E631-01

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

REGISTERED MAIL - RETURN RECEIPT REQUESTED

SFT Advertising Agency
35 Altufievskoe Avenue
Moscow, 127410
Russia

Attention: Mr. Dmitry N. Chernyshenko
Director

Dear Mr. Chernyshenko:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), hereby charges that, as described in detail below, SFT Advertising Agency (hereinafter "SFT") has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (hereinafter the "Act"), as set forth below.[2]

Facts constituting violations:

Charge 1

Beginning in March 1993 and continuing through September 1993, SFT engaged in a scheme to cause the export of a Hewlett-Packard Apollo Model 735 Workstation with a 99 MHz PA RISC processor chip (hereinafter collectively referred to as "HP Workstation") from the United States through Germany to Russia, the ultimate destination, without first obtaining the appropriate authorizations that it knew or had reason to know were required.

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[1] The alleged violations occurred during 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

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

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BXA alleges that, by ordering commodities exported or to be exported from the United States, and that by financing that transaction, with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transaction, SFT violated Section 787.4(a) of the former Regulations.

Charge 2

In connection with the transaction described in Charge 1 above, on or about May 14, 1993, using a German business affiliate's stationery and signing that affiliate's president's name without his permission, Dmitry Chernyshenko, acting in his capacity as Director of SFT, drafted a letter of assurance which stated, among other things, that the HP Workstation would not be shipped outside GCT-eligible countries without prior authorization from the appropriate national authorities and, in particular, that "this workstation [will not be reexported] from Germany to Russia or any other portion of the former Soviet Union without the permission of the U.S. Commerce Department." BXA alleges that, by falsifying information in the letter of assurance, SFT concealed material facts directly or indirectly from a United States agency for the purpose of or in connection with effecting an export from the United States, and thereby violated Section 787.5(a) of the former Regulations.

Charge 3

In connection with the transaction described in Charge 1 above and with reference to the activities described in Charge 2 above, on or about July 20, 1993, SFT caused, counseled or induced a third party to state on a Shipper's Export Declaration, an export control document as defined in Section 770.2 of the former Regulations, that the shipment of the HP-Workstation was authorized for export from the United States to Germany under General License GCT, when in fact the shipment required a validated license as the HP-Workstation was ultimately destined for Russia. BXA alleges that, in so doing, SFT caused, counseled, or induced the making of a false statement of material fact either directly or indirectly to a United States agency on an export control document, an act prohibited by Section 787.5(a) of the former Regulations, and thereby violated Section 787.2 of the former Regulations.

BXA alleges that SFT committed one violation of Section 787.2, one violation of Section 787.4(a), and one violation of Section 787.5(a), for a total of three violations of the former Regulations, each of which involves commodities controlled under Section 5 of the Act for reasons of national security.

E631-03

Accordingly, SFT is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

a. The maximum civil penalty allowed by law of $10,000 per violation or, for a violation of national security controls, $100,000 per violation (*see* Section 764.3(a)(1)) of the Regulations);

b. Denial of export privileges (*see* Section 764.3(a)(2)); and/or

c. Exclusion from practice (*see* Section 764.3(a)(3)).

Copies of relevant Parts of the Regulations are enclosed.

If SFT 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.

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

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 charging letter. Accordingly, SFT'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 SFT's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Lairold M. Street, Esq." below the address. Mr. Street may be contacted by telephone at (202) 482-5311.

Sincerely,

Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosures

E631-04

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

MAY 14 1998

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Dmitry N. Chernyshenko
Director
SFT Advertising Agency
35 Altufievskoe Avenue
Moscow, 127410
Russia

Dear Mr. Chernyshenko:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), hereby charges that you have violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (hereinafter the "Act"), as set forth below.[2]

Facts constituting violations:

Charge 1

Beginning in March 1993 and continuing through September 1993, you engaged in a scheme to cause the export of a Hewlett-Packard Apollo Model 735 Workstation with a 99 MHz PA RISC processor chip (hereinafter collectively referred to as "HP Workstation") from the United States through Germany to Russia, the ultimate destination, without first obtaining the appropriate authorizations that you knew or had reason to know were required.

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[1] The alleged violations occurred during 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

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

BXA alleges that, by ordering commodities exported or to be exported from the United States, and that by financing that transaction, with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transaction, you violated Section 787.4(a) of the former Regulations.

