees when acting for or on behalf of IEEA, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:
- i. applying for, obtaining, or using any license, License Exception, or export control document;
  - ii. carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
  - iii. benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the

Regulations, or in any other activity subject to the Regulations.

- c. As authorized by Section 766.18(c) of the Regulations, this denial of export privileges shall be suspended for a period of two years from the date of entry of the appropriate Order, and shall thereafter be waived, provided that, during the period of suspension, IEEA has committed no violation of the Act, or any regulation, order or license issued thereunder.
  - d. The timely payment of the 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 IEEA. Failure to make the timely payment of all or any portion of the civil penalty shall result in the denial of all of IEEA's export privileges for a period of one year from the date of entry of the appropriate Order.
3. IEEA agrees that, for a period of two years from the date of entry of an appropriate Order:
- a. IEEA's eligibility to export or reexport under the authority and conditions of License Exception CTP as set forth in Section 740.7 of the Regulations is suspended pursuant to Section 740.2(a)(1). However, during the two-year period, IEEA is eligible to apply for a license for any transaction that would ordinarily be eligible for

export or reexport under License Exception CTP;  
and

- b. IEEA will not engage in any sale or participate in any way, directly or indirectly, in any activity, including an activity such as repair, maintenance or in-country transfer, that is subject to the Regulations, involving any military or nuclear end-user or end-use, without prior written authorization from BXA; and
- c. IEEA understands and acknowledges that, if it or any of its officers, representatives, agents, or employees, when acting for or on behalf of IEEA, acts contrary to the provisions of paragraphs 3.a. or 3.b. above, IEEA, following notice and opportunity for hearing, will be subject to the sanctions available under the Regulations, including the reinstatement of the suspended denial period set forth in paragraph 2 above.

4. IEEA agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the appropriate Order, when entered, or any alleged failure to satisfy any condition of the suspension and waiver of the denial of export privileges as provided in paragraph 2.c. hereof), including, without limitation, any right: (a) to an administrative hearing regarding the allegations in the proposed

Charging Letter; (b) to request a refund of the civil penalty imposed pursuant to this Settlement Agreement and the appropriate Order, when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

5. BXA agrees that, upon entry of an appropriate Order, it will not initiate any further administrative proceedings against IEEA, or any affiliate or parent company of IEEA, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed Charging Letter or that were the subject of investigation by BXA, or that are otherwise known by BXA as of the date of this Settlement Agreement in connection with these transactions.

6. BXA agrees that, upon entry of an appropriate Order, it will not exercise its discretionary authority under Section 11(h) of the Act to deny or restrict the license eligibility of IEEA, or any affiliate or parent company of IEEA, by reason of any conviction of IEEA for any violation of the Act, the Regulations, or the International Emergency Economic Powers Act, on account of such transactions.

7. IEEA understands that BXA will make the proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered, available to the public.

8. BXA and IEEA agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not issued by the Assistant Secretary for Export Enforcement pursuant to

Section 766.18(a) of the Regulations, BXA and IEEA agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

9. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement 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.

10. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a decision and Order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE

Mark D. Menefee  
Mark D. Menefee  
Acting Director  
Office of Export Enforcement

IBM EAST EUROPE/ASIA, LTD

Bruce A. Baird  
Bruce A. Baird  
Attorney for IBM East  
Europe/Asia, Ltd.

Peter L. Flanagan  
Peter L. Flanagan  
Attorney for IBM East  
Europe/Asia, Ltd.

Date: 7/31/98

Date: 7/31/98



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 \$171,000 is assessed against IEEA, which shall be paid to BXA within 30 days of 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.A. §§ 3701-3720E (1983 and Supp. 1998)), 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, IEEA will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that for a period of two years from the date of entry of this Order, IEEA and all of its successors or assigns, and all of its officers, representatives, agents, and employees when acting for or on behalf of IEEA shall be denied all privileges of participating, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;

- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has

been exported from the United States;

- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

FIFTH, that, in the event the suspension, provided for in paragraph SEVENTH herein, of the denial of export privileges described in paragraphs THIRD and FOURTH herein is vacated, the provisions of § 766.23 of the Regulations, including the procedures described therein, shall be applicable.

SIXTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

SEVENTH, that, as authorized by Section 766.18(c) of the Regulations, this denial of export privileges shall be suspended for a period of two years from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, IEEA has committed no violation of the Act, or any regulation, order or license issued thereunder.

EIGHTH, that, for a period of two years from the date of this Order, IEEA's eligibility to export or reexport under the authority and conditions of License Exception CTP as set forth in Section 740.7 of the Regulations is suspended pursuant to Section 740.2(a)(1). However, during the two-year period, IEEA is eligible to apply for a license for any transaction that would ordinarily be eligible for export or reexport under License Exception CTP.

NINTH, that, for a period of two years from the date of this Order, IEEA may not engage in any sale or participate in any way, directly or indirectly, in any activity, including an activity such as repair, maintenance or in-country transfer, that is subject to the Regulations, involving any military or nuclear end-user or end-use, without prior written authorization from BXA.

TENTH, that, if IEEA or any of its officers, representatives, agents, or employees, when acting for or on behalf of IEEA, acts contrary to the provisions of paragraphs EIGHTH and NINTH of this Order, IEEA, following notice and opportunity for hearing, will be subject to the sanctions

available under the Regulations, including the reinstatement of the suspended denial period set forth herein.

ELEVENTH, 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.

  
A. Amanda DeBusk  
Assistant Secretary  
for Export Enforcement

Entered this 31<sup>st</sup> day of July, 1998.