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

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jason Liao
individually, and doing business as
JFD International
3370 Monroe Street
Santa Clara, California 95051

Dear Mr. Liao:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that Jason Liao, individually, and doing business as JFD International (hereinafter referred as Liao) has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2001)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2001)) (the Act).²

¹ The Regulations governing the violations at issue are found in the 1996 and 1997 versions of the Code of Federal Regulations, (15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996) (hereinafter "the former Regulations")), and 15 C.F.R. Parts 768-799 (1997)). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 *Federal Register* publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BXA alleges occurred. The 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 August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations then in effect under the International Emergency Economic Powers Act (50 U.S.C. A. §§ 1701 - 1706 (1991 & Supp. 2001)) (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 (66 *Fed. Reg.* 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.



Charge 1

On or about December 9, 1996, Liao exported detector log video amplifiers from the United States to the People's Republic of China (PRC) without the validated export license required under Section 772A.1(b) of the former Regulations. BXA alleges that, by exporting from the United States commodities contrary to the provisions of the Act or any regulation, order, or license issued thereunder, Liao violated 787A.6 of the former Regulations.

Charge 2

In connection with Charge 1 above, Liao knew or had reason to know that export of detector log video amplifiers to the PRC required a validated export license. BXA alleges that, by selling or transferring commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act or any regulation, order or license issued thereunder had occurred, was about to occur, or was intended to occur, Liao violated Section 787A.4 of the former Regulations.

Charge 3

On or about January 27, 1997, Liao exported detector log video amplifiers from the United States to the PRC without the license required under Sections 742.4 and 742.5 of the Regulations. BXA alleges that, by engaging in conducted prohibited by the Act, the Regulations, or any order, license or authorization issued thereunder, Liao violated Section 764.2(a) of the Regulations.

Charge 4

In connection with Charge 3 above, Liao knew or had reason to know that the export of detector log video amplifiers to the PRC required a license. BXA alleges that, by selling or transferring commodities exported or to be exported from the United States with knowledge that a violation of the Act, or the Regulations, or any order, license or authorization issued thereunder, had occurred, was about to occur, or was intended to occur, Liao violated Section 764.2(e) of the Regulations.

Charge 5

On or about July 18, 1997, Liao issued an invitation letter to Mr. Hu Changhong, inviting him and his colleagues, Mr. Wang Yongan and Mr. Qiu Yijie, to the United States. Messrs Hu, Wang, and Qui were citizens of the PRC, not citizens or permanent resident aliens of the United States. At the time Liao issued the invitation letter, he knew or had reason to know that Suntek Microwave Inc. (Suntek) would release U.S.-origin technology to them. The three individuals subsequently entered the United States and Suntek released U.S.-origin technology to them. Suntek's release of the technology within the United States to citizens of the PRC constituted exports under 734.2(b) of the Regulations and required licenses from BXA, which were not obtained. BXA alleges that, by causing, aiding or abetting any act prohibited by the Act, the Regulations, or any order, license or authorization issued thereunder, Liao violated Section 764.2(b) of the Regulations.

BXA alleges that Liao committed one violation each of Sections 787A.4 and 787A.6 of the former Regulations, and one violation of Section 764.2(a), one violation of Section 764.2(b), and one violation of Section 764.2(e), for a total of five violations.

Accordingly, Liao is hereby notified that an administrative proceeding is instituted against him 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 (see Section 764.3(a)(1) of the Regulations and 15 C.F.R. § 6.4(a)(3)(2001));

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).

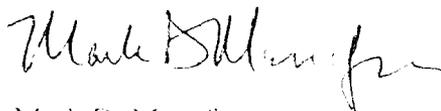
Copies of relevant Parts of the Regulations are enclosed.

If Liao 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.

Liao is further notified that he 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 his answer, to be represented by counsel, and to seek a consent 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 under the Regulations, in connection with the matters set forth in this letter. Accordingly, Liao's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of Liao's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Mi-Yong Kim, Esq." below the address and all communication with BXA concerning this matter should be directed to Ms. Kim. Ms. Kim may be contacted by telephone at (202) 482-5311.

Sincerely,



Mark D. Menefee
Director
Office of Export Enforcement

Enclosures

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
OFFICE OF THE ADMINISTRATIVE LAW JUDGE
ALAMEDA, CALIFORNIA

In the Matter of:

JASON LIAO
Individually, and d/b/a
JFD INTERNATIONAL

Respondent

Docket No's. 01-BXA-17

RECOMMENDED DECISION AND ORDER

Before:

HON. PARLEN L. MCKENNA
Administrative Law Judge

Appearances:

MI-YONG KIM, ESQ.

For the Bureau of Industry and Security

JENNIFER ZHONG

Lay Representative for Jason Liao, individually and doing business as JFD
International

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I.
PRELIMINARY STATEMENT

On December 5, 2001, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BIS or Bureau)¹ charged Jason Liao, individually, and doing business as JFD International (hereinafter referred collectively as Liao) with five violations of the Export Administration Regulations (EAR), codified at 15 C.F.R. §§ 730-774 (2001) issued pursuant to the Export Administration Act (EAA) of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1991 and Supp. 2001)).² BIS seeks \$11,000 per violation, denial of export privileges, and/or exclusion from practice before BIS. The charges were as follows:

Charge 1 alleged Liao exported detector log video amplifiers (DLVA or amplifiers) from the United States to the People's Republic of China (China) on or about December 9, 1996. Liao exported the DLVAs without a license as required by 15 C.F.R. § 772A.1(b). This conduct, contrary to the Act, violated 15 C.F.R. § 787A.6 of the former regulations.

Charge 2 alleged Liao knew or had reason to know that the export of DLVAs to China required a license as described in Charge 1. Liao's act of selling or transferring the DLVAs with knowledge of the license requirement violated 15 C.F.R. § 787A.4 of the former regulations.

¹ The Bureau of Export Administration issued the charging letter on December 5, 2001. Through an internal organizational order, the Department of Commerce changed the name of the Bureau of Export Administration to Bureau of Industry and Security (BIS). See Industry and Security Programs: Change of Name, 67 Fed. Reg. 20630 (Apr. 26, 2002). Pursuant to the Savings Provision of the order, "Any actions undertaken in the name of or on behalf of the Bureau of Export Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Bureau of Industry and Security." Id. at 20631.

² BIS's authority under the EAA has been re-authorized three times through various Executive Orders. The most recent Executive Order continues the EAA citing national security reasons in Executive Order 13222. See 68 Fed. Reg. 47833 (August 7, 2003).

Charge 3 alleged Liao exported DLVAs from the United States to China without a license as required by 15 C.F.R. §§ 742.2 and 742.5 on or about January 27, 1997. Liao's conduct was contrary to the Act and violated 15 C.F.R. § 764.2(a).

Charge 4 alleged Liao knew or had reason to know that export of DLVAs to China required a license as described in Charge 3. Liao's act of selling or transferring DLVAs with knowledge of the license requirement violated 15 C.F.R. § 764.2(e).

Charge 5 alleged Liao issued an invitation letter to visit the United States to Mr. Hu Changhong, which also included invitations to Mr. Wang Yongan, and Mr. Qiu Yijie, all citizens of the China. Liao knew Suntek Microwave, Inc. (Suntek) would release United States - origin technology to them during their visits to the United States. These Chinese citizens came to the United States pursuant to that invitation and Suntek released United States- origin technology to them. The act of releasing technology to Chinese citizens constituted an export under section 734.2(b) and required a license issued from BIS. Liao's conduct of aiding or abetting a prohibited act violated section 764.2(b).

On February 5, 2002, the Respondent filed a timely answer denying all of the charges. Importantly, on October 19, 2000, the United States Attorneys Office (San Jose Division) filed felony charges against Silicon Telecom Industries, Inc., Charley Kuan, and Jason Liao. The alleged violations were conspiracy (18 U.S.C. § 371); and Violation of Export Administration Regulations regarding exports to China (Title 50, U.S.C. § 1705 (b)). Rather than defending against the indictment, Liao fled the United States and his current location is unknown. Mr. Kuan entered into a Plea Agreement with the United States Attorney and entered a plea of Guilty to the Charges.

