

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

In the Matter of:)
)
Conax AS)
Kongens gate 8)
P.O. Box 425 Sentrum)
NO-0103 Oslo)
Norway)
)
Respondent)

ORDER RELATING TO CONAX AS

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Conax AS (“Conax”) of its intention to initiate an administrative proceeding against Conax 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 Conax that alleges that Conax committed one violation of the Regulations. Specifically, the charge is:

Charge 1 15 C.F.R. § 764.2(a): Unlicensed Reexport of Computer Servers and Software to Sudan

On one occasion on or about November 26, 2006, Conax engaged in conduct prohibited by the Regulations when it reexported items subject to the Regulations from Norway to Sudan via the United Arab Emirates without the required Department of Commerce authorization. Specifically, Conax reexported the following computer servers and software, all of which are subject to the Regulations: one Sun Sparc Enterprise T5120 Server and five Sun Fire X4150 Servers, items classified under Export Control Classification Number (“ECCN”) 5A002 and

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2011). The charged violation occurred in 2006. The Regulations governing the violation at issue are found in the 2006 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2011 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 12, 2010 (75 Fed. Reg. 50,681 (Aug. 16, 2010)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

controlled for National Security and Anti-Terrorism reasons; Oracle 9i software, an item classified under ECCN 5D002 and controlled for National Security and Anti-Terrorism reasons; and one Sun Solaris 10 Operating System and one Sun Java Standard Edition 1.6.0 Update 4 Package for Solaris, items classified under ECCN 5D992 and controlled for Anti-Terrorism reasons. The reexport of these items from Norway to Sudan required a license pursuant to Sections 742.4 and 742.10 of the Regulations. Pursuant to Section 734.2(b)(6) of the Regulations, the export or reexport of items subject to the Regulations that will transit through a country or be transshipped in a country to a new country or are intended for reexport to the new country, are deemed to be exports to the new country. No such license was obtained. In reexporting these items to Sudan without a license, Conax committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Conax 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, Conax shall be assessed a civil penalty in the amount of \$50,000, which shall be paid to the U.S. Department of Commerce within 30 days of the date of this Order.

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 any payment is not made in full by the due date set forth herein, Conax 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 full and timely payment of the civil penalty 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 Conax.

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.



David W. Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 1 day of July, 2011.

that Conax committed one violation of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(a): Unlicensed Reexport of Computer Servers and Software to Sudan

On one occasion on or about November 26, 2006, Conax engaged in conduct prohibited by the Regulations when it reexported items subject to the Regulations from Norway to Sudan via the United Arab Emirates without the required Department of Commerce authorization. Specifically, Conax reexported the following computer servers and software, all of which are subject to the Regulations: one Sun Sparc Enterprise T5120 Server and five Sun Fire X4150 Servers, items classified under Export Control Classification Number ("ECCN") 5A002 and controlled for National Security and Anti-Terrorism reasons; Oracle 9i software, an item classified under ECCN 5D002 and controlled for National Security and Anti-Terrorism reasons; and one Sun Solaris 10 Operating System and one Sun Java Standard Edition 1.6.0 Update 4 Package for Solaris, items classified under ECCN 5D992 and controlled for Anti-Terrorism reasons. The reexport of these items from Norway to Sudan required a license pursuant to Sections 742.4 and 742.10 of the Regulations. Pursuant to Section 734.2(b)(6) of the Regulations, the export or reexport of items subject to the Regulations that will transit through a country or be transshipped in a country to a new country or are intended for reexport to the new country, are deemed to be exports to the new country. No such license was obtained. In reexporting these items to Sudan without a license, Conax committed one violation of Section 764.2(a) of the Regulations.

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

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

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

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

WHEREAS, Conax 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 Conax, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanction shall be imposed against Conax in complete settlement of the alleged violation of the Regulations relating to the transaction specifically detailed in the Proposed Charging Letter:

a. Conax shall be assessed a civil penalty in the amount of \$50,000, which shall be paid to the U.S. Department of Commerce within 30 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions.

b. The timely payment in full 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 Conax. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Conax'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, Conax 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. Conax also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, for the time period between the date of the Order, if issued, and the date Conax pays in full the civil penalty set forth in Paragraph 2 of this Agreement, in connection with any violation of the Act or the Regulations arising out of the transaction identified in the Proposed Charging Letter, or in connection with collection of the civil penalty or enforcement of the Agreement and Order, if issued.

4. Upon full and timely payment of the civil penalty as set forth in Paragraph 2.a above, BIS agrees that it will not initiate any further administrative proceeding against Conax in connection with any violation of the Act or the Regulations arising out of the transaction 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

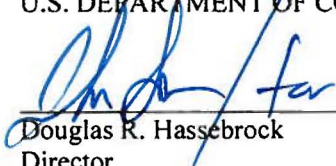
shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

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 his respective party to the terms and conditions set forth herein.


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



Douglas R. Hassebrock
Director
Office of Export Enforcement

Date: 7/1, 2011

CONAX AS



Berit Svendsen
Chief Executive Officer

Date: 27.06, 2011

PROPOSED CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Conax AS
Kongens gate 8
P.O. Box 425 Sentrum
NO-0103 Oslo
Norway

Attn.: Berit Svendsen, CEO

Dear Mr. Svendsen:

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), has reason to believe that Conax AS of Oslo, Norway (“Conax”), has committed one violation 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 Conax committed the following violation:

Charge 1 15 C.F.R. § 764.2(a): Unlicensed Reexport of Computer Servers and Software to Sudan

On one occasion on or about November 26, 2006, Conax engaged in conduct prohibited by the Regulations when it reexported items subject to the Regulations from Norway to Sudan via the United Arab Emirates without the required Department of Commerce authorization. Specifically, Conax reexported the following computer servers and software, all of which are subject to the Regulations: one Sun Sparc Enterprise T5120 Server and five Sun Fire X4150 Servers, items classified under Export Control Classification Number (“ECCN”) 5A002 and controlled for National Security and Anti-Terrorism reasons; Oracle 9i software, an item classified under ECCN 5D002 and controlled for National Security and Anti-Terrorism reasons; and one Sun Solaris 10 Operating System and one Sun Java Standard Edition 1.6.0 Update 4 Package for Solaris, items classified under ECCN 5D992 and controlled for Anti-Terrorism reasons. The reexport of these items from Norway to Sudan required a license pursuant to Sections 742.4 and 742.10 of the Regulations. Pursuant to Section 734.2(b)(6) of the

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Regulations, the export or reexport of items subject to the Regulations that will transit through a country or be transshipped in a country to a new country or are intended for reexport to the new country, are deemed to be exports to the new country. No such license was obtained. In reexporting these items to Sudan without a license, Conax committed one violation of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, Conax 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:

- 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 Conax fails to answer the charge 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 (2011). If Conax defaults, the Administrative Law Judge may find the charge alleged in this letter to be true without a hearing or further notice to the company. The Under Secretary for Industry and Security may then impose up to the maximum penalty on the charge in this letter.

Conax 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 (2011). Conax is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent the company. *See* 15 C.F.R. §§ 766.3(a) and 766.4 (2011).

Conax is further notified that under the Small Business Regulatory Enforcement Flexibility Act, the company 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 Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2011). Should Conax have a proposal to settle this case, the company or its representative should transmit it to the attorney representing BIS named below.

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

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

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

Eric Clark is the attorney representing BIS in this case; any communications that Conax may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement