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

In the Matter of:	)
	)
Philip Cheng	)
	)
currently incarcerated at:	)
	)
Registration Number 10105-111	)
FCI Terminal Island	)
Federal Correctional Institution	)
P.O. Box 3007	)
San Pedro, CA 90731	)
	)
and with an address at:	)
	)
7654 Peach Blossom Drive	)
Cupertino, CA 95014	)
	)
	)

ORDER DENYING EXPORT PRIVILEGES

On December 3, 2007, in the U.S. District Court for Northern District of California,

Philip Cheng ("Cheng") pled guilty to and was convicted of violating Section 38 of the Arms

Export Control Act (22 U.S.C. §§ 2778 (2000)). Cheng pled guilty to willfully engaging in

brokering activities in facilitating the export and transfer of defense articles and defense services,

specifically the brokering of the export of thermal imaging and infrared technology controlled

under 22 C.F.R.§ 121.1, Category XII(c), without having registered with and obtained the

required authorization from the Department of State. Cheng was sentenced to 24 months

imprisonment, followed by three years of supervised release, and ordered to pay a $50,000 fine

and a $100.00 special assessment fee.

Section 766.25 of the Export Administration Regulations ("EAR" or "Regulations")[1]

provides, in pertinent part, that "[t]he Director of the Office of Exporter Services, in consultation

with the Director of the Office of Export Enforcement, may deny the export privileges of any

person who has been convicted of a violation of the [Export Administration Act ("EAA")], the

EAR, of any order, license or authorization issued thereunder; any regulation, license, or order

issued under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706); 18

U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or

section 38 of the Arms Export Control Act (22 U.S.C. 2778)." 15 C.F.R. § 766.25(a); see also

Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this

provision may be for a period of up to 10 years from the date of the conviction. 15 C.F.R.

§ 766.25(d); see also 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations

states that the Bureau of Industry and Security's Office of Exporter Services may revoke any

Bureau of Industry and Security ("BIS") licenses previously issued in which the person had an

interest in at the time of his conviction.

I have received notice of Cheng's conviction for violating the AECA, and have provided

notice and an opportunity for Cheng to make a written submission to BIS, as provided in Section

766.25 of the Regulations. I have received a submission from Cheng. Based upon my review

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2008). The Regulations issued pursuant to the EAA, which is currently codified at 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the EAA 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 July 23, 2008 (73 Fed. Reg. 43603, July 25, 2008), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)).

and consideration of that submission, my consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Cheng's export privileges under the Regulations for a period of eight years from the date of Cheng's conviction.

Accordingly, it is hereby

ORDERED

I. Until December 3, 2015, Philip Cheng, currently incarcerated at: Registration Number 10105-111, FCI Terminal Island, Federal Correctional Institution, P.O. Box 3007, San Pedro, CA 90731, and with an address at: 7654 Peach Blossom Drive, Cupertino, CA 95014, and when acting for or on behalf of Cheng, his representatives, assigns, agents, or employees, (collectively referred to hereinafter 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. Benefitting in any way from any transaction involving any item exported or to be

C.   Benefitting 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.

II.   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 which 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.

III.   After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Philip Cheng 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 if necessary to prevent evasion of the Order.

IV.   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.

V.   This Order is effective immediately and shall remain in effect until December 3, 2015.

VI.   In accordance with Part 756 of the Regulations, Cheng may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII.   A copy of this Order shall be delivered to Cheng. This Order shall be published in the Federal Register.

Date: September 29, 2008

Bernard Kritzer
Director
Office of Exporter Services