Finding good cause shown, the parties were granted adequate time for settlement discussions prior to the assignment of a judge and the setting of a hearing date. See 15

C.F.R. § 766.17(d).³ The parties did not reach settlement and on May 22, 2003, the Chief Administrative Law Judge issued an Order of Assignment of Administrative Law Judge and Notice of Hearing. By that Order, the Chief Administrative Law Judge took notice that Liao's wife, Jennifer Zhong, previously filed documentation on his behalf.

Therefore, Ms. Zhong was directed to file a Notice of Appearance, signed by Liao and herself, designating Ms. Zhong as Liao's representative in this matter.

The undersigned Judge scheduled a hearing to commence on October 21, 2003. The BIS regulations provide, "[a]ll hearings will be held in Washington, D.C., unless the administrative law judge determines, for good cause shown, that another location would better serve the interests of justice." 15 C.F.R. § 766.13. Here, Ms. Zhong explained that traveling to Washington, D.C., to represent Liao would cause her extreme economic hardship. Further, Ms. Zhong stated that all of the witnesses she anticipated calling were located in California. Without objection from BIS, the undersigned concluded that good cause was shown and noticed the hearing to be held on October 21, 2003 in Alameda, California.

On October 3, 2003, BIS filed a Request for a Chinese (Mandarin) Interpreter. That request was granted and a Teresa Wong was authorized to serve as the interpreter.

The parties were ordered to file witness and exhibit lists no later than the close of business on October 19, 2003 (See Attachment A). After the hearing, the record remained open until December 10, 2003, for filing of post-hearing briefs. BIS filed a motion on December 8, 2003, requesting additional time to file its post-hearing brief. The Bureau's request to extend the filing date for of post-hearing briefs to December 15,

³ Administrative enforcement proceedings (including review by the Under Secretary) shall conclude within one year of submission of the charging letter, unless good cause shown. 15 C.F.R. § 766 (17)(d).

2003 was granted. On November 8, 2003, Jennifer Zhong filed a letter and seven exhibits. Ms. Zhong's filing was construed as a post-hearing brief. Upon review of the documents, the undersigned finds that the filing contained materials not previously admitted into the record. Therefore, Ms. Zhong's proffer is found to be untimely and are hereby rejected. Further, Ms. Zhong did not provide enumerated proposed findings of facts and conclusions of law. Rulings on enumerated proposed findings of fact and conclusions of law submitted by BIS are set forth in Attachment B.

Attachment C contains applicable regulations that were referenced in the Charging Letter filed against Liao and further referenced in this Recommended Decision and Order. Parties may refer to Attachment D for details regarding review by the Under Secretary and appeal procedures.

II.

APPLICABLE STATUTES AND REGULATIONS

The acts constituting violations of the export control laws and regulations alleged by BIS in the Charging Letter occurred in 1996 and 1997. Charges 1 and 2 concern acts that occurred in 1996. Charges 3, 4, and 5 involve acts that occurred in 1997. Thus, the regulations extant for each of the respective years is applicable.

A. Statutes/Executive Orders

On August 20, 2001, the EAA and underlying regulations expired. See 50 U.S.C. app. § 2419. Three days prior to the termination date, the President signed an Executive Order continuing the regulations declaring that the lapse of the EAA constituted an "unusual and extraordinary threat to the national security, foreign policy, and economy of the United States". See Exec. Order. No. 13222, 3 C.F.R. at 783-784, (2001). Exercising authority under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §

1701-1706 (2000), the President maintained the effectiveness of the EAA and all regulations thereunder. The effectiveness of the export control laws and regulations were further extended by Notice issued by the President on August 14, 2002 and August 7, 2003. See Notice of August 14, 2002: Continuation of Emergency Regarding Export Control Regulations, *reprinted* in 3 C.F.R. at 306 (2003) and Notice of August 7, 2003: Continuation of Emergency Regarding Export Control Regulations. The continuation and effectiveness of the EAA and its regulations through the issuance of Executive Orders by the President constitutes a valid exercise of authority. See Wisconsin Project on Nuclear Arms Control v. United States Dep't of Commerce, 317 F.3d 275, 278-279 (D.C. Cir. 2003); Times Publ'g Co. v. United States Department of Commerce, 236 F.3d 1286, 1290 (11 Cir. 2001).

B. Regulations

The Regulations governing the violations at issue are found in the 1996 and 1997 versions of the Code of Federal Regulations, (15 C.F.R. Parts 768-799(1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996) (the former Regulations)), and 15 C.F.R. Parts 730-774 (1997) (the Regulations)). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 *Federal Register* publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BIS alleges occurred. The Regulations establish the procedures that apply to this matter.

III.

FINDINGS OF FACT

The following Findings of Fact are based on the entire record including the documentary evidence and the testimony of the witnesses who testified at the hearing.

The facts of this case are as follows:

A. Background

1. Jason Liao, a United States Citizen, received a doctorate in civil engineering from Colorado State University. (Gov't Ex. 12).⁴
2. Liao operated JFD International (JFD) with his wife, Jennifer Zhong, and Francis Chang out of their home in Santa Clara, California. (Gov't Ex. 12).
3. JFD was a sales and marketing company representing United States manufacturers to customers in China and Korea. (Gov't Ex. 12).
4. In 1996, Charlie Kuan, Jason Liao, William Yu, and Chengdu Jeway Microwave Communication Corp. (Jeway) formed Suntek Microwave, Inc. (Suntek), a joint venture engaged in research, development, marketing and production of microwave communication products. (Gov't Ex. 4).
5. Suntek's Pre-Incorporation Agreement recorded the initial shareholder contribution as: Liao 10%; Jeway Corporation 50%; Charlie Kuan 25%; William Yu 10%; and Key Employee Team 5%. (Gov't Ex. 4.)
6. Shareholder Jeway is a Chinese registered joint venture which entered into a contract with Southwest Research Institute of Electronic Equipment (SIWI) in

⁴ The citations in this Initial Decision and Order are as follows: Transcript followed by the page number, (Tr. ____); Agency Exhibit followed by number (Gov't Ex. ____); and Respondent Exhibit followed by a letter (Resp Ex. ____).

April of 1997. SIWI is a Chinese Government controlled company located in Chengdu, China (Gov't Ex. 5). The purpose of the contract was to transfer microwave component manufacturing technology from Jeway to SIWI. (Tr. 49; Gov't Ex. 5, 32).

7. The Chairman of the Board for Jeway is Wang Lei Pei, former manager of a Chinese Government controlled company known as the 29th Research Institute of the Ministry of Electronics (29th Institute) located in Chengdu, China. (Tr. 45, 46, 49, and 126; Gov't Ex. 5, 9). Previously, Mr. Pei managed SIWI. (Tr. 126; Gov't Ex. 32).
8. Mr. Kuan hired Liao as the Sales and Marketing Manager for Suntek in 1996. (Tr. 143; Gov't Ex. 12).

B. Export of Digital Video Log Amplifiers to China Without a License

9. Following the formation of Suntek in September 1996, Liao obtained specifications for 70 detector log video amplifiers (DLVA) Model SKA 1000 from Kunshan Technology Development Company (Kunshan) in Yangzhou, China. (Tr. 47-48; Gov't Ex. 12, 32).⁵
10. Upon receipt of the order for 70 DLVAs, Liao forwarded the specifications to Suntek for manufacturing 70 units of Model SKA 1000. (Tr. 47-48; Gov't Ex. 32).

⁵ In an interview with Special Agent Benjamin Robinson of BIS, Liao stated the purchaser of the 70 DLVAs was Santa Trading Company in Chengdu, China. Further, Liao stated that he knew Santa was not the end user. (Gov't. Ex. 12).

