

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

In the Matter of:)
Super Net Computers, L.L.C.)
No 505, Dar Al Riffa Building)
Khalid Bin Al Waleed Rd) 06-BIS-16
P.O. Box 43557)
Dubai)
United Arab Emirates)

Respondent.)

FINAL DECISION AND ORDER

This matter is before me upon a Recommended Decision and Order of an Administrative Law Judge (“ALJ”), as further described below.

In a charging letter filed on August 28, 2006, the Bureau of Industry and Security (“BIS”) alleged that Respondent, Super Net Computers, L.L.C. (hereinafter “Super Net”), committed six violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774) (2007)) (“Regulations”)¹, issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”).² Specifically, the charging letter alleged that, on six occasions from on or about September 25, 2001, through on or about March 25, 2003, Super Net caused, aided and abetted the doing of an act prohibited by the Regulations.

¹ The charged violations occurred in 2001 through 2003. The Regulations governing the violations at issue are found in the 2001 through 2003 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001 – 2003)). The 2007 Regulations set forth the procedures that apply to this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006, (71 FR 44,551 (August 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)).

Specifically, the Charging Letter alleged that Super Net ordered super servers (ECCN³ 4A994), motherboards (ECCNs 4A003 and 4A994), and computer chassis (EAR99⁴), items subject to the Regulations and the Iranian Transactions Regulations⁵, from a U.S. company on behalf of Iranian end-users. The U.S. company then shipped those super servers and motherboards from the United States to Super Net in the United Arab Emirates. Super Net forwarded the items to end-users in Iran. Pursuant to Section 560.204 of the Iranian Transactions Regulations, an export to a third country intended for transshipment to Iran is a transaction subject to the Iranian Transaction Regulations. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S. Department of the Treasury (“OFAC”) for the shipment of these super servers and motherboards from the United States to Iran. No such U.S. Government authorization was obtained. By causing, aiding and/or abetting these exports in this manner, BIS alleged that Super Net committed six violations of Section 764.2(b) of the Regulations.

In accordance with Section 766.3(b)(1) of the Regulations, on August 28, 2006, BIS mailed the notice of issuance of the charging letter by registered mail to Super Net at its last known address. The record contains evidence that the notice of issuance of a charging letter was received by Super Net on September 17, 2006. To date, however, Super Net has not filed an answer or otherwise responded to the charging letter with the ALJ, as required by the Regulations.

³ The term “ECCN” refers to an Export Control Classification Number. See Section 772.1 of the Regulations.

⁴ Items subject to the Regulations, which are *not* listed on the Commerce Control List are designated as EAR99.

⁵ 31 C.F.R. Part 560.

On March 16, 2007, BIS filed a Motion for Default Order in accord with Section 766.7 of the Regulations. The Motion for Default Order recommended that Super Net be denied export privileges under the Regulations for a period of five years. Under Section 766.7(a) of the Regulations, “[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent’s right to appear,” and “on BIS’s motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter.” Based upon the record before him, the ALJ has found Super Net in default.

On May 1, 2007, based on the record before him, the ALJ issued a Recommended Decision and Order in which he found that Super Net committed six violations of Section 764.2(b) of the Regulations. The ALJ also recommended the penalty of denial of Super Net’s export privileges for five years, as recommended by BIS.

The ALJ’s Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. I find that the record supports the ALJ’s findings of fact and conclusions of law. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations and the facts of this case, and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law recommended by the ALJ.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that for a period of five years from the date this Order is published in the *Federal Register*, Super Net Computers, L.L.C., No 505, Dar Al Riffa Building, Khalid Bin Al Waleed Rd, P.O. Box 43557, Dubai, United Arab Emirates, its successors and assigns, and when acting for or on behalf of Super Net, its representatives, agents and employees (hereinafter collectively

referred to as the “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.

SECOND, 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.

THIRD, 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 the 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.

FOURTH, 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.

FIFTH, that this Order shall be served on the Denied Person and on BIS, and shall be published in the *Federal Register*. In addition, the ALJ's Recommended Decision and Order,

except for the section related to the Recommended Order, shall 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*.

