

Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services*: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. *Submissions via U.S. Postal Service*: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

Dated: September 24, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–22134 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1355]

Expansion of Foreign-Trade Zone 170; Clark County, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Indiana Port Commission, grantee of Foreign-Trade Zone 170, submitted an application to the Board for authority to expand FTZ 170-Site 1 to include the entire 993-acre Clark Maritime Center in Jeffersonville, Indiana, within the Louisville Customs port of entry (FTZ Docket 62–2003; filed 11/10/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 65872, 11/24/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 170–Site 1 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 24th day of September 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 04–22135 Filed 9–30–04; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1356]

Grant of Authority for Subzone Status Eubank Manufacturing Enterprises, Inc.; Longview, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for “* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, Gregg County, Texas, grantee of Foreign-Trade Zone 234, has made application for authority to establish special-purpose subzone status at the air conditioning and heating equipment manufacturing plant of Eubank Manufacturing Enterprises, Inc., located in Longview, Texas (FTZ Docket 36–2003, filed 7–21–2003; application amended 6–29–2004 to remove products under HTSUS Heading 7019 from the scope of authority);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 44282, 7–28–2003); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the air conditioning and heating equipment manufacturing plant of Eubank

Manufacturing Enterprises, Inc., located in Longview, Texas (Subzone 234A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 24th day of September 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 04–22136 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket Nos. 03–BIS–12 and 03–BIS–11]

In the Matters of: Xinjian Yi and Yu Yi, Respondents; Decision and Order

On November 5, 2003, the Bureau of Industry and Security (“BIS”) issued separate charging letters against Xinjian Yi and Yu Yi (collectively known as “Respondents”), alleging that the Respondents had each committed three violations of the Export Administration Regulations (the “Regulations”),¹ which were issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the “Act”).²

BIS charged that Xinjian Yi: (i) In or about June 1998 through in or about July 1998, conspired with others to export from the United States to the People's Republic of China (“PRC”) thermal imaging cameras, which were classified under export control classification number (“ECCN”) 6A003 and controlled for national security reasons, without a BIS export license in violation of Section 764.2(d) of the Regulations; (ii) in or about July 1998, exported the national security controlled thermal

¹ The alleged violations occurred from 1998 through 1999. The Regulations governing the violations at issue are found in the 1998 and 1999 versions of the Code of Federal Regulations (15 CFR parts 730–774 (1998–1999)). The 2004 Regulations establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized by Pub. L. 106–508, and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 FR 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

imaging cameras to the PRC without the required license in violation of Section 764.2(a) of the Regulations; and (iii) in or about July 1999, made a false statement to an Office of Export Enforcement (“OEE”) Special Agent about the thermal imaging cameras during the course of the OEE investigation, in violation of Section 764.2(g) of the Regulations.

BIS charged that Yu Yi: (i) In or about June 1998 through in or about July 1998, conspired with others to export from the United States to the PRC thermal imaging cameras, which were classified under ECCN 6A003 and controlled for national security reasons, without a BIS export license in violation of § 764.2(d) of the Regulations; (ii) aided and abetted the unlicensed export of the national security controlled thermal imaging cameras to the PRC in violation of § 764.2(b) of the Regulations; and (iii) in or about April 1999, made a false statement to an OEE Special Agent about the thermal imaging cameras in the course of the OEE investigation, in violation of § 764.2(g) of the Regulations.

These cases were consolidated pursuant to a motion filed by the parties.

On March 12, 2004, BIS filed a Motion for Summary Decision on two of the three charges filed against each Respondent.³ Respondents opposed the Motion. On April 28, 2004, the Administrative Law Judge (“ALJ”) granted BIS’s Motion for Summary Decision, holding that Xinjian Yi and Yu Yi had each violated § 764.2(d) of the Regulations by conspiring to export thermal imaging cameras to the PRC without the required license. He also found that Xinjian Yi had violated § 764.2(a) of the Regulations by making the unlicensed export of the thermal imaging cameras, and that Yu Yi had violated § 764.2(b) by aiding and abetting the unlicensed export to the PRC. Specifically, the ALJ held that BIS “met it’s [sic] burden by the submission of reliable, probative and relevant evidence * * * in that no genuine issue of material fact was present and [BIS] was entitled to judgment as a matter of law.”⁴ ALJ’s Recommended Decision and Order at 8.

