

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

In the Matter of:)
)
Foxsemicon LLC)
96 Bonaventura Drive)
San Jose, CA 95134)
)
Respondent)

ORDER RELATING TO FOXSEMICON LLC

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Foxsemicon LLC (“Foxsemicon”) of its intention to initiate an administrative proceeding against Foxsemicon pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),² through the issuance of a Proposed Charging Letter to Foxsemicon that alleged that it committed 23 violations of the Regulations. Specifically, these charges are:

Charges 1-15 15 C.F.R. § 764.2(b): Aiding and Abetting an Act Prohibited by the Regulations

On fifteen occasions between on or about August 23, 2005 and on or about May 16, 2006, Foxsemicon aided and abetted the doing of an act prohibited by the Regulations by assisting a branch office of an affiliated Taiwanese company in procuring and exporting to the People’s

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The charged violations occurred between 2005 and 2006. The Regulations governing the violations at issue are found in the 2005 and 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005-2006)). The 2009 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. However, the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701-1707).

Republic of China (“PRC”) pressure transducers, items subject to the Regulations, classified under Export Control Classification Number (“ECCN”) 2B230 and controlled for nuclear nonproliferation reasons, without the Department of Commerce licenses required by Section 742.3 of the Regulations. Specifically, Foxsemicon provided services, pursuant to a logistics service agreement, to Foxsemicon Integrated Technology, Inc. of San Jose, California (“FITI”), which was affiliated with Foxsemicon. These services enabled FITI to procure the pressure transducers and export them to its PRC manufacturing facilities. In so doing, Foxsemicon committed 15 violations of Section 764.2(b) of the Regulations.

Charges 16-23 15 C.F.R. § 764.2(b): Aiding and Abetting an Act Prohibited by the Regulations

On eight occasions between on or about August 23, 2005 and on or about May 16, 2006, Foxsemicon, in connection with the transactions described in Charges 1-8, aided and abetted the doing of an act prohibited by the Regulations by assisting a branch office of an affiliated Taiwanese company in indirectly making false statements to the U.S. Government in connection with the submission of export control documents. Specifically, Foxsemicon provided services, pursuant to a logistics service agreement, to FITI, of San Jose, California, which was affiliated with Foxsemicon. These services included the provision of information to FITI’s freight forwarder. This information was used by the freight forwarder for the filing, on behalf of FITI, of eight Shipper’s Export Declarations (“SEDs”) with the U.S. Government. The SEDs falsely stated that the pressure transducers that were the subject of the SEDs qualified for export as “NLR,” meaning that no license was required for their export, and stating that items that were the subject of the SEDs were designated as EAR99 items. These representations were false, as licenses were required for the items being exported, and the pressure transducers were not designated as EAR99 items but rather were classified under ECCN 2B230. SEDs are export control documents, as defined in Part 772 of the Regulations. In so doing, Foxsemicon committed eight violations of Section 764.2(b) of the Regulations.

WHEREAS, BIS and Foxsemicon have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

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

IT IS THEREFORE ORDERED:

FIRST, Foxsemicon shall be assessed a civil penalty in the amount of \$160,000. Foxsemicon shall pay \$16,000 to the U.S. Department of Commerce within 30 days of the date of the Order. Thereafter, Foxsemicon shall pay \$16,000 to the U.S. Department of Commerce not later than November 2, 2009; \$16,000 not later than December 1, 2009; \$16,000 not later

than January 4, 2010; \$16,000 not later than February 1, 2010; \$16,000 not later than March 1, 2010; \$16,000 not later than April 5, 2010; \$16,000 not later than May 3, 2010; \$16,000 not later than June 1, 2010; \$16,000 not later than July 5, 2010. 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, Foxsemicon will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Foxsemicon. Accordingly, if Foxsemicon should fail to pay the civil penalty in a timely manner, the undersigned may issue an Order denying all of Foxsemicon's export privileges under the Regulations for a period of one year from the date of this Order.

FOURTH, that the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



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

Issued this 11th day of September, 2009.

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

In the Matter of:)
)
Foxsemicon LLC)
96 Bonaventura Drive)
San Jose, CA 95134)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Foxsemicon LLC (“Foxsemicon”) and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).²

WHEREAS, Foxsemicon filed a voluntary self-disclosure with BIS’s Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The charged violations occurred between 2005 and 2006. The Regulations governing the violations at issue are found in the 2005 and 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005-2006)). The 2009 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. However, the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701-1707).