Dated: 5-21-07

Mark Foulon

Mark Foulon
Acting Under Secretary of Commerce
for Industry and Security

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

In the Matter of:)
Super Net Computers, L.L.C.)
No 505, Dar Al Riffa Building)
Khalid Bin Al Waleed Rd) Docket No: 06-BIS-16
P.O. Box 43557)
Dubai, United Arab Emirates)
Respondent.)

RECOMMENDED DECISION AND ORDER

On August 28, 2006, the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), issued a charging letter initiating this administrative enforcement proceeding against Super Net Computers, L.L.C. (“Super Net”). The charging letter alleged that Super Net committed six violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2006)) (the “Regulations”),¹ issued under the Export Administration Act of 1979, as amended (50 U.S.C. App. §§ 2401-2420 (2000)) (the “Act”).²

Specifically, the charging letter alleged that, on six occasions from on or about

September 25, 2001, through on or about March 25, 2003, Super Net caused, aided and abetted

¹ The charged violations occurred in 2001 through 2003. The Regulations governing the violations at issue are found in the 2001 through 2003 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2003)). The 2006 Regulations establish the procedures that apply to this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 Fed. Reg. 44,551 (Aug. 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 – 1706 (2000)).

the doing of an act prohibited by the Regulations. Specifically, BIS alleged that Super Net ordered super servers (ECCN³ 4A994), motherboards (ECCNs 4A003 and 4A994), and computer chassis (EAR99⁴), items subject to the Regulations and the Iranian Transactions Regulations,⁵ from a U.S. company on behalf of Iranian end-users. The U.S. company shipped those super servers and motherboards from the United States to Super Net in the United Arab Emirates. Super Net then forwarded the items to end-users in Iran. Pursuant to Section 560.204 of the Iranian Transactions Regulations, an export to a third country intended for transshipment to Iran is a transaction subject to the Iranian Transaction Regulations. Pursuant to Section 746.7 of the Regulations, a license was required for the shipment of these super servers and motherboards from the United States to Iran. No such license was obtained. BIS alleged that Super Net committed six violations of the Regulations. (Charges 1 – 6).

Section 766.3(b)(1) of the Regulations provides that notice of the issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address. In accordance with the Regulations, on August 28, 2006, BIS mailed the notice of issuance of the charging letter by registered mail to Super Net at its last known address: Super Net Computers, L.L.C., No 505, Dar Al Riffa Building, Khalid Bin Al Waleed Rd., P.O. Box 43557, Dubai, United Arab Emirates.

BIS has submitted evidence that establishes that the charging letter was received by Super Net
on or about September 17, 2006.⁶

³ The term "ECCN" refers to an Export Control Classification Number. See Section 772.1 of the Regulations.

⁴ Items subject to the Regulations, which are not listed on the Commerce Control List are designated as EAR99.

⁵ 31 C.F.R. Part 560.

⁶ BIS did not receive a delivery receipt for the charging letter and requested that the U.S. Postal Service inquire further about the delivery of the charging letter. The U.S. Postal Service was advised by the postal service of the United Arab Emirates that the charging letter was delivered on or about September 17, 2006.

Section 766.6(a) of the Regulations provides, in pertinent part, that “[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter” initiating the administrative enforcement proceeding. Furthermore, BIS informed Super Net that a failure to follow this requirement would result in default. (Charging Letter, at 2). To date, Super Net has not filed an answer, or otherwise responded, to the charging letter.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, the undersigned finds the facts to be as alleged in the charging letter, and hereby determine that those facts establish that Super Net committed six violations of Section 764.2(b) of the Regulations.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (i) a monetary penalty, (ii) suspension from practice before the Bureau of Industry and Security, and (iii) a denial of export privileges under the Regulations. See 15 C.F.R. § 764.3 (2001-2003). BIS requests that the undersigned recommend to the Under Secretary of Commerce for Industry and Security⁷ that Super Net's export privileges be denied for five years.