In June 2004, the parties filed their briefs for the proposed civil penalties. On August 25, 2004, the ALJ issued his Recommended Decision and Order, recommending that each Respondent be

fined \$22,000 and that each Respondent’s export privileges under the Regulations be denied for 10 years, as proposed by BIS. Specifically, the ALJ found that the “record does not support the Respondent’s [sic] arguments to allow mitigation of the proposed civil penalty assessments.” ALJ’s Recommended Decision and Order at 11.

Pursuant to § 766.22 of the Regulations, the ALJ’s Recommended Decision and Order has been referred to me for final action. In the Respondents’ responses to the ALJ’s Recommended Decision and Order, the Respondents do not challenge the ALJ’s factual and legal conclusions with respect to each of the charges. Rather, the Respondents argue that the ALJ’s civil penalty assessment is unjustified and should be mitigated.

Based upon my review of the entire record, I find that the evidence supports the ALJ’s findings of fact and conclusions of law regarding each of the above-referenced charges. I also find that the penalties recommended by the ALJ are appropriate given the sensitivity of the cameras involved, the country of ultimate destination, the concerted actions of the Respondents, the inconsistent and incomplete information provided by the Respondents, and the absence of strong or persuasive mitigating factors. The Respondent’s concerted actions to export national security-controlled items to the PRC without the required export license from BIS is a significant aggravating factor. BIS has determined that this type of transaction is detrimental to U.S. national security interests, and has, in fact, denied a license for the export of similar items to the same PRC end-user at issue. That significant aggravating factor combined with inconsistent statements made by the Respondents during the course of the investigation and the incomplete financial information provided cannot be overcome by the mitigating factors alleged by the Respondents.

It is hereby ordered,

First, that a civil penalty of \$22,000 is assessed against each Xinjian Yi and Yu Yi, which shall be paid to the Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owned 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, Xinjian Yi and Yu Yi will be assessed,

in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as further described in the attached Notice.

Third, that, for a period of 10 years from the date on which this order takes effect, Xinjian Yi of Wuhan, People’s Republic of China, and Yu Yi of Wuhan, People’s Republic of China, their successors or assigns and, when acting for or on behalf of them, their officers, representatives, agents, or employees (individually referred to as “a 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. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;

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

D. Obtain from a 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

³ BIS did not move for summary decision as to the false statement charge against each Respondent.

⁴ After the issuance of the ALJ’s Order granting BIS’s Summary Decision Motion, BIS withdrew the remaining false statement charges against each Respondent.

intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed, or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a 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.

Fifth, that, after notice and opportunity for comment as provided in Seciton 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Persons 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.

Sixth, that this Order shall be served on the Denied Persons and on BIS and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section with the heading "Recommended Sanction" and the export licensing information⁵ on pages 7 and 10, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: September 27, 2004.

Kenneth I. Juster,

Under Secretary of Commerce for Industry and Security.

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Bureau of Industry and Security, Export Enforcement Team, Room H-6883, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Attn: Sharon Gardner.

Notice

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount

⁵ The export licensing information on pages 7 and 10 of the ALJ Recommended Decision is protected by the confidentiality provisions of section 12(c) of the Act.

owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C. 3701-3720E (2000)), and the Federal Claims Collection Standards (31 CFR parts 900-904 (2002)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. *See* 31 U.S.C.A section 3717 and 31 CFR 901.9.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. *See* 31 U.S.C.A. section 3717 and 31 CFR 901.9.

The foregoing constitutes the initial written notice and demand to respondent in accordance with § 901.2(b) of the Federal Claims Collection Standards (31 CFR 901.2(b)).

Recommended Decision and Order and Order Granting Agency's Recommendation for Imposition of Civil Penalty Assessment

On November 5, 2003, the Bureau of Industry and Security (BIS or Agency) filed formal Complaints against Xinjian Yi and Yu Yi charging each with three (3) separate violations of the Export Administration Regulations (EAR) (15 CFR parts 730-74)¹ issued pursuant to the Export Administration Act of 1979 (Act), as amended (50 U.S.C. 2401-420 (1991 and Supp. 2001)).² Upon motion

¹ The regulations are currently codified in the Code of Federal Regulations (CFR) at 15 CFR parts 730-774 (2004). The regulations governing the violations at issue are found in the 1998 version of the CFR. The 1998 regulations and the degree to which they pertain to this matter are substantially the same as the 2004 version.