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

WHEREAS, BIS has issued a Proposed Charging Letter to Foxsemicon that alleged that Foxsemicon committed 23 violations of the Regulations, specifically:

Charges 1-15 15 C.F.R. § 764.2(b): Aiding and Abetting an Act Prohibited by the Regulations

On fifteen occasions between on or about August 23, 2005 and on or about May 16, 2006, Foxsemicon aided and abetted the doing of an act prohibited by the Regulations by assisting a branch office of an affiliated Taiwanese company in procuring and exporting to the People's Republic of China ("PRC") pressure transducers, items subject to the Regulations, classified under Export Control Classification Number ("ECCN") 2B230 and controlled for nuclear nonproliferation reasons, without the Department of Commerce licenses required by Section 742.3 of the Regulations. Specifically, Foxsemicon provided services, pursuant to a logistics service agreement, to Foxsemicon Integrated Technology, Inc. of San Jose, California ("FITI"), which was affiliated with Foxsemicon. These services enabled FITI to procure the pressure transducers and export them to its PRC manufacturing facilities. In so doing, Foxsemicon committed 15 violations of Section 764.2(b) of the Regulations.

Charges 16-23 15 C.F.R. § 764.2(b): Aiding and Abetting an Act Prohibited by the Regulations

On eight occasions between on or about August 23, 2005 and on or about May 16, 2006, Foxsemicon, in connection with the transactions described in Charges 1-8, aided and abetted the doing of an act prohibited by the Regulations by assisting a branch office of an affiliated Taiwanese company in indirectly making false statements to the U.S. Government in connection with the submission of export control documents. Specifically, Foxsemicon provided services, pursuant to a logistics service agreement, to FITI, of San Jose, California, which was affiliated with Foxsemicon. These services included the provision of information to FITI's freight forwarder. This information was used by the freight forwarder for the filing, on behalf of FITI, of eight Shipper's Export Declarations ("SEDs") with the U.S. Government. The SEDs falsely stated that the pressure transducers that were the subject of the SEDs qualified for export as "NLR," meaning that no license was required for their export, and stating that items that were the subject of the SEDs were designated as EAR99 items. These representations were false, as licenses were required for the items being exported, and the pressure transducers were not designated as EAR99 items but rather were classified under ECCN 2B230. SEDs are export control documents, as defined in Part 772 of the Regulations. In so doing, Foxsemicon committed eight violations of Section 764.2(b) of the Regulations.

WHEREAS, Foxsemicon has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Foxsemicon fully understands the terms of this Agreement and the Order (“Order”) that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

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

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

WHEREAS, Foxsemicon neither admits nor denies the allegations contained in the Proposed Charging Letter;

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

WHEREAS, Foxsemicon agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over Foxsemicon, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanction shall be imposed against Foxsemicon in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Proposed Charging Letter:

a. Foxsemicon shall be assessed a civil penalty in the amount of \$160,000. Foxsemicon shall pay \$16,000 to the U.S. Department of Commerce within 30 days of the date of the Order. Thereafter, Foxsemicon shall pay \$16,000 to the U.S. Department of Commerce not later than November 2, 2009; \$16,000 not later than December 1, 2009; \$16,000 not later than January 4, 2010; \$16,000 not later than February 1, 2010; \$16,000 not later than March 1, 2010; \$16,000 not later than April 5, 2010; \$16,000 not later than May 3, 2010; \$16,000 not later than June 1, 2010; \$16,000 not later than July 5, 2010. Payment shall be made in the manner specified in the attached instructions.

b. The timely payment of the civil penalty agreed to in paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Foxsemicon. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Foxsemicon's export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Foxsemicon hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if issued), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued.

4. BIS agrees that, upon issuance of the Order, it will not initiate any further administrative proceeding against Foxsemicon in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

5. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind it respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE



Thomas Madigan
Director
Office of Export Enforcement

Date: 9/3, 2009



Jackson C. Hwang
Vice President
Foxsemicon LLC

Date: Aug. 31, 2009

PROPOSED CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Foxsemicon LLC
96 Bonaventura Drive
San Jose, CA 95134

Attn: *Jackson C. Hwang*
Vice President

Dear Mr. Hwang:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Foxsemicon LLC (“Foxsemicon”), of San Jose, California, has committed 23 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 Foxsemicon committed the following violations:

Charges 1-15 15 C.F.R. § 764.2(b): Aiding and Abetting an Act Prohibited by the Regulations

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on fifteen occasions between on or about August 23, 2005 and on or about May 16, 2006, Foxsemicon aided and abetted the doing of an act prohibited by the Regulations by assisting a branch office of an affiliated Taiwanese company in procuring and exporting to the People’s Republic of China (“PRC”) pressure transducers, items subject to the Regulations, classified under Export Control Classification Number (“ECCN”) 2B230 and controlled for nuclear nonproliferation reasons, without the Department of Commerce licenses required by Section 742.3 of the Regulations. Specifically, Foxsemicon provided services, pursuant to a logistics service agreement, to Foxsemicon Integrated Technology, Inc. of San Jose, California (“FITI”), which was affiliated with Foxsemicon. These services enabled FITI to procure the

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² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701-1707).

pressure transducers and export them to its PRC manufacturing facilities. In so doing, Foxsemicon committed 15 violations of Section 764.2(b) of the Regulations.

