

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

In the Matter of:

Barracuda Networks, Inc.
3175 South Winchester Blvd.
Campbell, CA 95008

and

Barracuda Networks, Ltd.
Unit 8 Grafton Way
Basingstoke, United Kingdom
RG22 6HY

Respondents

ORDER RELATING TO
BARRACUDA NETWORKS, INC. AND BARRACUDA NETWORKS, LTD.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Barracuda Networks, Inc., of Campbell, California (“Barracuda”), and Barracuda Networks, Ltd., of Basingstoke, United Kingdom (“Barracuda UK”), of its intention to initiate an administrative proceeding against Barracuda and Barracuda UK 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 Barracuda and Barracuda UK that alleges that

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2015). The violations alleged occurred during 2009-2012. The Regulations governing the violations at issue are found in the 2009-2012 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2009-2012)). All references to the Regulations in Sections I. and II., *infra*, are to the 2009-2012 versions of the Regulations, as applicable. The 2015 Regulations govern the procedural aspects of this case.

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 13,222 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 7, 2015 (80 Fed. Reg. 48,233 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.) (2006 & Supp. IV 2010).

Barracuda committed twenty-six (26) violations and Barracuda UK committed eleven (11) violations of the Regulations. Specifically, the charges are:

I. Background Common to All Charges

Barracuda is a U.S. company that sells software and devices relating to managing electronic communications, web traffic, remote access, and network security. Its spam and virus firewall products provide customers with Internet Protocol and content-based filtering, keyword blocking, and application and file-type blocking. Advanced models of the spam and virus firewall products also allow for social media monitoring. Barracuda has a number of wholly-owned subsidiaries, including, inter alia, ones in the United Kingdom and the People's Republic of China. It generally does not sell directly to end users, but rather through its network of distributors and resellers.

Barracuda Networks, Ltd. ("Barracuda UK") is a wholly-owned subsidiary of Barracuda. It was formed in or about 2004, and is responsible for supporting the sale of Barracuda products in the Europe, Middle East and Africa region. Barracuda UK handled sales of Barracuda devices and Energizer Updates subscriptions to, inter alia, Iran and Syria, using Barracuda-authorized distributors and resellers in the region.

For Barracuda devices to work properly, Barracuda customers must also purchase a subscription to "Energizer Updates," which entitles the user to receive the necessary updates for the purchased product. Energizer Updates provide updates for software classified as 5D002 and include spam and virus email information, bug fixes, and firmware updates. Devices in active demonstration mode also receive Energizer Updates, but customers do not need to purchase a separate Energizer Updates subscription. Subscriptions run for one, three or five years and have to be renewed thereafter to ensure the device continues to function properly. For subscriptions to Energizer Updates from customers in Iran and Syria, Barracuda UK received notification when renewals were placed. Although sold by regional Barracuda subsidiaries such as Barracuda UK, Barracuda's Energizer Updates are exported electronically by Barracuda from the United States and are subject to the Regulations. Energizer Updates are classified the same as the ECCN 5D002 software they update and are controlled for National Security and Anti-Terrorism reasons.

When customers turned on the Barracuda devices at issue, the product registers online for servicing. If the device had a current subscription to Energizer Updates, then it would receive the related updates. Barracuda has update notifications in its order management system, which was accessible to Barracuda employees in the US and UK, and used by Barracuda to assist the customer with product and technical questions.

Barracuda knew that the exports and reexports constituted a violation of the Regulations. As early as 2004, Barracuda's International Authorized Reseller Agreements included provisions requiring that distributors agree to abide by any conditions of export or

reexport imposed by the U.S. Government pursuant to the Regulations. Despite acknowledging the Regulations in its reseller agreements, Barracuda entered into authorized reseller agreements with entities in Syria and Iran. For example, in three authorized reseller agreements dated between on or about December 1, 2007, through on or about February 2, 2010, Barracuda entered into distribution agreements with resellers in Damascus, Syria, for the territory of Syria. Barracuda also had a reseller agreement with an entity in Tehran, Iran, for the territory of Iran.

Further, in acquiring Netcontinuum in early 2008, and Yosemite Technologies in early 2009, Barracuda obtained these companies' Commodities Classification and Tracking System (CCATS) filings. In the email correspondence related to the classifications for Yosemite Technologies products, export consultants stated that the products could be shipped to all destinations except Iran, Syria, Sudan, Cuba and North Korea.

Barracuda itself had begun submitting BIS classification requests for certain Barracuda products as early as January 2008, further demonstrating its understanding of the Regulations, and in a sales meeting with Barracuda and Barracuda UK employees on or about April 16, 2009, the then-Chief Executive Officer of Barracuda discussed prohibitions on the sales to embargoed destinations. Following that meeting, a UK Channel Account Manager circulated an email to Barracuda and Barracuda UK employees with a list of embargoed destinations, which included Iran, Syria, and Sudan. Nonetheless, Barracuda and Barracuda UK did not take the steps needed to design and implement an appropriate compliance system and instead engaged in unlicensed exports or reexports to Iran, Syria, and Sudan without the required BIS or U.S. Government authorization, including the knowledge violations set forth in additional detail below.³

II. The Charged Transactions

Charges 1-5

15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Selling Encryption-Controlled Devices or Software to Syria

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on five occasions between on or about September 14, 2009, and on or about January 12, 2011, Barracuda and Barracuda UK acted with knowledge of a violation of the Regulations when they sold to end users in Syria encryption-controlled devices or software, items subject to the Regulations and exported or to be exported from the United States, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The items were

³ Barracuda is charged in connection with all 26 transactions below. Barracuda UK is charged in connection with Charges 1-10 and 16.

classified as ECCN 5A002 or 5D992, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$233,584.

The United States has a long-standing and widely-known trade embargo against Syria. With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a BIS license, as set forth at all times pertinent hereto in General Order No. 2, codified in Supplement No. 1 to Part 736 of the Regulations.⁴ Barracuda and Barracuda UK knew of the license requirement for Syria as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports or reexports referenced herein.