11. The Purchase Order, Quotation, Packing List, Invoices and checks generated for Model SKA 1000 list the California based company Silicon Valley Scientific Instruments Corp. (SVSIC) as the purchaser. (Tr. 56-59; Gov't Ex. 12, 32).⁶
12. Model SKA 1000 is a solid-state electronic amplifier and its primary purpose is to increase an electronic signal (Tr. 26).
13. Model SKA 1000 is used for commercial and military applications; therefore the Department of Commerce placed the commodity on the Commerce Control List for national security reasons. (Tr. 26-28). The Department of Commerce issues export licenses for such commodities exported to all countries. (Tr. 24).
14. Generally, Model SKA 1000 is made for general use. However, customers can provide a manufacturer with specifications to customize the commodity. (Tr. 28).
15. The specifications Liao received from the Chinese company Kunshan for Model SKA 1000 had a frequency range of 8-12 gigahertz. (Tr. 38; Gov't Ex. 3).
16. Model SKA 1000 is classified as a Category 3 commodity on the Commerce Control List. (Tr. 25-26).
17. John Verna, BIS licensing officer and electronic engineer responsible for evaluation of export applications, testified as an expert concerning Commerce Control List Category 3 and 4. (Tr. 23-35; Gov't Ex. 2, 16).
18. License determinations are made on a case-by-case basis and evaluation of intelligence shared from other federal agencies. Specifically, license applications

⁶ BIS did not offer testimony during the hearing detailing the relationship between SVSIC and Liao. However, the record does include an interview with Ling Wang, President and Owner of SVSIC. See Report of Investigative Activity at Gov't Ex. 12. (Tr. 144-146). During Ms. Wang's interview, she described Liao as an acquaintance and he asked her to act as the "middleman" on behalf of his company, JFD International, to place an order for 70 DLVAs Model SKA 1000 to Suntek. (Gov't Ex. 12). BIS entered the document into the record without objection by Liao.

for certain commodities are reviewed and controlled for national security reasons.
(Tr. 24-34).

19. Mr. Verna explained Category 3 commodities are regulated by Export Commodity Control Number (ECCN) 3A001.b.4.A. and a license is required if amplifiers exported to China exceed a frequency of 10.5 gigahertz. (Tr. 27-28, 39; Gov't Ex. 16).
20. Model SKA 1000 amplifiers are controlled for export to China for national security reasons and an exporter is required to obtain a license prior to export. (Tr. 34; Gov't Ex. 2, 16).
21. Mr. Verna concluded that during the time period of October, 1996, through July, 2000, a license was required for Liao's order of 70 Model SKA 1000 amplifiers exported to China. The reason a license was required was that the frequency range of 8-12 gigahertz exceeded the allowable 10.5 gigahertz. (Tr. 33-36, 39; Gov't Ex. 2, 16).
22. David Ports, a licensing officer for the Department of commerce, reviews license applications for dual use commodities. (Tr. 40-41).
23. In addition to licensing controls for amplifiers exceeding a frequency of 10.5 gigahertz, Mr. Ports testified that the technology associated with such commodities is also controlled under ECCN 3E001. (Tr. 41-42; Gov't Ex. 15).
24. Mr. Ports determined that the time period set forth from October of 1996, through July 2000, amplifier technology was controlled for national security reasons and an individual validated license was required for export to China or any foreign national. (Tr. 41-43; Gov't Ex. 15). Further, the transfer or release of amplifier

technology to any foreign national included any foreign national in the United States. (Tr. 43; Gov't Ex. 15).

25. Mr. Ports confirmed that license exceptions are available for exports but not to countries listed in group D:1. (Tr. 43).

26. China is a country in Group D:1; therefore no license exceptions are available. (Tr. 43).

C. Sale of 70 Digital LogVideo Amplifiers by Liao

27. Liao arranged the transaction between Suntek and SVSIC for 70 DLVAs with the assistance of SVSIC employee, Francis Chang.⁷ (Tr. 47-49; Gov't Ex. 12).

28. The Packing Lists and Invoices produced by Suntek showed the DLVAs were shipped to SVSIC; however, Liao actually received and took possession of the 70 amplifiers and hand-delivered the units to SVSIC. (Tr. 56-59; Gov't Ex. 12, 32).

29. Prime Transportation Corporation is a company operated out of Liao's home and was responsible for payments made to Suntek for the DLVAs. (Tr. 71-73; Gov't Ex. 12, 13).

30. On or about December 9, 1996, and on or about January 27, 1997, Liao hand-carried some of the DLVAs to China. (Tr. 49, 60, 69-70, 89; Gov't Ex. 12). Liao sent the remaining units to China via Federal Express. (Tr. 143-144; Gov't Ex. 12).

31. Suntek terminated Liao on May 16, 1997, for exporting 70 controlled amplifiers to China without a license and collecting a commission on the sale of the amplifiers without Mr. Kuan's approval. (Tr. 69-71; Gov't Ex. 9, 13).

⁷ JFD also employed Francis Chang. Mr. Chang's responsibilities at JFD included price quotes, shipping and receiving. (Gov't Ex. 12).

D. Liao's Knowledge of Licensing Requirement

32. Prior to Liao's employment at Suntek, he worked at Menlo Industries (Menlo) with the marketing department for exports to China. (Tr. 105-106).
33. In 1995, JFD assisted Menlo to obtain a license from the Department of Commerce for microwave amplifiers with a frequency range between 6-18 gigahertz. The contact person listed on the application submitted by JFD was Liao. (Gov't Ex. 27).
34. The amplifiers manufactured by Menlo and the DLVAs manufactured and exported in this case had the same technical parameters and were classified under the same ECCN number classification, 3A001.b.4.a.
35. In 1996, Frances Chang, a JFD employee, purchased amplifiers, ECCN number 3A01A, from DBS Microwave Inc. (DBS Microwave). The Invoice from DBS referenced JFD as the shipping and billing address.
36. The Invoice indicated that JFD would apply for the export license for this transaction with DBS Microwave. (Tr. 133-135; Gov't Ex. 36).

E. Invitations were sent to Chinese Nationals to Visit the United States in order to Obtain Amplifier Technology

37. Jeway, Chinese controlled and initial shareholder of Suntek, sent employees to the United States for the purpose of assisting Suntek to manufacture amplifiers and to obtain the technology associated with the amplifiers. (Tr. 77-82; Gov't Ex. 19).
38. The visiting Chinese nationals worked with the Vice President of Engineering of Suntek and acquired the manufacturing knowledge regarding the amplifiers. The knowledge obtained by the visiting Chinese Nationals was detrimental to the national security of the United States. (Tr. 27-28, 77-78).

39. Jennifer Zhong, acting on behalf of JFD, forwarded a letter dated July 18, 1997, to Mr. Hu Changhong, Project Manager of SIWI Electronics, inviting him and two colleagues, Mr. Wang Yongan and Mr. Qiu Yijie, to visit the United States from August 5, 1997 through October 15, 1997. (Tr. 78-799; Gov't Ex. 9, 17, and 25).
40. JFD facilitated the visits by Chinese nationals. (Tr. 83-84; Gov't Ex. 17).
41. JFD assumed the expenses incurred and obtained the necessary visas in an effort to facilitate the visit by the Chinese nationals. (Tr. 86, 88; Gov't Ex. 9, 17, 22-25).

IV.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Jason Liao, individually and doing business as JFD International, the subject matter of this proceeding, are properly within the jurisdiction of the Export Administration Act of 1979 (50 U.S.C. app. §§ 2401-2420) and the Export Administration Regulations (15 C.F.R. Parts 730-774).
2. BIS established by a preponderance of reliable, probative and substantial evidence that on or about December 9, 1996, Liao exported detector log video amplifiers from the United States to China without a validated export license as required under Section 772A.1(b) of the Former Regulations. Liao's conduct in exporting DLVAs without a license was contrary to the provisions of the Act and in violation of section 787A.6 of the Former Regulations.
3. BIS established by a preponderance of reliable, probative and substantial evidence that Liao knew or had reason to know that export of detector log video amplifiers on or about December 9, 1996, to China required a valid license under Sections

742A.2 and 742A.5 of the Former Regulations. Liao's conduct resulted in a violation of 787A.4 of the Former Regulations.