Charges 16-23 15 C.F.R. § 764.2(b): Aiding and Abetting an Act Prohibited by the Regulations

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on eight occasions between on or about August 23, 2005 and on or about May 16, 2006, Foxsemicon, in connection with the transactions described in Charges 1-8, aided and abetted the doing of an act prohibited by the Regulations by assisting a branch office of an affiliated Taiwanese company in indirectly making false statements to the U.S. Government in connection with the submission of export control documents. Specifically, Foxsemicon provided services, pursuant to a logistics service agreement, to FITI, of San Jose, California, which was affiliated with Foxsemicon. These services included the provision of information to FITI's freight forwarder. This information was used by the freight forwarder for the filing, on behalf of FITI, of eight Shipper's Export Declarations ("SEDs") with the U.S. Government. The SEDs falsely stated that the pressure transducers that were the subject of the SEDs qualified for export as "NLR," meaning that no license was required for their export, and stating that items that were the subject of the SEDs were designated as EAR99 items. These representations were false, as licenses were required for the items being exported, and the pressure transducers were not designated as EAR99 items but rather were classified under ECCN 2B230. SEDs are export control documents, as defined in Part 772 of the Regulations. In so doing, Foxsemicon committed eight violations of Section 764.2(b) of the Regulations.

* * * * *

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

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation;³
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Foxsemicon 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 Foxsemicon defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Foxsemicon. The

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

Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Foxsemicon 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. Foxsemicon is also entitled to be 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 Foxsemicon have a proposal to settle this case, Foxsemicon or its representative should transmit it to the attorney representing BIS named below.

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

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Foxsemicon'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 Foxsemicon's answer must be served on BIS at the following address:

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

Elias Wolfberg and Thea D. R. Kendler are the attorneys representing BIS in this case; any communications that Foxsemicon may wish to have concerning this matter should occur through them. Mr. Wolfberg and Mrs. Kendler may be contacted by telephone at (202) 482-5301.

Thomas Madigan
Director
Office of Export Enforcement

Schedule of Violations Foxsemicon, LLC								
Charge Number	Date of Export	Description of Commodity	P/O number	Quantity	Total Value	ECCN	Destination	Violation/s
1, 16	8/23/2005	Pressure Transducer: 20 TORR	3X26-05080001-0001	1	\$664	2B230	PRC	15 C.F.R. § 764.2(b)
2, 17	8/29/2005	Pressure Transducer: 10 TORR	3X26-05080006-0002	2	\$1,328	2B230	PRC	15 C.F.R. § 764.2(b)
3, 18	11/23/2005	Pressure Transducer: 20 TORR	3X26-05110001-0001	1	\$664	2B230	PRC	15 C.F.R. § 764.2(b)
4, 19	12/29/2005	Pressure Transducer: 20 TORR	3X26-05080001-0001	1	\$664	2B230	PRC	15 C.F.R. § 764.2(b)
5, 20	1/9/2006	Pressure Transducers: 10 TORR	3X26-05120001-0003 3X26-05120012-0001	6	\$3,984	2B230	PRC	15 C.F.R. § 764.2(b)
6, 21	2/4/2006	Pressure Transducers: 20 TORR	3X26-06010016-0002	2	\$1,328	2B230	PRC	15 C.F.R. § 764.2(b)
7, 22	2/27/2006	Pressure Transducers: 10 TORR 20 TORR	3X26-06010064-0001	2	\$1,328	2B230	PRC	15 C.F.R. § 764.2(b)
8, 23	3/6/2006	Pressure Transducer: 100 TORR	3X26-06020026-0001	1	\$1,107	2B230	PRC	15 C.F.R. § 764.2(b)
9	3/20/2006	Pressure Transducers: 100 TORR 1000 TORR	3X26-06020026-0002 3X26-06020056-0001	2	\$2,214	2B230	PRC	15 C.F.R. § 764.2(b)
10	3/27/2006	Pressure Transducer: 1000 TORR	3X26-06020056-002	1	\$1,107	2B230	PRC	15 C.F.R. § 764.2(b)
11	4/12/2006	Pressure Transducers: 100 TORR 1000 TORR 20 TORR	3X26-06030008-0001 3X26-06030009-0001 3X26-06030010-0001	4	\$3,542	2B230	PRC	15 C.F.R. § 764.2(b)
12	4/24/2006	Pressure Transducers: 100 TORR 1000 TORR 10 TORR	3X26-06030055-0001 3X26-06030055-0002 3X26-06030060-0001	3	\$2,878	2B230	PRC	15 C.F.R. § 764.2(b)
13	5/9/2006	Pressure Transducer: 10 TORR	3X26-06040041-001	1	\$664	2B230	PRC	15 C.F.R. § 764.2(b)
14	5/15/2006	Pressure Transducers: 100 TORR 1000 TORR	3X26-06040029-0002 3X26-06040029-0003	5	\$5,535	2B230	PRC	15 C.F.R. § 764.2(b)
15	5/16/2006	Pressure Transducers: 100 TORR 1000 TORR 20 TORR	3X26-06040029-0001 3X26-06040029-0004 3X26-06040029-0005	6	\$5,313	2B230	PRC	15 C.F.R. § 764.2(b)