Barracuda and Barracuda UK sold encryption items to end users identified in order documents as being located in Syria. For two orders, the "ship to" address was identified as Syria. For another shipment, the purchase order made reference to Damascus or Syria. On the other two orders, the Syrian end user was identified, and following the initial sale, Barracuda UK shipped a replacement device knowing the item was destined for Syria.

In so doing, Barracuda and Barracuda UK committed five violations of Section 764.2(e) of the Regulations.

Charges 6-10

15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Selling Subscriptions for Energizer Updates to, and Servicing Encryption-Controlled Devices in, Syria

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on five occasions between on or about June 20, 2010, and on or about December 21, 2011, Barracuda and Barracuda UK acted with knowledge of a violation of the Regulations in selling Energizer Updates to end users in Syria and servicing encryption-controlled devices with the Energizer Updates for end users in Syria, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The Energizer Updates were items subject to the Regulations and were exported or to be exported from the United States. They were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$2,486.

The United States has a long-standing and widely-known trade embargo against Syria. With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a BIS license, as set forth at all times pertinent

⁴ General Order No. 2 was issued pursuant to the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003. On December 12, 2011, the controls on exports and reexports to Syria were moved to Section 746.9 of the Regulations. The licensing requirements continued unchanged. *See* 76 Fed. Reg. 77,115 (Dec. 12, 2011).

hereto in General Order No. 2, codified in Supplement No. 1 to Part 736 of the Regulations.⁵ Barracuda and Barracuda UK knew of the license requirement for Syria as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports or reexports described herein.

As set forth in the schedule, Barracuda UK sold encryption-controlled devices through its authorized distributors and resellers in the Middle East. With each device sale, Barracuda UK also sold Energizer Updates for subscription periods of one, three or five years. When the subscriptions for the Energizer Updates expired, customers could renew their subscription so as to continue to get updates for their devices.

Barracuda and Barracuda UK sold and serviced Energizer Updates for devices in Syria. In the renewal orders, the end users identified the "ship to" address as in Syria.

In so doing, Barracuda and Barracuda UK committed five violations of Section 764.2(e) of the Regulations.

Charges 11-15

15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Servicing Encryption-Controlled Devices in Syria

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on five occasions between on or about December 22, 2009, and on or about December 21, 2011, Barracuda acted with knowledge of a violation of the Regulations when it serviced encryption-controlled devices for end users in Syria with Energizer Updates, items subject to the Regulations and exported or to be exported from the United States, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The items were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$22,426.

The United States has a long-standing and widely-known trade embargo against Syria. With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a Department of Commerce license, as set forth at all times pertinent hereto in General Order No. 2, codified in Supplement No. 1 to Part 736 of the Regulations.⁶ Barracuda knew of the license requirements for Syria as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports or reexports described herein.

Barracuda UK received requests for quotes for encryption-controlled devices from its authorized distributors and resellers in the Middle East, which Barracuda UK fulfilled.

⁵ See note 4, *supra*.

⁶ See note 4, *supra*.

Barracuda knew that the devices were located in Syria because, for example, the reseller or end user self-identified as being located in Damascus or Syria in the end-user activation emails.

In so doing, Barracuda committed five violations of Section 764.2(e) of the Regulations.

Charge 16

15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Selling Subscriptions for Energizer Updates to, and Servicing Encryption-Controlled Devices in, Iran

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, between on or about March 21, 2011, and on or about May 16, 2012, Barracuda and Barracuda UK acted with knowledge of a violation of the Regulations in selling a renewal for Energizer Updates to end users in Iran and servicing encryption-controlled devices with Energizer Updates for end users in Iran, with knowledge that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The Energizer Updates were items subject to the Regulations and were exported or to be exported from the United States. They were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at \$4,949.

Under Sections 746.7 and 742.8 of the Regulations, a BIS license is required to export to Iran items subject to controls for National Security and Anti-Terrorism reasons, such as items classified as 5D002. The Regulations also prohibit the export or reexport to Iran of any item subject to both the Regulations and the Iranian Transactions and Sanctions Regulations (“ITSR”), if the transaction is not authorized by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), which administers the ITSR.⁷ In order to avoid duplication, exporters and reexporters are not required under the Regulations to seek authorization from both BIS and OFAC for exports or reexports subject to both the EAR and the ITSR, and accordingly an authorization granted by OFAC is considered authorization for purposes of the EAR as well. Barracuda and Barracuda UK knew of the requirements to obtain U.S. Government authorization for Iran as set forth in Section I. above, but did not seek or obtain authorization from BIS or OFAC in connection with any of the exports or reexports described herein.

Barracuda UK received a request for an encryption-controlled device from distributors or resellers in the Middle East on or about April 24, 2009, which Barracuda UK fulfilled. Subsequent to the sale, Barracuda UK sold a subscription to Energizer Updates on or about March 21, 2011, and Barracuda serviced the device with Energizer Updates

⁷ 31 C.F.R. Part 560 (2011-2012). The ITSR formerly were known as the Iranian Transactions Regulations (“ITR”). On October 22, 2012, OFAC renamed the ITR as the ITSR and reissued them in relevant part. See 77 Fed. Reg. 64,664 (Oct. 22, 2012).

through at least August 30, 2012. Barracuda and Barracuda UK knew or should have known the items were destined for Tehran, Iran, because the end user self-identified as being located in "Tehran, Iran/UAE" in its renewal request, and the Barracuda purchase order identified the end user's "ship to" address as such.

In so doing, Barracuda and Barracuda UK committed one violation of Section 764.2(e) of the Regulations.

Charges 17-23 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Servicing Encryption-Controlled Devices in Iran

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on seven occasions between on or about April 24, 2009, and on or about May 16, 2012, Barracuda acted with knowledge of a violation of the Regulations when it serviced encryption-controlled devices with Energizer Updates for end users in Iran, with knowledge that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The Energizer Updates were items subject to the Regulations and exported or to be exported from the United States. They were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$52,597.