Charge 2

In connection with the transaction described in Charge 1 above, on or about July 20, 1993, using a German business affiliate's stationery and signing that affiliate's president's name without his permission, you drafted a letter of assurance which stated, among other things, that the HP Workstation would not be shipped outside GCT-eligible countries without prior authorization from the appropriate national authorities and, in particular, that "this workstation [will not be reexported] from Germany to Russia or any other portion of the former Soviet Union without the permission of the U.S. Commerce Department." BXA alleges that, by falsifying information in the letter of assurance, you concealed material facts directly or indirectly from a United States agency for the purpose of or in connection with effecting an export from the United States, and you thereby violated Section 787.5(a) of the former Regulations.

Charge 3

In connection with the transaction described in Charge 1 above and with reference to the activities described in Charge 2 above, on or about May 14, 1993, you caused, counseled or induced a third party to state on a Shipper's Export Declaration, an export control document as defined in Section 770.2 of the former Regulations, that the shipment of the HP-Workstation was authorized for export from the United States to Germany under General License GCT, when in fact the shipment required a validated license as the HP-Workstation was ultimately destined for Russia. BXA alleges that, in so doing, you caused, counseled, or induced the making of a false statement of material fact either directly or indirectly to a United States agency on an export control document, an act prohibited by Section 787.5(a) of the former Regulations, and you thereby violated Section 787.2 of the former Regulations.

BXA alleges that you committed one violation of Section 787.2, one violation of Section 787.4(a), and one violation of Section 787.5(a), for a total of three violations of the former Regulations, each of which involves commodities controlled under Section 5 of the Act for reasons of national security.

Accordingly, you are hereby notified that an administrative proceeding is instituted against you pursuant to Part 766 of the

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Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

a. The maximum civil penalty allowed by law of $10,000 per violation or, for a violation of national security controls, $100,000 per violation (*see* Section 764.3(a)(1)) of the Regulations);

b. Denial of export privileges (*see* Section 764.3(a)(2)); and/or

c. Exclusion from practice (*see* Section 764.3(a)(3)).

Copies of relevant Parts of the Regulations are enclosed. If you fail 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.

You are further notified that you are 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 your answer, to be represented by counsel, and to seek settlement of the charges.

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 charging letter. Accordingly, your 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 your answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Lairold M. Street, Esq." below the address. Mr. Street may be contacted by telephone at (202) 482-5311.

Sincerely,

Mark D. Menefee

Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosures

E631-007

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matters of:

DMITRY N. CHERNYSHENKO
Director
SFT Advertising Agency
35 Altufievskoe Avenue
Moscow, 127410
Russia,

and

SFT ADVERTISING AGENCY
35 Altufievskoe Avenue
Moscow, 127410
Russia,

Respondents

RECOMMENDED DECISION AND ORDER

On May 14, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued separate charging letters initiating administrative proceedings against Dmitry N. Chernyshenko and SFT Advertising Agency (hereinafter "Chernyshenko" and "SFT").[1] The charging letters alleged that Chernyshenko and SFT each committed three violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998))

[1] In light of the fact that the enforcement proceedings against Chernyshenko and SFT arose out of the same transaction, and as the evidence supporting BXA's allegations in both cases is the same, BXA has consolidated the proceedings and is filing a single default submission.

(hereinafter the "Regulations"),[2] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (hereinafter the "Act").[3]

Specifically, the charging letters alleged that, beginning in March 1993 and continuing through September 1993, Chernyshenko and SFT engaged in a scheme to cause the export of a Hewlett-Packard Apollo Model 735 Workstation with a 99 MHz PA RISC processor chip (hereinafter collectively referred to as "HP-Workstation") from the United States through Germany to Russia, the ultimate destination, without first obtaining the appropriate authorizations that Chernyshenko and SFT knew or had reason to know were required. BXA alleged that, by ordering commodities exported or to be exported from the United States, and that, by financing that transaction, with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended

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[2] The alleged violations occurred in 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth herein.

[3] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (63 Fed. Reg. 44121, August 17, 1998), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

to occur with respect to the transaction, both Chernyshenko and SFT violated Section 787.4(a) of the former Regulations.

Furthermore, the charging letters alleged that, in connection with that transaction, on or about May 14, 1993, using a German business affiliate's stationery and signing that affiliate's president's name without his permission, Chernyshenko, acting in his capacity as Director of SFT, drafted a letter of assurance which stated, among other things, that the HP-Workstation would not be shipped outside GCT-eligible countries without prior authorization from the appropriate national authorities and, in particular, that "this workstation [will not be reexported] from Germany to Russia or any other portion of the former Soviet Union without the permission of the U.S. Commerce Department." BXA alleged that, by falsifying information in the letter of assurance, both Chernyshenko and SFT (through Chernyshenko, its Director) concealed material facts directly or indirectly from a United States agency for the purpose of or in connection with effecting an export from the United States, and thereby violated Section 787.5(a) of the former Regulations.