4. BIS established by a preponderance of reliable, probative, and substantial evidence that on or about January 27, 1997, Liao exported detector log video amplifiers from the United States to China without a license as required under Sections 742.4 and 742.5 of the Regulations. Liao violated 764.2(a) of the Regulations by exporting commodities from the United States without a license. Liao's conduct was contrary to the provisions of the Act.
5. BIS established by a preponderance of reliable, probative, and substantial evidence that Liao knew or had reason to know that export of detector log video amplifiers on or about January 27, 1997, to China required a license in the violation of 764.2(e) the Regulations.
6. BIS established by a preponderance of reliable, probative, and substantial evidence that on or about July 18, 1997, Liao issued an invitation letter to Mr. Hu Changhong, inviting him and fellow colleagues, M. Wang Yongan and Mr. Qiu Yije, to the United States. All three men were citizens of China, not citizens or permanent resident aliens of the United States. At the time Liao issued the invitation letter, he knew or had reason to know that Suntek would release United States- origin technology to them. The three individuals entered the United States and Suntek released United States- origin technology to them. The release of information to the three individuals from China constituted an export under 734.2(b) and a license was required. By causing, aiding or abetting a prohibited act, Liao violated Section 764.2(b) of the Regulations.

V.

DISCUSSION

A. Administrative Procedure Act

The EAA generally excludes application of the Administrative Procedure Act, as amended (5 U.S.C. §§ 551, 553-559; and §§ 701 to 706. See 50 U.S.C. app. § 2412(a)). Further, Title 15 of the Code of Federal Regulations for Part 766 Section 1 states in part, “This part does not confer any procedural rights or impose any requirements based on the Administrative Procedure Act (APA) for proceedings charging violations under the EAA, except as expressly provided for in this part.” However, the EAA does provide an exception to 50 U.S.C. app. § 2412(a) and 15 CFR 766.1. Actions involving civil penalties and sanctions for violations arising under 50 U.S.C. app. §§ 2407 and 2410, allow the party charged with an EAR violation to receive a formal complaint and at his request, a hearing before an administrative law judge.⁸ 50 U.S.C. app. § 2412(c)(1). Any such hearings held are conducted in accordance with sections 556 and 557 of the APA as provided pursuant to 15 C.F.R. Part 766. See 50 U.S.C. app. § 2412(c)(1). This case involved violations of §2410; therefore the administrative proceeding was conducted in accordance with section 556 and 557 of the APA.

The undersigned conducted the October 21, 2003, hearing in accordance with provisions of a letter from the United States Office of Personnel Management (OPM) and an interagency reimbursable agreement between the Coast Guard and the BIS dated December 30, 2002. “The OPM letter and the reimbursable agreement authorize Coast Guard Administrative Law Judges to adjudicate formal on-the-record hearings for cases

⁸ Section 2407 addresses prohibitions and exceptions to foreign boycotts and export violations of the EAA and underlying regulations are addressed in section 2410.

involving violations of U.S. export laws and regulations.” In the Matter of Mabdulamir Mahdi, 68 Fed. Reg. 57406, 57408 (October 3, 2003).

B. Burden of Proof

The burden of proof is on the Agency. In order to sustain that burden, BIS must prove the charges by reliable, probative and substantial evidence. 5 U.S.C. § 556(d); see also Steadman v. Securities and Exchange Commission, 450 U.S. 91, 98 (1981). In Steadman, the Supreme Court concluded that the legislative history of the APA intended the establishment of the traditional preponderance of evidence standard applied in civil proceedings. Id. at 102. In other words, the burden of satisfying the preponderance standard is accomplished when the trier of fact believes the existence of a fact is more probable than its nonexistence. Concrete Pipe & Products v. Construction Laborers Pension Trust, 508 U.S. 602, 622 (1993).

Here, BIS submitted overwhelming evidence to support the five charges filed against Liao. BIS offered the testimony of six witnesses without objection. Further, BIS proffered Exhibits 1 through 38 into evidence without objection. (TR. 11-12, 112, 132, 148-49). In rebuttal, Ms. Zhong proffered fourteen exhibits for admission into evidence. (Tr. 117-122). Exhibits 2, 3, 5, 6, 7, and 8 were not admitted because they were duplicative of the Government’s exhibits. (Tr. 117). Exhibits 1, 4, 7, 9, 10, 11, 12, and 14 were excluded for lack of relevancy. Further, exhibits 10 and 11 were rejected since they were written in Chinese, not translated into English, not dated, and not served on BIS until two days prior to the hearing. (Tr. 122). Finally, Ms. Zhong presented the testimony of one witness, Francis Chang.

C. Violations of the Export Administration Act and Regulations

1. Violations of 15 C.F.R. §787A.6 – Export, Diversion, Reexport, Transshipment.

In Charge 1, BIS alleged Liao exported detector video amplifiers (DLVA) on or about December 9, 1996, from the United States to China without a valid export license as required under 15 C.F.R. § 772A.1(b) of the Former Regulations. The failure to obtain a license to export the DLVAs resulted in a violation of 15 C.F.R. § 787A.6. Section 787A.6 basically provides that no person may export commodities or technical data to any person or destination for any use in violation of the terms, provisions, or conditions of the EAA or any regulation issued under the Act.

Liao violated Export Administration Regulation 15 C.F.R. § 772A.1(b), which requires a person to obtain a license for the export of commodities or technical data. Title 50 of the United States Code Appendix §2415(A) provides, “the term ‘export’ means- an actual shipment, transfer, or transmission of good or technology out of the United States.”

On or about December 9, 1996, Suntek released thirty (30) Model SKA 1000 amplifiers to Liao. (Tr. 49; Gov’t Ex. 12, 32). According to the purchase order, packing lists, and invoices, the amplifiers were to be shipped to SVSIC. (Gov’t Ex. 12). However, Liao exported the amplifiers out of the United States by hand-carrying the amplifiers to China. (Tr. 49, 60, 69-70, 89; 143-144; Gov’t Ex. 6, 12). On or about January 27, 1997, Suntek again released forty (40) Model SKA 1000 amplifiers to Liao. (Gov’t Ex. 12, 32). Liao exported this second group of amplifiers out of the United States to China via Federal Express. (Tr. 143-144; Gov’t Ex. 6, 12). The export of seventy (70) amplifiers out of the United States to China by Liao was accomplished

without an export license from the United States Department of Commerce. (Tr. 69-70; 143, 144; Gov't Ex. 6, 12, 28, 32).

In consideration of the entire record, including the lack of countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao violated 15 C.F.R. § 787A.6 and failed to obtain a license to export DLVAs to China as required by 15 C.F.R. § 772A.1(b).

**2. Violation of 15 C.F.R. § 787A.4(a) of the Former Regulations—
Acting with Knowledge of a Violation; Possession with Intent to
Export Illegally.**

In Charge 2, BIS alleged Liao knew or had reason to know that export of the DLVAs to China as described in Charge 1, required a validated export license; therefore he violated 15 C.F.R. § 787A.4 of the Former Regulations. According to section 787A.4(a), no person may sell or transfer any commodity or technical data, exported or cause to be exported from the United States, which is subject to EAR, with knowledge of an EAA violation or violation of any regulation, has occurred, is about to occur, or is intended to occur with respect to any transaction.