Under Sections 746.7 and 742.8 of the Regulations, a BIS license is required to export to Iran items subject to controls for National Security and Anti-Terrorism reasons, such as items classified as 5D002. The Regulations also prohibit the export or reexport to Iran of any item subject to both the Regulations and the ITSR, if the transaction is not authorized by OFAC.⁸ In order to avoid duplication, exporters and reexporters are not required under the Regulations to seek authorization from both BIS and OFAC for exports or reexports subject to both the EAR and the ITSR, and accordingly an authorization granted by OFAC is considered authorization for purposes of the EAR as well. Barracuda knew of the requirement to obtain U.S. Government authorization for Iran as set forth in Section I. above, but did not seek or obtain authorization from BIS or OFAC in connection with any of the exports described herein.

Barracuda UK received requests for quotes for encryption-controlled devices from its authorized distributors and resellers in the Middle East, which Barracuda UK fulfilled. Barracuda knew that the devices were located in Iran because, for example, the reseller or end user self-identified as being located in Iran based on the address information they provided in end-user activation emails.

In so doing, Barracuda committed seven violations of Section 764.2(e) of the Regulations.

⁸ 31 C.F.R. Part 560 (2009-2012). See also note 7, *supra*.

**Charges 24-26 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation
by Servicing Encryption-Controlled Devices in Sudan**

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on three occasions between on or about August 4, 2010, through on or about May 16, 2012, Barracuda acted with knowledge of a violation of the Regulations when it serviced encryption-controlled devices with Energizer Updates for end users in Sudan, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The Energizer Updates were items subject to the Regulations and exported or to be exported from the United States. They were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$34,217. A BIS license is required by Section 742.10 of the Regulations for exports of items to Sudan.

After the initial activation of the items in Sudan, Barracuda serviced the devices through Energizer Updates it exported to Sudan. Email correspondence (in June 2011) among senior management indicated that Barracuda was aware that the devices were being used by a Chinese oil company operating in Sudan.⁹ Barracuda knew of the license requirement for Sudan as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports described herein.

In so doing, Barracuda committed three violations of Section 764.2(e) of the Regulations.

WHEREAS, BIS, Barracuda, and Barracuda UK 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, Barracuda and Barracuda UK shall be assessed a civil penalty in the amount of \$1,500,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

⁹ The Barracuda devices had been sold through authorized distributors and resellers by Barracuda Networks Technology, Ltd. (“Barracuda China”), a wholly-owned subsidiary of Barracuda.

SECOND, 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, Barracuda and Barracuda UK 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, the full and timely payment of the civil penalty in accordance with the payment schedule 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 Barracuda and Barracuda UK. Accordingly, if Barracuda and Barracuda UK should fail to pay the civil penalty in a full and timely manner, the undersigned may issue an order denying all of Barracuda's and Barracuda UK's export privileges under the Regulations for a period of one year from the date of failure to make such payment.

FOURTH, Barracuda and Barracuda UK shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Barracuda's and Barracuda UK's testimonial obligations in any proceeding, nor does it affect their right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

FIFTH, 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 23rd day of November, 2015.

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

In the Matter of:

Barracuda Networks, Inc.
3175 South Winchester Blvd.
Campbell, CA 95008

and

Barracuda Networks, Ltd.
Unit 8 Grafton Way
Basingstoke, United Kingdom
RG22 6HY

Respondents

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and among Barracuda Networks, Inc., of Campbell, California ("Barracuda"), Barracuda Networks, Ltd., of Basingstoke, United Kingdom ("Barracuda UK"), 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

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2015). The violations alleged occurred during 2009-2012. The Regulations governing the violations at issue are found in the 2009-2012 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2009-2012)). All references to the Regulations in Sections I. and II., *infra*, are to the 2009-2012 versions of the Regulations, as applicable. The 2015 Regulations govern the procedural aspects of this case.

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 13,222 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 7, 2015 (80 Fed. Reg. 48,233 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.) (2006 & Supp. IV 2010).

WHEREAS, Barracuda and Barracuda UK 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;

WHEREAS, BIS has notified Barracuda and Barracuda UK of its intentions to initiate an administrative proceeding against Barracuda and Barracuda UK, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a Proposed Charging Letter to Barracuda and Barracuda UK that alleges that Barracuda committed twenty-six (26) violations and Barracuda UK committed eleven (11) violations of the Regulations, specifically:

I. Background Common to All Charges

Barracuda is a U.S. company that sells software and devices relating to managing electronic communications, web traffic, remote access, and network security. Its spam and virus firewall products provide customers with Internet Protocol and content-based filtering, keyword blocking, and application and file-type blocking. Advanced models of the spam and virus firewall products also allow for social media monitoring. Barracuda has a number of wholly-owned subsidiaries, including, inter alia, ones in the United Kingdom and the People's Republic of China. It generally does not sell directly to end users, but rather through its network of distributors and resellers.

Barracuda Networks, Ltd. ("Barracuda UK") is a wholly-owned subsidiary of Barracuda. It was formed in or about 2004, and is responsible for supporting the sale of Barracuda products in the Europe, Middle East and Africa region. Barracuda UK handled sales of Barracuda devices and Energizer Updates subscriptions to, inter alia, Iran and Syria, using Barracuda-authorized distributors and resellers in the region.

For Barracuda devices to work properly, Barracuda customers must also purchase a subscription to "Energizer Updates," which entitles the user to receive the necessary updates for the purchased product. Energizer Updates provide updates for software classified as 5D002 and include spam and virus email information, bug fixes, and firmware updates. Devices in active demonstration mode also receive Energizer Updates, but customers do not need to purchase a separate Energizer Updates subscription. Subscriptions run for one, three or five years and have to be renewed thereafter to ensure the device continues to function properly. For subscriptions to Energizer Updates from customers in Iran and Syria, Barracuda UK received notification when renewals were placed. Although sold by regional Barracuda subsidiaries such as Barracuda UK,

Barracuda's Energizer Updates are exported electronically by Barracuda from the United States and are subject to the Regulations. Energizer Updates are classified the same as the ECCN 5D002 software they update and are controlled for National Security and Anti-Terrorism reasons.