Finally, the charging letters alleged that, in connection with the transaction and the activities described above, on or about July 20, 1993, both Chernyshenko and SFT caused, counseled or induced a third party to state on a Shipper's Export Declaration, an export control document as defined in Section 770.2 of the former Regulations, that the shipment of the HP-

Workstation was authorized for export from the United States to Germany under General License GCT, when in fact the shipment required a validated license, as the HP-Workstation was ultimately destined for Russia. BXA alleged that, in so doing, both Chernyshenko and SFT caused, counseled, or induced the making of a false statement of material fact either directly or indirectly to a United States agency on an export control document, an act prohibited by Section 787.5(a) of the former Regulations, and thereby violated Section 787.2 of the former Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of 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 respondent's last known address. In accordance with that section, on May 14, 1998, BXA sent both Chernyshenko and SFT, at the same address in Moscow, Russia, which is the last known address for each, notice that BXA had issued a charging letter against each respondent.

BXA states that it received a signed return receipt that had been addressed to Chernyshenko and SFT[4] on June 11, 1998, indicating that both charging letters had been delivered at the same Moscow address. Neither Chernyshenko nor SFT has answered the charging letter. Thus, pursuant to Section 766.6 of the

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[4] On both the receipt for certified mail, and the return receipt, the company's name was inadvertently identified as "AFT Advertising Agency" or "AFT". This was incorrect, but the error did not prejudice the respondent company, SFT, as the receipts were otherwise properly addressed.

Regulations, BXA moved that the Administrative Law Judge find the facts to be as alleged in each charging letter and render a Recommended Decision and Order since Chernyshenko and SFT are in default.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I therefore find the facts to be as alleged in the charging letters, and hereby determine that both Chernyshenko and SFT violated Sections 787.2, 787.4(a) and 787.5(a) of the former Regulations, as charged.

Section 764.3 of the Regulations identifies the sanctions available to BXA for the violations charged in this proceeding. The applicable sanctions are a civil monetary penalty and/or a denial of export privileges. See, 15 C.F.R. § 764.3 (1998).

Because Chernyshenko and SFT acted in concert and are charged with the same violations, BXA urges that I recommend to the Under Secretary for Export Administration[5] that the same sanctions be applied in each case, and that both Chernyshenko's and SFT's export privileges be denied for 10 years. Moreover, BXA asserts that a 10-year denial period for each respondent is the appropriate sanction for several reasons. First, as noted, under Section 764.3 of the Regulations, the sanctions available to BXA for the violations charged in this proceeding are a civil monetary penalty and/or a denial of export privileges. Both

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[5] Pursuant to Section 13(c)(1) of the Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge issues a recommended decision which is reviewed by the Under Secretary for Export Administration who issues the final decision for the agency.

Chernyshenko and SFT reside overseas, neither has responded to the allegations set forth in the charging letter issued separately to each, and neither party has demonstrated any intention of ever resolving this matter, either through the hearing process or through settlement. In light of these circumstances, the denial of all Chernyshenko's and SFT's export privileges is the appropriate sanction, because it is unlikely that either Chernyshenko or SFT would ever pay a civil monetary penalty, rendering any judgment involving a civil monetary penalty meaningless.

Second, at the time Chernyshenko and SFT caused the computer to be exported, the computer was controlled for national security and nuclear proliferation reasons, was classified under ECCN 4A03A, and required a validated license for its export to Russia or authorization from the appropriate national authorities to reexport the computer to Russia from Germany. Gov. Ex. 3. Neither respondent obtained either the required validated license or any other authorization required to send the computer to Russia.

Third, an appropriate sanction should be tailored to the severity of the violation. Chernyshenko and SFT blatantly violated the former Regulations by devising an unlawful scheme, resulting in three separate violations of the former Regulations on the part of each of them. Under all of these circumstances, and given that (1) Chernyshenko and SFT knew or had reason to know that a validated license or reexport authorization was

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required; (2) the Director of SFT, Dmitry N. Chernyshenko, drafted a letter and then forged the signature of another person on a letter of assurance saying that SFT would not ship the computer outside GCT-eligible countries; and (3) SFT's Director, Chernyshenko, caused a third person to make a false statement on an export control document, a 10-year denial, rather than any shorter denial period, is warranted.

Given the foregoing, I concur with BXA, and recommend that the Under Secretary for Export Administration enter an Order against Dmitry N. Chernyshenko and SFT Advertising Agency, and that each be denied all export privileges for a period of 10 years.[6]

Accordingly, I am referring my recommended decision and order to the Under Secretary 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 § 766.22(c) of the Regulations.

Dated: 6/11/99

Administrative Law Judge

[6] Denial orders can be either "standard" or "non-standard." A standard order denying export privileges is appropriate in this case. The terms of a standard denial order are set forth in Supplement No. 1 to Part 764 of the Regulations.