The issue for determination is whether Liao knew his failure to obtain an export license was in violation of Section 772A.1. Previously, Menlo employed Liao where he worked in the marketing department as a representative for the China market. (Tr. 105-107; Gov't Ex. 14). BIS introduced evidence from 1995 wherein Liao's company, JFD, obtained a license from the Department of Commerce for export of amplifiers to China on behalf of JFD and Menlo. (Gov't Ex. 27). The amplifiers at issue in this hearing and the amplifiers manufactured at Menlo and exported by JFD in 1995, were the same model and classified under the same Export Commodity Control Number (ECCN) 3A01A.b.4.a. (Tr. 72-74; Gov't Ex. 9, 27). The export license obtained for Menlo listed JFD as the

applicant and Jason Liao as the contact person. (Gov't Ex. 27). Moreover, Charlie Kuan also worked with Liao at Menlo during this time period and stated both men, Kuan and Liao, knew a license was required for export of amplifiers. (Tr. 73-74; Gov't Ex. 9, 14).

A similar transaction between JFD and DBS Microwave included the export of amplifiers with the same ECCN number, 3A01A.b.4.a, for export to China in 1996. (Tr. 133-135; Gov't Ex. 36). The invoices noted that JFD would apply for the required export license prior to shipment outside the United States. (Gov't Ex. 36). Further, Francis Chang, a JFD employee, testified that during the transaction with DBS Microwave, Liao knew a license was required. (Tr. 135).

During Liao's employment with Suntek, he knowingly arranged the export of DLVAs to a Chinese controlled company through his company JFD. Suntek Production Manager, William Yu, testified Liao knew the seventy (70) amplifiers exported to China required a license.⁹ (Tr. 107; Gov't Ex. 14). Charlie Kuan, President and Chairman of Suntek, further corroborated Mr. Yu's testimony. Specifically, Mr. Kuan testified that Liao knew an export license was required and assured Mr. Kuan he would be responsible for obtaining an export license. (Tr. 66-69).

In consideration of the entire record, including the lack of any countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao violated 15 C.F.R. § 787A.4 by acting with knowledge of a violation of the EAA.

⁹ Mr. Yu was born in China and immigrated to the United States in 1976 and received a bachelor of science degree and masters degree in electrical engineering from the University of California, Los Angeles. (Tr. 108-109). While employed at Suntek, Mr. Yu allowed Chinese nationals to rent his apartment while they trained at Suntek. (Tr. 108; Gov't Ex. 19, 24). Currently, Mr. Yu is Vice President of Technology at Cernex, Inc., which manufactures microwave amplifiers with a frequency range exceeding 10.5 gigahertz for customers in China. (Tr. 110-112; Gov't Ex. 33).

3. Respondent Engaged in Conduct Prohibited by the EAA and the EAR Resulting in a Violation of 15 C.F.R. § 764.2.

In Charge 3, BIS alleged on or about January 27, 1997, Liao exported DLVAs from the United States to China without a license as required under Sections 742.4(a) and 742.5(a). Section 742.4(a) restricts the export of items that would make a significant contribution to the military potential of any other country that would prove detrimental to the national security of the United States. Consequently, a license is required for all destinations, except Canada, for all items regulated by Export Commodity Control Number on the Commerce Control List. See 15 C.F.R. § 742.4 (a). The purpose of export controls in 15 C.F.R. §742.4(a) is to prevent contributions to the military potential of countries in Country Group D:1. Id. Moreover, extended review or denial of a license will occur on applications to China where the commodity would make a direct and significant contribution to electronic and anti-submarine warfare, intelligence gathering, power projection or air superiority. See 15 C.F.R. §742.4(b)(7).

The second regulation relied upon by BIS for violation of the EAR is 15 C.F.R. § 742.5 missile technology. In an effort to limit missile proliferation, a license is required for the export of items related to the design, development, production or use of missiles. 15 C.F.R. § 742.5. The purpose of this regulatory control is to ensure the national security of the United States. Id.

Here, BIS presented evidence that Liao engaged in prohibited conduct by exporting commodities regulated for national security reasons. In 1996 and 1997, Liao exported 70 amplifiers with a frequency range of 8-12 gigahertz to China. (Tr. 38; Gov't Ex. 3). The amplifiers are dual use electronics that can be used for commercial or military applications. (Tr. 26-28). National security concerns arise because Model SKA

1000 amplifiers can be used for the following military applications: radar, missile, radio, electronic warfare equipment, electronic countermeasure equipment, ESM, traveling wave tube replacement and simulators. (Tr. 27-28; Gov't Ex. 3). During this time period, Liao did not obtain a license for export of amplifiers to China. (Tr. 33-36, 39; Gov't Ex. 2, 16).

Given the above, Liao further violated the EAR by releasing technology that could potentially benefit China's military. Charlie Kuan, President of Suntek, explained one of the goals of Suntek was to bring Jeway employees to the United States to manufacture amplifiers and obtain technology associated with the amplifiers. (Tr. 75-89). Moreover, Liao's company, JFD International, arranged the visit of Chinese foreign nationals to Suntek for the purpose of learning about the manufacturing of amplifiers and associated technology. (Tr. 83-84; Gov't Ex. 17). Review of Government Exhibit 5, revealed JFD entered into a joint venture for the expressed purpose of passing technology gained from training in the United States to Chinese controlled company Jeway. (Gov't Ex. 5).

In consideration of the entire record, and lack of countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao violated 15 C.F.R. § 764.2(a) by exporting Model SKA 1000 amplifiers, with a frequency range of 8-12 gigahertz, and associated technology to China without the required license.

4. Violation of 15 C.F.R. § 764.2(e) by Acting with Knowledge of a Violation.

In Charge 4, BIS alleges Liao knew or had reason to know the DLVAs exported to China in Charge 3 required a license. Section 764.2(e) provides in part: a person may not buy, sell, dispose of, transfer, transport, or forward in whole or in part an item from

the United States that is subject to the EAR with knowledge that a violation occurred, was about to occur, or was intended to occur. The testimony and exhibits herein, previously found Liao knowingly violated the regulations because he knew a license was required for exports. Further, Liao's previous business transactions with JFD, Menlo, and DBS Microwave discussed above, demonstrated his knowledge of export violations.

In consideration of the entire record, and lack of countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao violated 15 C.F.R. § 764.2(e) by acting with knowledge of a regulation violation.

5. Liao Aided or Abetted in the Release of United States –Origin Technology to Three Chinese Nationals in violation of 15 C.F.R. § 764.2(b).

In Charge 5, BIS alleged on or about July 18, 1997, Liao issued invitation letters to three Chinese Nationals to visit the United States with knowledge that Suntek would release United States –origin technology to them. Further, the release of technology in the United States to citizens of China constituted an export under 15 C.F.R. § 734.2(b) and a license was required.

BIS asserts Liao aided or abetted in the prohibited act of releasing United States technology to Chinese nationals. Section 764.2(b) provides, “No person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited for the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder.”

Charlie Kuan, President of Suntek, explained one of the goals of Suntek was to bring Jeway employees to the United States to manufacture amplifiers and obtain technology associated with the amplifiers. (Tr. 75-89). During this time, Suntek had a very limited number of technicians; therefore, Suntek committed resources to bring

Jeway employees to the United States to assist technicians with the manufacturing of amplifiers. (Tr. 76). In an effort to facilitate the arrival of Jeway employees, JFD organized travel, boarding, and visa applications.

JFD employee, Francis Chang, received a letter from Liao Guozi, General Manager for Jeway, providing instructions for obtaining visa applications for three Chinese nationals traveling to the United States for training at Suntek. (Gov't Ex. 17). Mr. Guozi advised Mr. Chang to avoid mentioning Suntek in the invitation letters in an effort "to facilitate their visa applications and to protect Suntek". (Gov't Ex. 17). Mr. Guozi communicated that Chairman Wang instructed JFD to invite three engineers from SIWI for training on imported products at AEMI Co. located in San Diego. After a couple of days at AEMI, the three engineers would then go to Suntek. (Gov't Ex. 17). The Three engineers listed in Mr. Guozi's letter were: Wang Yongan, Hu Changhong, and Qiu Yijie. (Gov't Ex. 17). The correspondence also informed Mr. Chang that the engineers would be at Suntek for three months and expenses would be borne by JFD. (Gov't Ex. 17, 22-25).