When customers turned on the Barracuda devices at issue, the product registers online for servicing. If the device had a current subscription to Energizer Updates, then it would receive the related updates. Barracuda has update notifications in its order management system, which was accessible to Barracuda employees in the US and UK, and used by Barracuda to assist the customer with product and technical questions.

Barracuda knew that the exports and reexports constituted a violation of the Regulations. As early as 2004, Barracuda's International Authorized Reseller Agreements included provisions requiring that distributors agree to abide by any conditions of export or reexport imposed by the U.S. Government pursuant to the Regulations. Despite acknowledging the Regulations in its reseller agreements, Barracuda entered into authorized reseller agreements with entities in Syria and Iran. For example, in three authorized reseller agreements dated between on or about December 1, 2007, through on or about February 2, 2010, Barracuda entered into distribution agreements with resellers in Damascus, Syria, for the territory of Syria. Barracuda also had a reseller agreement with an entity in Tehran, Iran, for the territory of Iran.

Further, in acquiring Netcontinuum in early 2008, and Yosemite Technologies in early 2009, Barracuda obtained these companies' Commodities Classification and Tracking System (CCATS) filings. In the email correspondence related to the classifications for Yosemite Technologies products, export consultants stated that the products could be shipped to all destinations except Iran, Syria, Sudan, Cuba and North Korea.

Barracuda itself had begun submitting BIS classification requests for certain Barracuda products as early as January 2008, further demonstrating its understanding of the Regulations, and in a sales meeting with Barracuda and Barracuda UK employees on or about April 16, 2009, the then-Chief Executive Officer of Barracuda discussed prohibitions on the sales to embargoed destinations. Following that meeting, a UK Channel Account Manager circulated an email to Barracuda and Barracuda UK employees with a list of embargoed destinations, which included Iran, Syria, and Sudan. Nonetheless, Barracuda and Barracuda UK did not take the steps needed to design and implement an appropriate compliance system and instead engaged in unlicensed exports or reexports to Iran, Syria, and Sudan without the required BIS or U.S. Government authorization, including the knowledge violations set forth in additional detail below.³

³ Barracuda is charged in connection with all 26 transactions below. Barracuda UK is charged in connection with Charges 1-10 and 16.

II. The Charged Transactions

Charges 1-5 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Selling Encryption-Controlled Devices or Software to Syria

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on five occasions between on or about September 14, 2009, and on or about January 12, 2011, Barracuda and Barracuda UK acted with knowledge of a violation of the Regulations when they sold to end users in Syria encryption-controlled devices or software, items subject to the Regulations and exported or to be exported from the United States, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The items were classified as ECCN 5A002 or 5D992, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$233,584.

The United States has a long-standing and widely-known trade embargo against Syria. With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a BIS license, as set forth at all times pertinent hereto in General Order No. 2, codified in Supplement No. 1 to Part 736 of the Regulations.⁴ Barracuda and Barracuda UK knew of the license requirement for Syria as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports or reexports referenced herein.

Barracuda and Barracuda UK sold encryption items to end users identified in order documents as being located in Syria. For two orders, the "ship to" address was identified as Syria. For another shipment, the purchase order made reference to Damascus or Syria. On the other two orders, the Syrian end user was identified, and following the initial sale, Barracuda UK shipped a replacement device knowing the item was destined for Syria.

In so doing, Barracuda and Barracuda UK committed five violations of Section 764.2(e) of the Regulations.

⁴ General Order No. 2 was issued pursuant to the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003. On December 12, 2011, the controls on exports and reexports to Syria were moved to Section 746.9 of the Regulations. The licensing requirements continued unchanged. See 76 Fed. Reg. 77,115 (Dec. 12, 2011).

Charges 6-10

15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Selling Subscriptions for Energizer Updates to, and Servicing Encryption-Controlled Devices in, Syria

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on five occasions between on or about June 20, 2010, and on or about December 21, 2011, Barracuda and Barracuda UK acted with knowledge of a violation of the Regulations in selling Energizer Updates to end users in Syria and servicing encryption-controlled devices with the Energizer Updates for end users in Syria, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The Energizer Updates were items subject to the Regulations and were exported or to be exported from the United States. They were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$2,486.

The United States has a long-standing and widely-known trade embargo against Syria. With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a BIS license, as set forth at all times pertinent hereto in General Order No. 2, codified in Supplement No. 1 to Part 736 of the Regulations.⁵ Barracuda and Barracuda UK knew of the license requirement for Syria as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports or reexports described herein.

As set forth in the schedule, Barracuda UK sold encryption-controlled devices through its authorized distributors and resellers in the Middle East. With each device sale, Barracuda UK also sold Energizer Updates for subscription periods of one, three or five years. When the subscriptions for the Energizer Updates expired, customers could renew their subscription so as to continue to get updates for their devices.

Barracuda and Barracuda UK sold and serviced Energizer Updates for devices in Syria. In the renewal orders, the end users identified the “ship to” address as in Syria.

In so doing, Barracuda and Barracuda UK committed five violations of Section 764.2(e) of the Regulations.

Charges 11-15

15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Servicing Encryption-Controlled Devices in Syria

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on five occasions between on or about December 22,

⁵ See note 4, *supra*.

2009, and on or about December 21, 2011, Barracuda acted with knowledge of a violation of the Regulations when it serviced encryption-controlled devices for end users in Syria with Energizer Updates, items subject to the Regulations and exported or to be exported from the United States, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The items were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$22,426.

The United States has a long-standing and widely-known trade embargo against Syria. With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a Department of Commerce license, as set forth at all times pertinent hereto in General Order No. 2, codified in Supplement No. 1 to Part 736 of the Regulations.⁶ Barracuda knew of the license requirements for Syria as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports or reexports described herein.

Barracuda UK received requests for quotes for encryption-controlled devices from its authorized distributors and resellers in the Middle East, which Barracuda UK fulfilled. Barracuda knew that the devices were located in Syria because, for example, the reseller or end user self-identified as being located in Damascus or Syria in the end-user activation emails.

In so doing, Barracuda committed five violations of Section 764.2(e) of the Regulations.