BIS has suggested this sanction because Super Net's role in causing, aiding and abetting ~~the export of super servers, motherboards and chassis from the United States to Iran without U.S.~~ Government authorization evidences a serious disregard for U.S. export control laws. BIS notes that the items exported in this case involved super servers and motherboards controlled for anti-terrorism reasons. BIS asserts that Super Net's role in ordering and forwarding these items to

⁷ Pursuant to Section 13(c)(1) of the Export Administration Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the ALJ makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary's action is the final decision for the U.S. Commerce Department.

Iran—a country that the United States Government has designated a state sponsor of international terrorism—represents a significant harm to national security and to the national interests protected by U.S. export controls.⁸ Furthermore, BIS believes that the recommended denial order is particularly appropriate in this case, since Super Net failed to respond to the charging letter filed by BIS, despite evidence indicating that Super Net received actual service of the charging letter. Although the imposition of a monetary penalty is an option, BIS contends that such a penalty would not be effective, given the above reasons and the difficulty of collecting payment against a party outside the United States. Based on the foregoing, BIS believes that the denial of Super Net export privileges for five years is an appropriate sanction.

The undersigned concurs with BIS and recommends that the Under Secretary enter an Order denying Super Net's export privileges for a period of five years. Such a denial order is consistent with penalties imposed in similar cases involving shipments to countries designated as "Terrorist Supporting Countries"⁹ in which a default judgment was issued on BIS's motion. See, e.g., In the Matter of Teepad Electronic General Trading, 71 Fed. Reg. 34,596 (June 15, 2006) (affirming the ALJ's recommendation to grant BIS's motion for a ten-year denial where a Canadian respondent knowingly caused the export of telecommunications devices to Iran, and where that respondent failed to respond to BIS's charging letter); In the Matter of Swiss Telecom, 71 Fed. Reg. 32,920 (June 7, 2006) (affirming the ALJ's recommendation to grant BIS's motion for a ten-year denial where a respondent in the United Arab Emirates knowingly forwarded

⁸ Cf. 15 C.F.R. Part 766, Supp. No. 1, III, A (discussing the factors that BIS considers in the context of settling an enforcement action and stating that "BIS is more likely to seek a greater monetary penalty and/or denial or export privileges . . . in cases involving: (1) exports or reexports to countries subject to anti-terrorism controls . . ."). Iran has been designated as a Terrorist Supporting Country and is subject to such anti-terrorism controls. See 15 C.F.R. Part 740, Supp. No. 1 Country Group E:1 (2001 - 2003); 15 C.F.R. § 742.8 (2001 - 2003); 15 C.F.R. § 746.7 (2001 - 2003).

⁹ The U.S. Government's List of Terrorist Supporting Countries is set forth in 15 C.F.R. Part 740, Supp. No. 1, Country Group E:1.

telecommunications devices to Iran, and failed to respond to BIS's charging letter); In the Matter of MUTCO International, 71 Fed. Reg. 38,133 (July 5, 2006) (affirming the ALJ's recommendation to grant BIS's default motion for a six-year denial to resolve conspiracy and solicitation charges related to an attempted export to North Korea).

The terms of the denial of export privileges against Super Net should be consistent with the standard language used by BIS in such orders. The language is:

[REDACTED SECTION]

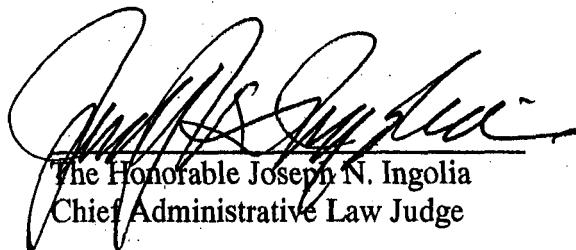
[REDACTED SECTION]

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

Accordingly, the undersigned refers this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the respondent, as provided in Section 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. See 15 C.F.R. § 766.22(c).