The instructions from Mr. Guozi were corroborated with witness testimony and documentation. (Gov't Ex. 9, 17, 19, 22-25). Mr. Kuan, President of Suntek, testified that bringing Jeway employees to Suntek for training was a "company goal." (Tr. 75-76). JFD employee, Francis Chang, drafted a Letter of Invitation to Mr. Hu Changhong, Project Manager of SIWI dated July 18, 1997. The letter also invited Wang Yongan and Qiu Yijie to visit the United States for the purpose of receiving full installation training and perform quality inspection of microwave absorbers previously purchased from JFD. Although Francis Chang drafted the letter, Jennifer Zhong was listed as the signatory on behalf of JFD. (Tr. 124-129; Gov't Ex. 17). Liao approved the

practice of invitations letters on JFD letterhead sent to foreign nationals. These letters were drafted by Mr. Chang and signed by Mr. Chang, Liao, or Jennifer Zhong. (Tr. 125-128; Gov't Ex. 18).

In consideration of the entire record, and lack of countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao released United States – origin technology to three Chinese nationals without a license as required by 15 C.F.R. § 734.2(b). Further, Liao aided and abetted the prohibited act of inviting Chinese nationals and releasing technology to them by sending invitation letters to SIWI employees in violation of 15 C.F.R. § 764.2(b).

VI.

SANCTION

BIS requested the maximum civil penalty permitted, \$11,000.00 per violation. See 15 C.F.R. § 764.3(a)(1) and 15 C.F.R. § 6.4(a)(3)(2001). Further, BIS seeks denial of export privileges for a period of twenty (20) years under 15 C.F.R. § 764.3(a)(2)(2001) and exclusion from practice before BIS as described in 15 C.F.R. § 764.3(a)(3)(2001).

Several aggravating factors support the recommendation to order the maximum civil penalty, deny export privileges and exclude Liao from practice before BIS. Liao exported a restricted commodity without a license from the Department of Commerce. The seventy (70) amplifiers exported by Liao were controlled for national security reasons since they had dual-use capabilities serving the commercial industry or advancing military applications. Experts from the Department of Commerce explained the military applications of the amplifiers, Model SKA 1000, and associated technology could be used for radar, missile, radio, electronic warfare equipment, electronic countermeasure equipment, ESM, traveling wave tube replacement and simulators.

Mr. Kuan, President of Suntek, testified that bringing Jeway employees to the United States with the intent to acquire United States - origin amplifier technology was a company goal. Liao, initial shareholder and one of the founders of Suntek, aided and abetted in the release of United States- origin technology to Chinese controlled companies by issuing invitational letters to Chinese nationals. The purpose of the visits by Chinese nationals was to gain training and perform quality inspections of United States-origin amplifiers and associated technology.

Liao's employment history with Menlo and previous business transactions with JFD, DBS Microwave and Suntek, demonstrated his significant involvement with Model SKA 1000 amplifier exports. Furthermore, Liao facilitated the export of amplifiers to Chinese controlled companies through his company JFD. Coincidentally, another company, Prime Transportation Corporation, operated and controlled by Liao, provided payments for the amplifiers manufactured by Suntek. I find Liao individually, and doing business as JFD violated the EAA and EAR thus warranting the proposed civil penalty assessment by BIS, \$55,000.00, appropriate.

VII.

RECOMMENDED ORDER

WHEREFORE, IT IS HEREBY ORDERED that

Jason Liao, individually, and doing business as, JFD International be assessed the maximum civil penalty of Fifty-five Thousand Dollars and no/cents (\$55,000.00).

IT IS FURTHER ORDERED that for a period of 20 years from the date of this Order, Jason Liao, individually and doing business as JFD International, 3370 Monroe Street, Santa Clara, California 95051, and all of his successors or assigns and, when acting for him or his behalf, his officers, representatives, agents, and employees

(hereinafter collectively referred to as “Denied Persons”), hereby lose his/their /it’s export privileges and are excluded from practice before BIS. In this regard, the above-mentioned Denied Persons 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:

- 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.

IT IS FURTHER ORDER that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by a 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 a 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 a Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from a 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 a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a 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.

IT IS FURTHER ORDERED that after notice an opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IT IS FURTHER ORDERED 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. See Attachment D for Notice concerning review by Under Secretary and appeal rights in accordance with 15 C.F.R. § 766.22.

SO ORDERED,

A handwritten signature in black ink, appearing to read "Parlen L. McKenna", is written over a horizontal line.

Honorable Parlen L. McKenna
Administrative Law Judge

Done and dated this 5th day of April, 2004
Alameda, California

ATTACHMENT A
EXHIBIT LIST

A. Government Exhibits

- Gov't Ex. 1 Superseding Indictment of Silicon Telecom Industries, Inc. a/k/a JFD International, Suntek Microwave, Inc., Charlie Kuan, and Jason Liao
- Gov't Ex. 2 License determination from Department of Commerce for Suntek DLVA model SKA-1000
- Gov't Ex. 3 Letter from Charlie Kuan to Office of Export Enforcement dated February 3, 2000, regarding DLVA specifications and applications
- Report of Investigative Activity telephone interview with Charlie Kuan dated February 3, 2000, regarding specifications for Model SKA 1000
- Facsimile to Mr. Sheridan regarding Specifications SKA-1000 sent by Charlie Kuan
- Gov't Ex. 4 Pre-Incorporation Agreement dated May 20, 1996, for Suntek Microwave, Inc.
- Gov't Ex. 5 Contract between JFD International and SIWI Electronics Co.
- Gov't Ex. 6 Report of Investigative Activity interview of Jason Liao dated December 2, 1997
- Gov't Ex. 7 Chengdu JEWAY Microwave Communication Co. Ltd. marketing brochure
- Gov't Ex. 8 Chengdu SIWI Electronic Inc. marketing brochure
- Gov't Ex. 9 Report of Investigative Activity interview of Charlie Kuan, dated March 2, 2000
- Fax from JW, Wang Yongan to Suntek, Attention General Manager Kuan dated March 25, 1997
- Fax from Wang Yuwen to General Manager Yu dated June 26, 1997
- Fax from Liao Guozi to Charlie Kuan dated August 14, 1997
- Fax from Charlie Kuan to Wang Lipei dated March 12, 1998

- Gov't Ex. 10 License application for Suntek Microwave, Inc. dated March 4, 1997
- Gov't Ex. 11 Letter from Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, to Charlie Kuan regarding notice of intent to deny license application
- Bureau of Export Administration notice of denial of license application dated July 17, 1997
- Gov't Ex. 12 Report of Investigative Activity interview of Jason Liao dated December 2, 1997
- SVSIC Purchase Orders
- Suntek Packing Lists
- Suntek Invoices
- JFD International Invoices
- Letter from Charlie Kuan to Jason Liao regarding payment for DLVAs dated October 9, 1997
- Prime Intrans Corporation checks
- Report of Investigative Activity interview of Ling Wang, dated May 24, 2000
- Gov't Ex. 13 Letter from Charlie Kuan to Jason Liao regarding employment termination dated May 15, 1997
- Letter from Daniel C. Minutillo, Attorney for Suntek Microwave, inc., to Bureau of Export Enforcement regarding Suntek's voluntary self disclosure dated June 10, 1997
- Report of Investigative interviews of Charlie Kuan dated February 14, 2000 and February 14, 2000
- Gov't Ex. 14 William Yu Affidavit dated April 25, 2000
- Report of Investigative Activity interviews of Charlie Kuan dated October 27, 1997 and February 14, 2000
- Report of Investigative Activity interview of Melba Bauto dated February 17, 2000