Charge 16

15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Selling Subscriptions for Energizer Updates to, and Servicing Encryption-Controlled Devices in, Iran

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, between on or about March 21, 2011, and on or about May 16, 2012, Barracuda and Barracuda UK acted with knowledge of a violation of the Regulations in selling a renewal for Energizer Updates to end users in Iran and servicing encryption-controlled devices with Energizer Updates for end users in Iran, with knowledge that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The Energizer Updates were items subject to the Regulations and were exported or to be exported from the United States. They were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at \$4,949.

⁶ See note 4, *supra*.

Under Sections 746.7 and 742.8 of the Regulations, a BIS license is required to export to Iran items subject to controls for National Security and Anti-Terrorism reasons, such as items classified as 5D002. The Regulations also prohibit the export or reexport to Iran of any item subject to both the Regulations and the Iranian Transactions and Sanctions Regulations ("ITSR"), if the transaction is not authorized by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), which administers the ITSR.⁷ In order to avoid duplication, exporters and reexporters are not required under the Regulations to seek authorization from both BIS and OFAC for exports or reexports subject to both the EAR and the ITSR, and accordingly an authorization granted by OFAC is considered authorization for purposes of the EAR as well. Barracuda and Barracuda UK knew of the requirements to obtain U.S. Government authorization for Iran as set forth in Section I. above, but did not seek or obtain authorization from BIS or OFAC in connection with any of the exports or reexports described herein.

Barracuda UK received a request for an encryption-controlled device from distributors or resellers in the Middle East on or about April 24, 2009, which Barracuda UK fulfilled. Subsequent to the sale, Barracuda UK sold a subscription to Energizer Updates on or about March 21, 2011, and Barracuda serviced the device with Energizer Updates through at least August 30, 2012. Barracuda and Barracuda UK knew or should have known the items were destined for Tehran, Iran, because the end user self-identified as being located in "Tehran, Iran/UAE" in its renewal request, and the Barracuda purchase order identified the end user's "ship to" address as such.

In so doing, Barracuda and Barracuda UK committed one violation of Section 764.2(e) of the Regulations.

Charges 17-23 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Servicing Encryption-Controlled Devices in Iran

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on seven occasions between on or about April 24, 2009, and on or about May 16, 2012, Barracuda acted with knowledge of a violation of the Regulations when it serviced encryption-controlled devices with Energizer Updates for end users in Iran, with knowledge that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The Energizer Updates were items subject to the Regulations and exported or to be exported from the United States. They were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$52,597.

⁷ 31 C.F.R. Part 560 (2011-2012). The ITSR formerly were known as the Iranian Transactions Regulations ("ITR"). On October 22, 2012, OFAC renamed the ITR as the ITSR and reissued them in relevant part. See 77 Fed. Reg. 64,664 (Oct. 22, 2012).

Under Sections 746.7 and 742.8 of the Regulations, a BIS license is required to export to Iran items subject to controls for National Security and Anti-Terrorism reasons, such as items classified as 5D002. The Regulations also prohibit the export or reexport to Iran of any item subject to both the Regulations and the ITSR, if the transaction is not authorized by OFAC.⁸ In order to avoid duplication, exporters and reexporters are not required under the Regulations to seek authorization from both BIS and OFAC for exports or reexports subject to both the EAR and the ITSR, and accordingly an authorization granted by OFAC is considered authorization for purposes of the EAR as well. Barracuda knew of the requirement to obtain U.S. Government authorization for Iran as set forth in Section I. above, but did not seek or obtain authorization from BIS or OFAC in connection with any of the exports described herein.

Barracuda UK received requests for quotes for encryption-controlled devices from its authorized distributors and resellers in the Middle East, which Barracuda UK fulfilled. Barracuda knew that the devices were located in Iran because, for example, the reseller or end user self-identified as being located in Iran based on the address information they provided in end-user activation emails.

In so doing, Barracuda committed seven violations of Section 764.2(e) of the Regulations.

**Charges 24-26 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation
by Servicing Encryption-Controlled Devices in Sudan**

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on three occasions between on or about August 4, 2010, through on or about May 16, 2012, Barracuda acted with knowledge of a violation of the Regulations when it serviced encryption-controlled devices with Energizer Updates for end users in Sudan, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The Energizer Updates were items subject to the Regulations and exported or to be exported from the United States. They were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$34,217. A BIS license is required by Section 742.10 of the Regulations for exports of items to Sudan.

After the initial activation of the items in Sudan, Barracuda serviced the devices through Energizer Updates it exported to Sudan. Email correspondence (in June 2011) among senior management indicated that Barracuda was aware that the devices were being used by a Chinese oil company operating in Sudan.⁹ Barracuda knew of the license

⁸ 31 C.F.R. Part 560 (2009-2012). See also note 7, *supra*.

⁹ The Barracuda devices had been sold through authorized distributors and resellers by Barracuda Networks Technology, Ltd. ("Barracuda China"), a wholly-owned subsidiary of Barracuda.

requirement for Sudan as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports described herein.

In so doing, Barracuda committed three violations of Section 764.2(e) of the Regulations.

WHEREAS, Barracuda and Barracuda UK have reviewed the Proposed Charging Letter and are aware of the allegations made against them and the administrative sanctions that could be imposed against them if the allegations are found to be true;

WHEREAS, Barracuda and Barracuda UK fully understand 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, Barracuda and Barracuda UK enter into this Agreement voluntarily and with full knowledge of their rights, after having consulted with counsel;

WHEREAS, Barracuda and Barracuda UK state that no promises or representations have been made to them other than the agreements and considerations herein expressed;

WHEREAS, Barracuda and Barracuda UK neither admit nor deny the allegations contained in the Proposed Charging Letter; and

WHEREAS, Barracuda and Barracuda UK agree 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 Barracuda and Barracuda UK, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanction shall be imposed against Barracuda and Barracuda UK in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Proposed Charging Letter:

a. Barracuda and Barracuda UK shall be assessed a civil penalty in the amount of \$1,500,000, the payment of which shall be made 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 full and 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, license exception, permission, or privilege granted, or to be granted, to Barracuda and Barracuda UK. Failure to make full and timely payment of the civil penalty may result in the denial of all of Barracuda's and Barracuda UK's export privileges under the Regulations for one year from the date of the failure to make such payment.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, Barracuda and Barracuda UK hereby waive 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. Barracuda and Barracuda UK also waive and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the

Regulations arising out of the transactions identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until Barracuda and Barracuda UK pay in full the civil penalty agreed to in Paragraph 2.a of this Agreement.