² From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which has been extended by successive Presidential Notices, continued the Regulations in effect under the International Economic Powers Act (50 U.S.C. 1701-1706 (1994 & Supp. V. 1999)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since that time, the Act has been in lapse and the

by the parties, both cases were consolidated into a single proceeding. On March 12, 2004 BIS filed a Motion for Summary Decision regarding the first and second charges filed against both Respondents. By Order issued on April 28, 2004, the Undersigned Administrative Law Judge granted the Agency's Motion for Summary Decision (Summary Decision Order). In so doing, it was held that the Agency met its burden to prove the respective charges that Xinjian Yi: (1) Conspired to violate the Export Administration Regulations and (2) unlawfully exported thermal imaging cameras to the People's Republic of China (PRC) and that Yu Yi: (1) Conspired to violate the Export Administration Regulations and (2) aided and abetted the unauthorized export of thermal imaging cameras to the People's Republic of China. At that time, a hearing was set for May 18, 2004, to hear the final remaining charges.

On or about May 10, 2004, the Agency notified this office of its intent to withdraw the remaining third charge filed against each Respondent. The parties requested to cancel the scheduled hearing and sought to file briefs regarding final sanctions. On May 19, 2004, an Order was issued to cancel the scheduled hearing and to provide the parties an opportunity to file briefs on the issue of sanctions.

On June 24, 2004, Respondents Xinjian Yi and Yu Yi filed their Brief on Proposed Civil Penalty (Respondent's Brief) with nine (9) attached exhibits. Respondent's Brief argued for the mitigation of any civil monetary penalty and submitted that the appropriate penalty should be the denial of Respondent's export privileges for a reasonable period of time (one year period of time for each charge). On June 29, 2004, the Agency filed its Recommendation for Imposition of Administrative Penalties Against Xinjian Yi and Yu Yi (Agency's Brief) with six (6) exhibits. The Agency seeks the maximum civil penalty assessment of \$22,000.00 and a ten (10) year period of time for denial of export privileges for each Respondent.

As a result of the Agency's decision to withdraw the remaining charges, the issuance of the April 28, 2004, Summary Decision Order has effectively decided the legal issues in this matter. However, it should be noted that no credibility determinations have been made regarding the parties and no

President, through Executive Order 13222 of August 17, 2001, as extended by subsequent Notices (the last being found at 68 FR 47833 (August 7, 2003)), has continued the regulations in effect under IEEPA.

witness testimony has been received. I have carefully reviewed the record in its entirety and specifically, the parties' briefs and exhibits concerning the award of sanctions. I find that the Agency has sustained its burden for the award of sanctions as it proposed. Respondents' arguments are well pled but fall short of providing the necessary legal documentation to overcome or mitigate the Agency's proposed sanctions. As such, the Agency is *hereby* awarded the full civil penalty assessment of \$22,000.00 and a ten (10) year period of time for denial of export privileges as filed against each Respondent. The civil penalty assessment is based on the following.

Charging Letter

The final charges against the Respondents are as follows:

Xinjian Yi

Charge 1: Conspiracy To Violate the Export Administration Regulations—15 CFR 764.2(d).

Beginning on or about June 1998 and continuing through and in or about July 1998, Xinjian Yi conspired and acted in concert with others, known and unknown, to violate the Regulations. The purpose of the conspiracy was to export thermal imaging cameras from the United States to the People's Republic of China without a BIS export license. The thermal imaging cameras were items subject to the Regulations and covered by export control classification number ("ECCN") 6A003.b. As set forth in § 742.2 of the Regulations, a BIS export license was required before the thermal imaging cameras could be exported to the People's Republic of China. To accomplish the conspiracy, the conspirators, including Xinjian Yi, participated in a scheme to have a co-conspirator purchase the cameras from a U.S. distributor, have the U.S. distributor ship the cameras to a destination in the United States, and then have a co-conspirator carry the cameras by hand to the People's Republic of China without a BIS export license. In doing so, Xinjian Yi committed one violation of § 764.2(d) of the Regulations.

Charge 2: Exporting Thermal Imaging Cameras to the People's Republic of China Without the Required BIS Export License—15 CFR § 764.2(a).

In connection with the conspiracy referenced in Charge 1, in or about July 1998, Xinjian Yi exported or caused the export of the three thermal imaging cameras, items covered by ECCN 6A003.b of the Regulations, from the United States to the People's Republic of China without a license from BIS as required by § 742.4 of the Regulations. In doing so, Xinjian Yi committed one violation of § 764.2(b) of the Regulations.