Report of Investigative Activity interview of Russ Alm dated February 22, 2000

Report of Investigative Activity interview of Salim Kader dated February 1, 2000

- Gov't Ex. 15 License determination for amplifier technology
- Gov't Ex. 16 Licensing determinations for Models SKA-1002, 1004 and 1006
- Gov't Ex. 17 Letter of Invitation from JFD International to SIWI employees, July 18, 1997
- Fax from Francis Chang to Charlie Kuan dated August 25, 1997
- Fax from Charlie Kuan to Liao Guozi/JW dated August 25, 1997
- Fax from Liao Guozi to Charlie Kuan dated June 27, 1997
- Gov't Ex. 18 Letters of Invitation to SIWI and Jeway employees from JFD International
- Gov't Ex. 19 Contract between JFD and SIWI Electronics Co.
- Report of Investigative Activity interview of Charlie Kuan dated April 25, 2000
- Affidavit of William Yu dated April 25, 2000
- Gov't Ex. 20 Two Suntek Microwave, Inc. checks payable to Yan Jian Gui; each in the amount of Nine Hundred dollars (\$900.00)
- Memorandum dated July 30, 1997, from Charlie Kuan to Jianguo Yan regarding use of time clock
- Fax from Liao Guozi to Charlie Kuan dated August 14, 1997
- Gov't Ex. 21 Invoice from JFD International to Suntek dated December 13, 1996, regarding fees for B-1 visa extensions
- INS Notices of Action regarding Yong An Wang and An Lao Wang
- Affidavits of Support made by Jason Liao on behalf of Yong An Wang

- Gov't Ex. 22 Fax from Charlie Kuan to Liao Guozi/ JW dated October 1, 1997
- Gov't Ex. 23 Memorandum from Charlie Kuan to Jeway employees dated July 24, 1997, regarding telephone expenses
Suntek Microwave, Inc. check #1824 made payable to cash for September 1997 pocket money
- Gov't Ex. 24 Living Expenses Check paid by Suntek
- Gov't Ex. 25 Facsimile from Charlie Kuan to Liao Guozi/JW dated June 27, 1997
- Gov't Ex. 26 Facsimile from Charlie Kuan to Liao Guozi/JEWAY dated February 1, 1997
- Gov't Ex. 27 Export License obtained by JFD International for amplifiers manufactured by Menlo
- Gov't Ex. 28 Memo from Jason Liao to Charlie Kuan dated January 27, 1997, regarding Liao's receipt of 70 units of SKA – 1000 Amplifiers
- Gov't Ex. 29 Facsimile from Charlie Kuan to Wang Libu and Liao Guozi dated December 23, 1996
- Gov't Ex. 30 Memo from Jason Liao to Charlie Kuan and carbon copy to Bill Yu dated December 31, 1996 regarding results of DVLA after exported to China
- Gov't Ex. 31 Memo from Charlie Kuan to Liao Guozi/ JW dated April 7, 1998
- Gov't Ex. 32 Stipulation and Proposed Order for Unsealing of Factual Stipulation in U.S. v. Kuan, CR No. 00-20308-JW
Plea Agreement in U.S. v. Kuan, CR 00-20308-JW
- Gov't Ex. 33 Bill Yu, Vice President of Technology, Cernex, Inc. Business Card
- Gov't Ex. 34 Agreement on Partnership of JFD International and Fictitious Business Name Statements
- Gov't Ex. 35 Memo from Thomas Muir, Advanced Electromagnetics, Inc. to Francis Chang dated August 27, 1997 regarding absorber application training request

- Gov't Ex. 36 DBS Microwave, Inc. Order Acknowledgement, Packing Slips and Invoices addressed to JFD International
- Gov't Ex. 37 Bureau of Export Administration Charging letter to Jason Liao, individually, and doing business as JFD International dated December 5, 2001
- Gov't Ex. 38 JFD International Invoice showing commission to Jason Liao

ATTACHMENT B
RULING ON BUREAU'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

On December 15, 2003, the Administrative Law Docketing Center (ALJ Docketing Center) received Post-Hearing Submission of the Bureau of Industry and Security for filing in the above-referenced matter. The pleading included enumerated paragraphs entitled Findings of Fact and Conclusions of Law in accordance with 15 C.F.R. § 766.17(a)(2). Rulings on the proposed findings are detailed below.

1. The DLVAs are controlled for export to China for national security reasons. Through documentary evidence and witness testimony, BIS showed that the DLVAs were controlled for export to China for national security reasons and that licenses would be required for their exports. *See* Gov't Exhibit 2 and testimony of John Verna, BIS licensing officer, October 21, 2003 Hearing Transcript (October 21 Tr.) at 20-31 and 33-35.

RULING: ACCEPTED AND INCORPORATED.

2. On or about December 9, 1996, and on or about January 27, 1997, Liao exported DLVAs from the United States to China without the required export licenses.¹⁰ Specifically, Liao picked up the DLVAs from Suntek and exported them to China without licenses. *See e.g.* Gov't Exhibit 12, 28, and 32 (Plea Agreement of Charlie Kuan) at 4. Accordingly, Liao violated the EAR as specified in Charges 1 and 3 of the Charging Letter. *See* Gov't Exh. 37.

¹⁰ Because the DLVAs were hand-carried by Liao, there are no shipping documents. Therefore, BIS used the dates that Liao picked up the DLVAs from Suntek as the dates for export.

RULING: ACCEPTED AND INCORPORATED.

3. At the time of these exports, Liao knew that licenses were required for the exports. In 1995, Liao applied for and obtained a license to export controlled amplifiers to China. *See* Gov't Exhibit 27. These amplifiers were classified under the same ECCN number in 1996 (3A01A.b.4.a) as the DLVAs in this case and under 3A01.b.4.a. in 1997. *See id.* The amplifiers were manufactured by Menlo Industries and when Menlo sold the amplifiers to Liao for export, Menlo informed Liao of the licensing requirement. *See* Gov't Exh. 11. Also, in 1996 Liao bought amplifiers from DBS Microwave, inc. (DBS). The invoices clearly indicated that these amplifiers were classified under ECCN 3A01A and that licenses were required for export from the United States. *See* Gov't Exh. 36. Accordingly, Liao violated the EAR as specified in Charges 2 and 4 of the Charging Letter. *See* Gov't Exh. 37.

RULING: ACCEPTED AND INCORPORATED.

4. The DLVA technology was controlled for export to China. *See* Gov't Exh. 15. The release of DLVA technology in the United States to a foreign national is "deemed" to be an export to the foreign country. *See* 15 C.F.R. 734.2(b)(2) and 734.2(b)(2)(ii) (1997).

RULING: ACCEPTED AND INCORPORATED.

5. Liao caused, aided and abetted or abetted the release of DLVA technology to Messrs. Hu Changhong, Wang Yongan, and Qiu Yijie, Chinese nationals, by Suntek. On or about July 18, 1997, Liao invited the Chinese nationals to the Unite[s] States. At the time Liao issued the invitation letter, he knew that they were citizens of China, not citizens or permanent resident aliens of the United

States; that they were going to work at Suntek manufacturing DLVAs; and that Suntek would release controlled U.S. – origin DLVA technology the [sic] them.

RULING: ACCEPTED AND INCORPORATED

ATTACHMENT C
APPLICABLE REGULATIONS

Charge 1

15 C.F.R. § 772.1 General provisions.

(b) Exports requiring validated licenses. No commodity or technical data subject to the Export Administration Regulations may be exported to any destination without a validated license issued by the Office of Export Licensing, except where the export is authorized by a general license or other authorization by the Office of Export Licensing.

15 C.F.R. § 787.6 Export, diversion, reexport, transshipment.

Except as specifically authorized by the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may export, dispose of, divert, direct, mail or otherwise ship, transship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification of prohibition against such action, or any provision of the Export Administration Act or any regulation, order, or license issued under the Act.

Charge 2

15 C.F.R. § 787.4 Acting with knowledge of a violation; possession with intent to export illegally.

(a) No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 USC 1324b(a)(3)). Note that the release of any items to any party with knowledge a violation is about to occur is prohibited by § 736.2(b)(10) of the EAR.

(3) *Definition of “release” of technology or software.*

Technology or software is “released” for export through:

- (i) Visual inspection by foreign nationals of U.S.-origin equipment and facilities;
- (iii) Oral exchanges of information in the United States or abroad; or
- (ii) The application to situations abroad of personal knowledge or technical experience acquired in the United States.