4. Barracuda and Barracuda UK shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Barracuda's and Barracuda UK's testimonial obligations in any proceeding, nor does it affect their right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a, BIS will not initiate any further administrative proceeding against Barracuda and Barracuda UK in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

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

10. Each signatory affirms that he/she has authority to enter into this Settlement Agreement and to bind his/her respective party to the terms and conditions set forth herein.

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

Douglas R. Hassebrock
Director of Export Enforcement

BARRACUDA NETWORKS, INC.
BARRACUDA NETWORKS, LTD.

Diane Honda
Vice President, General Counsel for
Barracuda Networks, Inc. and Authorized
Representative for Barracuda Networks, Ltd.

Date: 23 Nov 15

Date: November 19, 2015

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Barracuda Networks, Inc.
3175 South Winchester Blvd.
Campbell, CA 95008

Attn: William Jenkins
CEO and President

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Barracuda Networks, Ltd.
Unit 8 Grafton Way
Basingstoke, United Kingdom
RG22 6HY

Attn: CEO or President

Dear Sir or Madam:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that as set forth below, Barracuda Networks, Inc., of Campbell, California (“Barracuda”), has committed twenty-six (26) violations, and that Barracuda Networks, Ltd., of Basingstoke, United Kingdom (“Barracuda UK”), has committed eleven (11) violations of the Export Administration Regulations (the “Regulations”),¹ which issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).²

I. Background Common to All Charges

Barracuda is a U.S. company that sells software and devices relating to managing electronic communications, web traffic, remote access, and network security. Its spam and virus firewall products provide customers with Internet Protocol and content-based

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2015). The violations alleged occurred during 2009-2012. The Regulations governing the violations at issue are found in the 2009-2012 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2009-2012)). All references to the Regulations in Sections I. and II., *infra*, are to the 2009-2012 versions of the Regulations, as applicable. The 2015 Regulations govern the procedural aspects of this case.

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 13,222 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 7, 2015 (80 Fed. Reg. 48,233 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 & Supp. IV 2010).

filtering, keyword blocking, and application and file-type blocking. Advanced models of the spam and virus firewall products also allow for social media monitoring. Barracuda has a number of wholly-owned subsidiaries, including, inter alia, ones in the United Kingdom and the People's Republic of China. It generally does not sell directly to end users, but rather through its network of distributors and resellers.

Barracuda Networks, Ltd. ("Barracuda UK") is a wholly-owned subsidiary of Barracuda. It was formed in or about 2004, and is responsible for supporting the sale of Barracuda products in the Europe, Middle East and Africa region. Barracuda UK handled sales of Barracuda devices and Energizer Updates subscriptions to, inter alia, Iran and Syria, using Barracuda-authorized distributors and resellers in the region.

For Barracuda devices to work properly, Barracuda customers must also purchase a subscription to "Energizer Updates," which entitles the user to receive the necessary updates for the purchased product. Energizer Updates provide updates for software classified as 5D002 and include spam and virus email information, bug fixes, and firmware updates. Devices in active demonstration mode also receive Energizer Updates, but customers do not need to purchase a separate Energizer Updates subscription. Subscriptions run for one, three or five years and have to be renewed thereafter to ensure the device continues to function properly. For subscriptions to Energizer Updates from customers in Iran and Syria, Barracuda UK received notification when renewals were placed. Although sold by regional Barracuda subsidiaries such as Barracuda UK, Barracuda's Energizer Updates are exported electronically by Barracuda from the United States and are subject to the Regulations. Energizer Updates are classified the same as the ECCN 5D002 software they update and are controlled for National Security and Anti-Terrorism reasons.

When customers turned on the Barracuda devices at issue, the product registers online for servicing. If the device had a current subscription to Energizer Updates, then it would receive the related updates. Barracuda has update notifications in its order management system, which was accessible to Barracuda employees in the US and UK, and used by Barracuda to assist the customer with product and technical questions.

Barracuda knew that the exports and reexports constituted a violation of the Regulations. As early as 2004, Barracuda's International Authorized Reseller Agreements included provisions requiring that distributors agree to abide by any conditions of export or reexport imposed by the U.S. Government pursuant to the Regulations. Despite acknowledging the Regulations in its reseller agreements, Barracuda entered into authorized reseller agreements with entities in Syria and Iran. For example, in three authorized reseller agreements dated between on or about December 1, 2007, through on or about February 2, 2010, Barracuda entered into distribution agreements with resellers in Damascus, Syria, for the territory of Syria. Barracuda also had a reseller agreement with an entity in Tehran, Iran, for the territory of Iran.

Further, in acquiring Netcontinuum in early 2008, and Yosemite Technologies in early 2009, Barracuda obtained these companies' Commodities Classification and Tracking System (CCATS) filings. In the email correspondence related to the classifications for Yosemite Technologies products, export consultants stated that the products could be shipped to all destinations except Iran, Syria, Sudan, Cuba and North Korea.

Barracuda itself had begun submitting BIS classification requests for certain Barracuda products as early as January 2008, further demonstrating its understanding of the Regulations, and in a sales meeting with Barracuda and Barracuda UK employees on or about April 16, 2009, the then-Chief Executive Officer of Barracuda discussed prohibitions on the sales to embargoed destinations. Following that meeting, a UK Channel Account Manager circulated an email to Barracuda and Barracuda UK employees with a list of embargoed destinations, which included Iran, Syria, and Sudan. Nonetheless, Barracuda and Barracuda UK did not take the steps needed to design and implement an appropriate compliance system and instead engaged in unlicensed exports or reexports to Iran, Syria, and Sudan without the required BIS or U.S. Government authorization, including the knowledge violations set forth in additional detail below.³

II. The Charged Transactions

Charges 1-5 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Selling Encryption-Controlled Devices or Software to Syria

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on five occasions between on or about September 14, 2009, and on or about January 12, 2011, Barracuda and Barracuda UK acted with knowledge of a violation of the Regulations when they sold to end users in Syria encryption-controlled devices or software, items subject to the Regulations and exported or to be exported from the United States, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The items were classified as ECCN 5A002 or 5D992, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$233,584.