Yu Yi

Charge 1: Conspiracy To Violate the Export Administration Regulations—15 CFR § 764.2(d).

Beginning in or about June 1998 and continuing through and in or about July 1998, Yu Yi conspired and acted in concert with others, known and unknown, to violate the Regulations. The purpose of the conspiracy was to export thermal imaging cameras from the United States to the People's Republic of China without a BIS export license. The thermal imaging cameras were items subject to the Regulations and covered by export control classification number ("ECCN") 6A003.b. As set forth in § 742.2 of the Regulations, a BIS export license was required before the thermal imaging cameras could be exported to the People's Republic of China. To accomplish the conspiracy, the conspirators, including Yu Yi, participated in a scheme to have a co-conspirator purchase the cameras from a U.S. distributor, have the U.S. distributor ship the cameras to a destination in the United States, and then have a co-conspirator carry the cameras by hand to the People's Republic of China without a BIS export license. In doing so, Yu Yi committed one violation of § 764.2(d) of the Regulations.

Charge 2: Aiding and Abetting the Unauthorized Export of Thermal Imaging Cameras to the People's Republic of China—15 CFR § 764.2(b).

In connection with the conspiracy referenced in Charge 1, in or about July 1998, Yu Yi aided and abetted the unauthorized export of the three thermal imaging cameras, items covered by ECCN 6A003.b of the Regulations, from the United States to the People's Republic of China without a license from BIS as required by § 742.4 of the Regulations. In doing so, Yu Yi committed one violation of § 764.2(b) of the Regulations.

Finding of Facts

The findings of facts, unless otherwise noted, were previously determined by the issuance of the April 28, 2004 Summary Decision Order. They are essentially as follows:³

1. Xinjian Yi is a Chinese citizen who lives in Wuhan, People's Republic of China ("PRC").

2. At the times relevant hereto, Mr. Yi was a professor in the Department of Opto-electronic Engineering at Huazhong University of Science and Technology in Wuhan, PRC.

3. Yu Yi is the daughter of Xinjian Yi. See the July 21, 1999 letter from Yu Yi, which is attached hereto as Exhibit E.

4. At the times relevant hereto, Yu Yi was employed in Dallas, Texas. Ex.E.

5. In 1998, Xinjian Yi contacted Yu Yi and requested her assistance in purchasing thermal imaging cameras ("cameras") from Accurate Locators, Inc., a U.S. company. Exs. D and E.

³ Unless otherwise noted the following designations are used: (1) Exhibits referenced are those attached with the Agency's Motion for Summary Decision, (2) any reference made to Respondents' exhibits (Opposition Motion to BIS's Motion for Summary Decision) will be designated as R-1, R-2, etc.

6. Pursuant to her father's request, Yu Yi contacted Accurate Locators and purchased one thermal imaging camera. Exs. D and E.

7. Yu Yi told Accurate Locators to send the camera to her sister, Yong Yi, who lived in Boston, Massachusetts. Exs. D and E.

8. Yu Yi wired payment for the camera to Accurate Locators. Ex.E.

9. The funds used by Yu Yi to pay for the camera were transferred to her from the PRC. Ex. E.

10. Accurate Locators shipped the camera to Yong Yi's address in Boston. Exs. D and E.

11. Xinjian Yi traveled from the PRC to Boston on or about June 1998 and stayed with his daughter, Yong Yi. Exs. B and E.

12. After arriving in Boston, Xinjian Yi took possession of the camera that had been shipped to his daughter's house in Boston. Exs. B and E.

13. Xinjian Yi then asked Yu Yi to buy two more cameras from Accurate Locators. Ex. E.

14. Pursuant to her father's request, Yu Yi purchased two additional thermal imaging cameras for him from Accurate Locators. Ex. E.

15. Yu Yi told Accurate Locators to send the two cameras using funds that had been wired to her from the PRC. Ex. E.

16. Yu Yi wired the company payment for the two cameras using funds that had been wired to her from the PRC. Ex. E.

17. Xinjian Yi received all three cameras and on or about July 1998 traveled back to the PRC with the three cameras. Ex. B.

18. Yu Yi believed the cameras were for use by Xinjian Yi for some research he was conducting at the University in the PRC. Ex. E.

19. The cameras were items subject to the regulations and classified under Export Control Classification Number 6A003.b. A copy of the licensing determinations is attached hereto as Ex. F.