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UNITED STATES DEPARTMENT OF COMMERCE
UNDER SECRETARY FOR EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matters of:

DMITRY N. CHERNYSHENKO
Director
SFT Advertising Agency
35 Altufievskoe Avenue
Moscow, 127410
Russia,

and

SFT ADVERTISING AGENCY
35 Altufievskoe Avenue
Moscow, 127410
Russia,

Respondents

DECISION AND ORDER

On May 14, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued separate charging letters initiating administrative proceedings against Dmitry N. Chernyshenko and SFT Advertising Agency (hereinafter "Chernyshenko" and "SFT").[1] The charging letters alleged that Chernyshenko and SFT each committed three violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999))

[1] In light of the fact that the enforcement proceedings against Chernyshenko and SFT arose out of the same transaction, and as the evidence supporting BXA's allegations in both cases is the same, BXA has consolidated the proceedings and filed a single default submission.

E631-15

(hereinafter the "Regulations"),[2] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (hereinafter the "Act").[3]

Specifically, the charging letters alleged that, beginning in March 1993 and continuing through September 1993, Chernyshenko and SFT engaged in a scheme to cause the export of a Hewlett-Packard Apollo Model 735 Workstation with a 99 MHz PA RISC processor chip (hereinafter collectively referred to as "HP-Workstation") from the United States through Germany to Russia, the ultimate destination, without first obtaining the authorizations that Chernyshenko and SFT knew or had reason to know were required. BXA alleged that, by ordering commodities exported or to be exported from the United States, and that, by financing that transaction, with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transaction, both Chernyshenko and

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[2] The violations at issue occurred in 1993. The Regulations governing those violations are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799(1993)) and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to these matters.

[3] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

SFT violated Section 787.4(a) of the former Regulations.

Furthermore, the charging letters alleged that, in connection with that transaction, on or about May 14, 1993, using a German business affiliate's stationery and signing that affiliate's president's name without his permission, Chernyshenko, acting in his capacity as Director of SFT, drafted a letter of assurance which stated, among other things, that the HP-Workstation would not be shipped outside GCT-eligible countries without prior authorization from the appropriate national authorities and, in particular, that "this workstation [will not be reexported] from Germany to Russia or any other portion of the former Soviet Union without the permission of the U.S. Commerce Department." BXA alleged that, by falsifying information in the letter of assurance, both Chernyshenko and SFT (through Chernyshenko, its Director) concealed material facts directly or indirectly from a United States agency for the purpose of or in connection with effecting an export from the United States, and thereby violated Section 787.5(a) of the former Regulations.

Finally, the charging letters alleged that, in connection with the transaction and the activities described above, on or about July 20, 1993, both Chernyshenko and SFT caused, counseled or induced a third party to state on a Shipper's Export Declaration, an export control document as defined in Section 770.2 of the former Regulations, that the shipment of the HP-Workstation was authorized for export from the United States to

Germany under General License GCT, when in fact the shipment required a validated license, as the HP-Workstation was ultimately destined for Russia. BXA alleged that, in so doing, both Chernyshenko and SFT caused, counseled, or induced the making of a false statement of material fact either directly or indirectly to a United States agency on an export control document, an act prohibited by Section 787.5(a) of the former Regulations, and thereby violated Section 787.2 of the former Regulations.

BXA presented evidence that the charging letters were served on Chernyshenko and SFT. Neither Chernyshenko nor SFT has answered the charging letters, as required by Section 766.7 of the Regulations, and each respondent is therefore in default. Thus, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the "ALJ") find the facts to be as alleged in the charging letters and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letters, and concluded that those facts constitute three violations of the former Regulations by both Chernyshenko and SFT, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for those violations is that Chernyshenko and SFT each be denied all U.S. export privileges for a period of 10 years. As provided by Section 766.22 of the Regulations, the Recommended Decision

and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that, for a period of 10 years from the date of this Order, Dmitry N. Chernyshenko, Director, SFT Advertising Agency, 35 Altufievskoe Avenue, Moscow, 127410 Russia, and SFT Advertising Agency, 35 Altufievskoe Avenue, Moscow, 127410 Russia, and all of SFT's successors, assigns, officers, representatives, agents and employees when acting for or on behalf of SFT, 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 either denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by either 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 either 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 either denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from either 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 either denied person, or service any item, of whatever origin, that is owned, possessed or controlled by either 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 either 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 both Chernyshenko and SFT, as well as on BXA, and shall be published in the *Federal Register*.

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

Dated: July 12, 1999

William A. Reinsch
Under Secretary
for Export Administration