The United States has a long-standing and widely-known trade embargo against Syria. With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a BIS license, as set forth at all times pertinent hereto in General Order No. 2, codified in Supplement No. 1 to Part 736 of the

³ Barracuda is charged in connection with all 26 transactions below. Barracuda UK is charged in connection with Charges 1-10 and 16.

Regulations.⁴ Barracuda and Barracuda UK knew of the license requirement for Syria as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports or reexports referenced herein.

Barracuda and Barracuda UK sold encryption items to end users identified in order documents as being located in Syria. For two orders, the “ship to” address was identified as Syria. For another shipment, the purchase order made reference to Damascus or Syria. On the other two orders, the Syrian end user was identified, and following the initial sale, Barracuda UK shipped a replacement device knowing the item was destined for Syria.

In so doing, Barracuda and Barracuda UK committed five violations of Section 764.2(e) of the Regulations.

Charges 6-10

15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Selling Subscriptions for Energizer Updates to, and Servicing Encryption-Controlled Devices in, Syria

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on five occasions between on or about June 20, 2010, and on or about December 21, 2011, Barracuda and Barracuda UK acted with knowledge of a violation of the Regulations in selling Energizer Updates to end users in Syria and servicing encryption-controlled devices with the Energizer Updates for end users in Syria, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The Energizer Updates were items subject to the Regulations and were exported or to be exported from the United States. They were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$2,486.

The United States has a long-standing and widely-known trade embargo against Syria. With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a BIS license, as set forth at all times pertinent hereto in General Order No. 2, codified in Supplement No. 1 to Part 736 of the Regulations.⁵ Barracuda and Barracuda UK knew of the license requirement for Syria as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports or reexports described herein.

⁴ General Order No. 2 was issued pursuant to the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003. On December 12, 2011, the controls on exports and reexports to Syria were moved to Section 746.9 of the Regulations. The licensing requirements continued unchanged. *See* 76 Fed. Reg. 77,115 (Dec. 12, 2011).

⁵ *See* note 4, *supra*.

As set forth in the schedule, Barracuda UK sold encryption-controlled devices through its authorized distributors and resellers in the Middle East. With each device sale, Barracuda UK also sold Energizer Updates for subscription periods of one, three or five years. When the subscriptions for the Energizer Updates expired, customers could renew their subscription so as to continue to get updates for their devices.

Barracuda and Barracuda UK sold and serviced Energizer Updates for devices in Syria. In the renewal orders, the end users identified the "ship to" address as in Syria.

In so doing, Barracuda and Barracuda UK committed five violations of Section 764.2(e) of the Regulations.

Charges 11-15

15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Servicing Encryption-Controlled Devices in Syria

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on five occasions between on or about December 22, 2009, and on or about December 21, 2011, Barracuda acted with knowledge of a violation of the Regulations when it serviced encryption-controlled devices for end users in Syria with Energizer Updates, items subject to the Regulations and exported or to be exported from the United States, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The items were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$22,426.

The United States has a long-standing and widely-known trade embargo against Syria. With the exception of certain medicines and food, no item subject to the Regulations may be exported or reexported to Syria without a Department of Commerce license, as set forth at all times pertinent hereto in General Order No. 2, codified in Supplement No. 1 to Part 736 of the Regulations.⁶ Barracuda knew of the license requirements for Syria as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports or reexports described herein.

Barracuda UK received requests for quotes for encryption-controlled devices from its authorized distributors and resellers in the Middle East, which Barracuda UK fulfilled. Barracuda knew that the devices were located in Syria because, for example, the reseller or end user self-identified as being located in Damascus or Syria in the end-user activation emails.

⁶ See note 4, *supra*.

being located in "Tehran, Iran/UAE" in its renewal request, and the Barracuda purchase order identified the end user's "ship to" address as such.

In so doing, Barracuda and Barracuda UK committed one violation of Section 764.2(e) of the Regulations.

Charges 17-23 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation by Servicing Encryption-Controlled Devices in Iran

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on seven occasions between on or about April 24, 2009, and on or about May 16, 2012, Barracuda acted with knowledge of a violation of the Regulations when it serviced encryption-controlled devices with Energizer Updates for end users in Iran, with knowledge that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The Energizer Updates were items subject to the Regulations and exported or to be exported from the United States. They were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$52,597.

Under Sections 746.7 and 742.8 of the Regulations, a BIS license is required to export to Iran items subject to controls for National Security and Anti-Terrorism reasons, such as items classified as 5D002. The Regulations also prohibit the export or reexport to Iran of any item subject to both the Regulations and the ITSR, if the transaction is not authorized by OFAC.⁸ In order to avoid duplication, exporters and reexporters are not required under the Regulations to seek authorization from both BIS and OFAC for exports or reexports subject to both the EAR and the ITSR, and accordingly an authorization granted by OFAC is considered authorization for purposes of the EAR as well. Barracuda knew of the requirement to obtain U.S. Government authorization for Iran as set forth in Section I. above, but did not seek or obtain authorization from BIS or OFAC in connection with any of the exports described herein.

Barracuda UK received requests for quotes for encryption-controlled devices from its authorized distributors and resellers in the Middle East, which Barracuda UK fulfilled. Barracuda knew that the devices were located in Iran because, for example, the reseller or end user self-identified as being located in Iran based on the address information they provided in end-user activation emails.

In so doing, Barracuda committed seven violations of Section 764.2(e) of the Regulations.

⁸ 31 C.F.R. Part 560 (2009-2012). See also note 7, *supra*.