20. A license from BIS was required for the export of the cameras from the United States to the PRC. Ex. F.

21. No License from BIS was obtained for the export of the cameras from the United States to PRC. Ex. B.

In addition to the above, the following findings of fact have been determined based on the parties' recent filings.

22. Yu Yi now resides in the PRC. Respondent's Brief at 5.

23. The thermal imaging cameras in question remain in the PRC. Agency's Brief, Ex. 1.

24. [Redacted. See footnote 5.] was denied an export license for the

purchase of a [Redacted.] thermal imaging camera in 2000 (subsequent to the unlawful export in this matter) based on the determination by the Department of Commerce that “this export would be detrimental to U.S. national security interests.” Agency’s Brief, Ex. 2.

25. Yu Yi’s March 31, 1999 United States bank statement contained a total amount of \$38,570.89 U.S. dollars. Agency’s Brief, Ex. 6. A deposit certification in the amount of \$5,040.75 U.S. dollars was made by Yu Yi to the Bank of China on May 20, 2003. Respondent’s Brief, Ex. 4.

Conclusions of Law

1. Xinjian Yi and Yu Yi conspired to violate the Export Administration Regulation found under 15 CFR 764.2(d), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–420 (1991 & Supp. 2001)). They participated in a scheme to export thermal imaging cameras which are subject to the regulations and covered by an export control classification number (ECCN) requiring a BIS export license for export to the People’s Republic of China.

2. Xinjian Yi violated the Export Administration Regulation found under 15 CFR 764.2(a), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–420 (1991 & Supp. 2001)) by exporting thermal imaging cameras to the People’s Republic of China without having an export license as required by § 764.2(a).

3. Yu Yi violated the Export Administration Regulations found under 15 CFR 764.2(b), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–420 (1991 & Supp. 2001)) by aiding and abetting Xinjian Yi with the unauthorized export of thermal imaging cameras to the People’s Republic of China.

Discussion

As held by the April 28, 2004, Summary Decision Order, it was determined that the Agency met its burden by the submission of reliable, probative, and relevant evidence with regard to the respective two (2) charges filed against Respondents in that no genuine issue of material fact was present and the Agency was entitled to judgment as a matter of law. Following the Agency’s subsequent withdrawal of the respective final third charge and the filing of the parties’ briefs concerning the award of sanctions, this matter is now ripe for issuance of the Recommended Decision and Order.

Respondents argue and submit exhibits to support the view that they acted without knowledge and intent which inadvertently led to violations of the EAR. Respondents contend that the purchase of the thermal imaging cameras was based on the ability to get similar cameras at a cheaper price in the United States. The thermal imaging cameras were to be used for a university research project to develop a system for detecting and analyzing overheating problems in power distribution lines. For this reason Xinjian Yi contacted his daughter, Yu Yi, who at that time resided in the United States, to assist him with the purchase and delivery of the thermal imaging cameras from the United States to the People’s Republic of China (PRC). Yu Yi’s involvement is simply argued to be that of a dutiful daughter who sought not benefit, other than the gratitude of her father.

The Agency contends that Respondents’ lack credibility and noted, a “pattern of untrue statements” allegedly made during the investigation of this matter. While no determination is made regarding Respondents’ credibility, the Report of Investigative Activity (Respondent Brief, Ex. 3) indicated that Yu Yi was “combative and evasive.” More importantly, however, Respondents have failed to provide support for their arguments, including, but not limited to, whether or not the university research project was ever conducted or actually contemplated. At this point, the record reveals no documentary evidence, and Respondents have not provided, other than arguments, that Respondents’ actions were simply innocent and inadvertent.

Respondents further argue that the ultimate destination (the PRC) for the thermal imaging cameras does not raise any terrorism concerns because the PRC is not listed as a state sponsor of terrorism by the United States. Respondents support their claim, in part, by submitting documentation to show that thermal imaging cameras, arguably of similar quality to those at issue, are widely available in the PRC. Respondents contend that even if requested, an export license would likely have been granted and that no United States national security interest would have been challenged.

The Agency disagrees and submits documentation that shows [Redacted. See footnote 5.] made a request in November 1999 for an export license for a [Redacted.] thermal imaging camera [Redacted.] This request was rejected by the Department of Commerce as “detrimental to U.S. national security interests.” While Respondents have

submitted numerous documents that show the apparent availability of similar thermal imaging cameras in the PRC, the fact remains that the United States Department of Commerce and the Bureau of Industry and Security have classified the thermal imaging cameras in question under an ECCN requiring an export license determination and have denied such request as “detrimental to U.S. national security interests.” [Redacted.]