Dated: 05/01/07



The Honorable Joseph N. Ingolia
Chief Administrative Law Judge



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

AUG 28 2006

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Super Net Computers, L.L.C.
No 505, Dar Al Riffa Building
Khalid Bin Al Waleed Rd
P.O. Box 43557
Dubai
United Arab Emirates

*Attn: Mr. Tofiqh Setayeshi
Managing Director*

Dear Mr. Setayeshi:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Super Net Computers, L.L.C., of Dubai, United Arab Emirates (“Super Net”) has committed six violations of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that Super Net committed the following violations:

Charges 1 – 6: 15 C.F.R. § 764.2(b): Aiding or Abetting the Export of Items to Iran Without the Required Licenses:

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on six occasions from on or about September 25, 2001, through on or about March 25, 2003, Super Net caused the doing of an act prohibited by the Regulations. Specifically,

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2006). The charged violations occurred in 2001 through 2003. The Regulations governing the violations at issue are found in the 2001 through 2003 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001 – 2003)). The 2006 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 Fed. Reg. 44,551 (August 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)).



Super Net ordered super servers (ECCN³ 4A994), motherboards (ECCNs 4A003 and 4A994), and computer chassis (EAR99⁴), items subject to the Regulations and the Iranian Transactions Regulations,⁵ from a U.S. company on behalf of Iranian end-users. The U.S. company then shipped those super servers and motherboards from the United States to Super Net in the United Arab Emirates (“UAE”). Super Net then forwarded the items to end-users in Iran. Pursuant to Section 560.204 of the Iranian Transactions Regulations, an export to a third country intended for transshipment to Iran is a transaction subject to the Iranian Transaction Regulations. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S. Department of Treasury (“OFAC”) for the shipment of these super servers and motherboards from the United States to Iran. No such U.S. Government authorization was obtained. By causing these exports in this manner, Super Net committed six violations of Section 764.2(b) of the Regulations.

* * * *

Accordingly, Super Net is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;⁶

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Super Net fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. See 15 C.F.R. §§ 766.6 and 766.7. If Super Net defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Super Net. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Super Net is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. See 15 C.F.R. § 766.6. Super Net is also entitled to be

³ The term “ECCN” refers to an Export Control Classification Number. See Section 772.1 of the Regulations.

⁴ Items subject to the Regulations, which are *not* listed on the Commerce Control List are designated as EAR99.

⁵ 31 C.F.R. Part 560.

⁶ 15 C.F.R. § 6.4(a)(4).

Super Net
Charging Letter
Page 3 of 4

represented by counsel or other authorized representative who has power of attorney to represent it. See 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. See 15 C.F.R. § 766.18. Should Super Net have a proposal to settle this case, Super Net or its representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Super Net's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

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

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

James C. Pelletier is the attorney representing BIS in this case; any communications that Super Net may wish to have concerning this matter should occur through him. Mr. Pelletier may be contacted by telephone at (202) 482-5301.

Sincerely,



Michael D. Turner
Director
Office of Export Enforcement

Attachment

SCHEDULE A

SUPER NET COMPUTERS, L.L.C.

ITEM #	DATE	COMMODITY	ECCN	COUNTRY	VALUE (U.S. DOLLARS)	ORDER # INVOICE #
1	9/25/01	6011 Super Server P4SBA Motherboard	4A994 4A003	Iran	662.20	ORD0893803 IN0892510
2	12/17/01	P3TDL Motherboards P4SBA Motherboards	4A994 4A003	Iran	41,425.20	ORD0903434 IN0896416
3	12/26/01	P4SBA Motherboards	4A003	Iran	9,200.00	ORD0903839 IN0896805
4	5/7/02	P4SBM Motherboards P4SBA Motherboards P4SDA Motherboards	4A994 4A994 4A994	Iran	71,540	ORD0910724 IN0904734
5	11/7/02	P4DP6 & P4DP8 Motherboards P4DL6 Motherboards P4SSE Motherboards P4SGR Motherboards P4SBR Motherboards P4DPL Motherboards	4A994 4A994 4A994 4A994 4A994	Iran	24,100	ORD0921676 IN0919347
6	03/25/03	SC742i-420W Chassis SC760 Chassis w/420W	EAR99 EAR99	Iran	54,419.84	ORD0931423 IN0931257