**Charges 24-26 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation
by Servicing Encryption-Controlled Devices in Sudan**

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on three occasions between on or about August 4, 2010, through on or about May 16, 2012, Barracuda acted with knowledge of a violation of the Regulations when it serviced encryption-controlled devices with Energizer Updates for end users in Sudan, knowing that a violation of the Regulations had occurred or was about or intended to occur in connection with the items. The Energizer Updates were items subject to the Regulations and exported or to be exported from the United States. They were classified as ECCN 5D002, were controlled for National Security and/or Anti-Terrorism reasons, and were valued at approximately \$34,217. A BIS license is required by Section 742.10 of the Regulations for exports of items to Sudan.

After the initial activation of the items in Sudan, Barracuda serviced the devices through Energizer Updates it exported to Sudan. Email correspondence (in June 2011) among senior management indicated that Barracuda was aware that the devices were being used by a Chinese oil company operating in Sudan.⁹ Barracuda knew of the license requirement for Sudan as set forth in Section I. above, but did not seek or obtain a license in connection with any of the exports described herein.

In so doing, Barracuda committed three violations of Section 764.2(e) of the Regulations.

III. Potential Penalties; Procedures

Accordingly, Barracuda and Barracuda UK are hereby notified that administrative proceedings are instituted against them 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;¹⁰
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

⁹ The Barracuda devices had been sold through authorized distributors and resellers by Barracuda Networks Technology, Ltd. ("Barracuda China"), a wholly-owned subsidiary of Barracuda.

¹⁰ See International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

If Barracuda and Barracuda UK fail 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 Barracuda and Barracuda UK default, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Barracuda or Barracuda UK. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Barracuda and Barracuda UK are further notified that they are entitled to an agency hearing on the record if they file written demands for one with their answers. *See* 15 C.F.R. § 766.6. Barracuda and Barracuda UK are also entitled to be represented by counsel or other authorized representative who has power of attorney to represent Barracuda and Barracuda UK. *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 Barracuda and Barracuda UK have proposals to settle this case, Barracuda and Barracuda UK should transmit them to the attorney representing BIS named below.

Barracuda and Barracuda UK are further notified that under the Small Business Regulatory Enforcement Flexibility ACT, they 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, Barracuda's and Barracuda UK's answers 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 Barracuda's and Barracuda UK's answers must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: R. Elizabeth Abraham, Esq.
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Barracuda Networks, Inc.
Barracuda Networks, Ltd.
Proposed Charging Letter
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R. Elizabeth ("Liz") Abraham and Brian Volsky are the attorneys representing BIS in this case; any communications that Barracuda and Barracuda UK may wish to have concerning this matter should occur through her. Ms. Abraham or Mr. Volsky may be contacted by telephone at (202) 482-5301.

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement

Schedule of Violations*

Charge No.	Order date**	Product	Destination	ECCN	Value
1	9/14/2009	Spam and Virus Firewall 800, Web Filters 610, 810, 910	Syria	5A002	\$198,927.01
2	3/25/2010	Web Filter 810 (Replacement)	Syria	5A002	\$21,606.89
3	4/19/2010	Web Filter 610 with 1-year Energizer Updates	Syria	5A002	\$9,796.40
4	10/25/2010	Link Balancer 330 with 1-year Energizer Updates	Syria	5A002	\$1,903.90
5	1/12/2011	Yosemite Server Backup Software	Syria	5D992	\$1,349.50
6	6/20/2010	One-year Energizer Updates for Spam and Virus Firewall 100	Syria	5D002	\$439.20
7	6/20/2010	One-year Energizer Updates for Web Filter 310	Syria	5D002	\$559.20
8	3/13/2011	One-year Energizer Updates for Spam and Virus Firewall 200	Syria	5D002	\$489.30
9	7/6/2011	One-year Energizer Updates for Web Filter 310	Syria	5D002	\$559.20
10	7/10/2011	One-year Energizer Updates for Spam and Virus Firewall 100	Syria	5D002	\$439.20
11	12/22/2009	One-year Energizer Updates for Spam and Virus Firewall 300 Demo Conversion	Syria	5D002	\$2,116.40
12	1/7/2010	One-year Energizer Update for Spam and Virus Firewall 200	Syria	5D002	\$1,683.90
13	5/9/2011	Three-year Energizer Updates for Spam and Virus Firewall 600	Syria	5D002	\$13,184.40
14	10/21/2011	One-year Energizer Updates for SSL-VPN 280	Syria	5D002	\$1,634.40
15	11/17/2011	One-year Energizer Updates for Link Balancer 430	Syria	5D002	\$3,806.90
16	3/21/2011	Three-year Energizer Updates for Spam and Virus Firewall 400	Iran	5D002	\$4,949.00

Charge No.	Order date**	Product	Destination	ECCN	Value
17	4/24/2009	One-year Energizer Updates for Spam and Virus Firewall 400 Demo Conversion	Iran	5D002	\$4,343.90
18	12/7/2009	One-year Energizer Updates for Spam and Virus Firewall 300	Iran	5D002	\$2,206.40
19	12/23/2009	Three-year Energizer Updates for Spam and Virus Firewall 400	Iran	5D002	\$5,891.40
20	3/5/2010	Three-year Energizer Updates for Spam and Virus Firewall 600 Demo Conversion	Iran	5D002	\$12,868.90
21	9/30/2010	Three-year Energizer Updates for Load Balancer 640 (2)	Iran	5D002	\$23,441.70
22	3/14/2011	One-year Energizer Updates for Spam and Virus Firewall 300	Iran	5D002	\$2,266.90
23	10/3/2011	Web Application Firewall 660 Demo	Iran	5D002	\$1,578.00
24	8/4/2010	One-year Energizer Updates for Spam and Virus Firewall 600 (2)	Sudan	5D002	\$13,676.00
25	8/30/2010	One-year Energizer Updates for Message Archiver 850	Sudan	5D002	\$18,286.40
26	8/31/2010	One-year Energizer Updates for Load Balancer 440	Sudan	5D002	\$2,254.40

* Barracuda is charged in connection with all 26 transactions above. Barracuda UK is charged in connection with Charges I-10 and 16.

** The date of violation is identified in the text of the Proposed Charging Letter.