Finally, Respondents contend that the inadvertent violation of the EAR was simply the result of inexperience by novice persons who were unaware of export laws and regulations. Respondents do not have any prior history of export violations and argue that they never attempted to hide or conceal their identities or actions. Respondents’ further argue an inability to pay stating that Xinjian Yi is now retired and living off his pension and Yu Yi is unemployed and raising a family. Based on all of the above, Respondents seek to totally mitigate or in the alternative, suspend or defer the monetary civil penalty assessment while seeking an export period of denial for one (1) year, (citing *In the Matter of: Basem A. Alhalabi*, 03–BIS–03, June 24, 2003 (settlement agreement denying Respondent’s export privileges for a one (1) year period of time for the export of a thermal imaging camera to Syria)).

Conclusion

Respondents’ filings have been well written and argued throughout this proceeding. However, Respondents fail to provide in the record the necessary legal documentation to support mitigation of the proposed civil penalty assessments. Simply put, the record does not support the Respondent’s arguments to allow mitigation of the proposed civil penalty assessments. The record indicates that Yu Yi was not totally cooperative during the investigation, that the financial documentation submitted is incomplete and Yu Yi’s bank statements and deposit documentation raises other questions rather than provide answers. The record also lacks any affidavits or sworn statements, including documentation of Xinjian Yi’s proposed research. With regard to the cited settlement agreement for *Alhalabi*, no weight is given to the sanction for this matter. *Wherefore*, Respondents’ supporting documentation is not sufficient to overcome the Agency’s proposal to individually assess a civil penalty assessment of \$22,000.00 and a ten (10) year period of time for denial of export privileges.

[Section on "Recommended Sanction" redacted. See footnote 5.]

Done and dated this 25th day of August, 2004, at New York, New York.

Walter J. Brudzinski,

Administrative Law Judge.

[FR Doc. 04-22057 Filed 9-30-04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2003), that the Department conduct an administrative review of that antidumping or countervailing duty

order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of October 2004, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period
Antidumping Duty Proceedings	
Brazil: Carbon and Certain Alloy Steel Wire Rod, A-351-832	10/1/03-9/30/04
Canada:	
Carbon and Certain Alloy Steel Wire Rod, A-122-840	10/1/03-9/30/04
Hard Red Spring Wheat, A-122-847	5/8/03-9/30/04
Indonesia: Carbon and Certain Alloy Steel Wire Rod, A-560-815	10/1/03-9/30/04
Italy: Pressure Sensitive Tape, A-475-059	10/1/03-9/30/04
Mexico: Carbon and Certain Alloy Steel Wire Rod, A-201-830	10/1/03-9/30/04
Moldova: Carbon and Certain Alloy Steel Wire Rod, A-841-805	10/1/03-9/30/04
Republic of Korea: Polyvinyl Alcohol, A-580-850	3/20/03-9/30/04
The People's Republic of China:	
Barium Carbonate, A-570-880	3/17/03-9/30/04
Barium Chloride, A-570-007	10/1/03-9/30/04
Certain Cut-to-Length Carbon Steel, A-570-849	11/3/03-9/30/04
Cotton Shop Towels, A-570-003	10/1/03-9/30/04
Helical Spring Lock Washers, A-570-822	10/1/03-9/30/04
Polyvinyl Alcohol, A-570-879	3/20/03-9/30/04
Trinidad and Tobago: Carbon and Certain Alloy Steel Wire Rod, A-274-804	10/1/03-9/30/04
Ukraine: Carbon and Certain Alloy Steel Wire Rod, A-823-812	10/1/03-9/30/04
Countervailing Duty Proceedings	
Brazil: Carbon and Certain Alloy Steel Wire Rod, C-351-833	1/1/03-12/31/03
Canada: Hard Red Spring Wheat, C-122-848	3/10/03-12/31/03
Iran: Roasted In-Shell Pistachios, C-507-601	1/1/03-12/31/03
Suspension Agreements	
Russia:	
Certain Cut-to-Length Carbon Steel, A-821-808	10/1/03-9/30/04
Uranium, A-821-802	10/1/03-9/30/04

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or

exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 69

FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at <http://www.ia.ita.doc.gov>.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International