15 C.F.R. § 764.2 Violations

(b) Causing, aiding, or abetting a violation. No person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder.

ATTACHMENT D
NOTICE TO THE PARTIES REGARDING REVIEW
BY UNDER SECRETARY

TITLE 15 -- COMMERCE AND FOREIGN TRADE
SUBTITLE B -- REGULATIONS RELATING TO COMMERCE AND
FOREIGN TRADE
CHAPTER VII -- BUREAU OF INDUSTRY AND SECURITY, DEPARTMENT
OF COMMERCE
SUBCHAPTER C -- EXPORT ADMINISTRATION REGULATIONS
PART 766 -- ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

15 CFR 766.22

§ 766.22 Review by Under Secretary.

(a) Recommended decision. For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) Submissions by parties. Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) Final decision. Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) Delivery. The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 766.20 of this part.

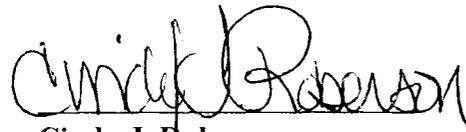
(e) Appeals. The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. § 2412(c)(3).

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing DECISION AND ORDER to the following persons as indicated:

Mi-Yong Kim, Esq.
Senior Attorney
Office of Chief Counsel for Industry and Security
U.S. Department of Commerce, Room H-3839
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230
(by Federal Express (overnight delivery))

Jason Liao
In C/O Jennifer Zhong
3370 Monroe Street
Santa Clara, CA 95051
(by Federal Express (overnight delivery))



Cindy J. Roberson
Paralegal Specialist to the
Hon. Parlen L. McKenna

Done and dated this 5th day of April, 2004
Alameda, California

UNITED STATES DEPARTMENT OF COMMERCE
UNDER SECRETARY FOR INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)	
)	
JASON LIAO,)	Docket No. 01-BXA-17
individually and doing business as)	
JFD INTERNATIONAL)	
3370 Monroe Street)	
Santa Clara, California 95051)	
)	
Respondent)	

DECISION AND ORDER

On December 10, 2001 the Bureau of Industry and Security (“BIS”)¹ issued a charging letter against the respondent, Jason Liao, individually and doing business as JFD International (collectively referred to as “Liao”), that alleged five violations of the Export Administration Regulations,² which were issued under the Export Administration Act of 1979, as amended (50

¹ The Bureau of Industry and Security was formerly known as the Bureau of Export Administration. The name of the Bureau was changed pursuant to an order signed by the Secretary of Commerce on April 16, 2002.

² The Regulations governing the violations at issue are found in the 1996 and 1997 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996) (hereinafter “the former Regulations”), and 15 C.F.R. Parts 768-799 (1997) (“the Regulations”). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 *Federal Register* publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The 2003 Regulations establish the procedures that apply to this matter.

U.S.C. app. §§ 2401-2420 (2000)) (“Act”).³

Specifically, BIS charged that (i) on or about December 9, 1996, Liao exported detector log video amplifiers (DLVAs) from the United States to the People’s Republic of China (“PRC”) without the validated export license required under Section 772A.1(b) of the former Regulations; (ii) in connection with the December 9, 1996 export, Liao knew or had reason to know that a validated export license was required, in violation of Section 787A.4(a) of the former Regulations; (iii) on or about January 27, 1997, Liao exported DLVAs from the United States to the PRC without the license required under Sections 742.4 and 742.5 of the Regulations; (iv) in connection with the January 27, 1997 export, Liao knew or had reason to know that a license was required, in violation of Section 764.2(e) of the Regulations; and (v) Liao aided and abetted the release of controlled technology to three PRC nationals in violation of Section 764.2(b) of the Regulations by issuing a letter on or about July 18, 1997 to the PRC nationals inviting them the United States, knowing that Suntek Microwave Inc. would release U.S.-origin technology to them. The PRC nationals subsequently entered the United States and Suntek did release U.S.-origin technology to them.

On October 21, 2003, the Administrative Law Judge (“ALJ”) conducted an evidentiary hearing in this matter. On April 5, 2004, the ALJ issued a Recommended Decision and Order, in

³ 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. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Regulations in effect under IEEPA.

which he found that Liao committed the five violations described above. With regard to the unlawful exports of national security controlled DLVAs to the PRC, the ALJ determined that, based on uncontested evidence, Liao delivered 70 DLVAs to a customer in the PRC, which was controlled by the PRC, without obtaining the required export licenses.

In addition, based on evidence that Liao had previously obtained licenses for exports of similar amplifiers to the PRC and on the sworn testimony of two witnesses that Liao knew that licenses were required for the export of the 70 DLVAs to the PRC, the ALJ found that Liao knew or should have known that these exports required a license from the Commerce Department.

Finally, the ALJ held that Liao aided and abetted the transfer of controlled technology to three PRC nationals without the required export license by inviting and facilitating the travel of the PRC nationals to the United States for the purpose of obtaining the controlled technology. The ALJ recommended a monetary penalty of \$55,000, the denial of Liao's export privileges for 20 years, and the exclusion of Liao from practice before BIS for a period of 20 years.

The ALJ's Recommended Decision and Order, together with the entire record in this case, have been referred to me for final action under Section 766.22 of the Regulations. Based on my review of the entire record, I find that the record supports the ALJ's findings of fact and conclusions of law regarding the liability of Liao for each of the above-referenced charges. I also find that the penalty recommended by the ALJ is appropriate, given the knowing nature of the violations, the scope of the respondent's efforts to make unauthorized exports, and the importance of preventing future unauthorized exports. I therefore affirm the findings of fact and

conclusions of law in the ALJ's Recommended Decision and Order.⁴

IT IS HEREBY ORDERED,

FIRST, that a civil penalty of \$55,000 is assessed against Jason Liao, 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, Liao 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, for a period of 20 years from the date on which this Order takes effect, Jason Liao shall be excluded from acting as an attorney, accountant, consultant, freight forwarder, or in any other representative capacity for any license application or other matter before the Bureau of Industry and Security.

FOURTH, that, for a period of 20 years from the date on which this Order takes effect, Jason Liao, individually and doing business as JFD International, 3370 Monroe Street, Santa

⁴ There is a clarification to the ALJ's Recommended Decision and Order that needs to be made. In the Recommended Decision and Order, the ALJ concludes that Liao released U.S.-origin technology to PRC nationals without the required export licenses: "In consideration of the entire record, and lack of countervailing evidence, I find BIS presented reliable, probative, and substantial evidence that Liao released United States-origin technology to three Chinese nationals without a license as required by 15 C.F.R. § 734.2(b)." ALJ Recommend Decision and Order, 25. BIS, however, did not charge Liao with improperly transferring controlled technology to PRC nationals, and did not submit any evidence supporting this conclusion. I therefore vacate this portion of the ALJ's Recommended Decision and Order. However, I affirm the ALJ's conclusion that Liao aided and abetted the release of controlled technology to PRC nationals without the required license.

Clara, California 95051, and all of his successors or assigns and, when acting for him or on his behalf, his officers, representatives, agents, and employees (individually referred to as a “Denied Person”), 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:

- 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.

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

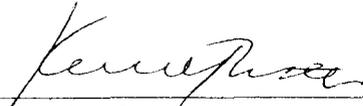
- A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including

- financing or other support activities related to a transaction whereby a 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 a Denied Person of any item subject to the Regulations that has been exported from the United States;
 - D. Obtain from a 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 a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a 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.

SIXTH, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

SEVENTH, that this Order shall be served on the Denied Person and on BIS, and shall be published in the *Federal Register*. Additionally, the ALJ’s Recommended Decision and Order, except for the section with the heading “Recommended Order,” shall also be published in the *Federal Register*.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the *Federal Register*.



Kenneth I. Juster

Under Secretary of Commerce
for Industry and Security

Dated: May 24, 2004