

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

In the Matters of:)	
)	
Megatech Engineering & Services Pvt. Ltd.,)	Docket Nos: 04-BIS-04
Ajay Ahuja,)	04-BIS-05
Ravi Shettugar, and)	04-BIS-06
T.K. Mohan)	04-BIS-07
)	
Respondents.)	
<hr/>		

DECISION AND ORDER

This matter is before me upon a Recommended Decision and Order of an Administrative Law Judge (“ALJ”), as further described below.

On February 2, 2004, the Bureau of Industry and Security (“BIS”) initiated four administrative proceedings by filing Charging Letters alleging that Megatech Engineering & Services Pvt. Ltd. (“Megatech”) and Ajay Ahuja (“Ahuja”) each committed four violations of the Export Administration Regulations (“Regulations”) and that Ravi Shettigar (“Shettigar”) and T.K. Mohan (“Mohan”) each committed three violations of the Regulations,¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”).² On August 13, 2004, the ALJ consolidated the cases involving Megatech, Ahuja, Shettigar and Mohan. Thus, use of the term “the Respondents” in this document refers to Megatech, Ahuja, Shettigar and Mohan, collectively.

¹ The violations charged occurred in 2000 and 2001. The Regulations governing the violations at issue are found in the 2000 and 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2001)). The 2007 Regulations establish the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401- 2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

The charges against each Respondent are as follows:

Charge 1: Conspiracy to Export Items Subject to the Regulations to a Person Listed on the Entity List Without BIS Authorization: From on or about April 1, 2000, through on or about August 31, 2001, the Respondents conspired with others, known and unknown, to export from the United States to the Indira Gandhi Centre for Atomic Research (“IGCAR”) in India a thermal fatigue test system and a universal testing machine, both items subject to the Regulations, without a BIS export license as required by Section 744.11 of the Regulations.

Charge 2: Engaging in a Transaction with Intent to Evade the Regulations: On or about June 13, 2000, in connection with the export of the fatigue test system, the Respondents took actions to evade the Regulations. Specifically, the Respondents, with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the fatigue test system from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations.

Charge 3: Engaging in a Transaction with Intent to Evade the Regulations: On or about December 21, 2000, in connection with the attempted export of a universal testing machine, the Respondents took actions to evade the Regulations. Specifically, the Respondents, with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the universal testing machine from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations.

Charge 4 (Respondents Megatech and Ahuja only): False Statements in the Course of an Investigation Subject to the Regulations: On or about August 16, 2001, through on or about April 8, 2002, in connection with the export of the fatigue test system, Megatech and Ahuja made false statements to the U.S. Government regarding its knowledge of and involvement in the export. Specifically, Megatech and Ahuja falsely asserted to U.S. Foreign Commercial Service Officers a lack of knowledge regarding the intended diversion of the items involved to ICGAR.

On October 1, 2007, based on the record before him, the ALJ issued a Recommended Decision and Order in which he found that the Respondents each committed the violations alleged in Charges 1-3 of the Charging Letters dated February 2, 2004. Additionally, the ALJ found that BIS did not prove by a preponderance of the evidence Charge 4 against Respondents Megatech and Ahuja. The ALJ recommended each Respondent be denied export privileges for a period of fifteen (15) years.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations.

I find that the record supports the ALJ's findings of fact and conclusions of law regarding the allegations against the Respondents for each of Charges 1-3. I also agree with the ALJ's recommendation that the BIS has failed to prove by a preponderance of the evidence the allegations contained in Charge 4. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations, the importance of preventing future unauthorized exports, and the lack of any mitigating circumstances. Based on my review of the entire record, I affirm the findings of fact and conclusions of law contained in the ALJ's Recommended Decision and Order.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that, for a period of fifteen (15) years from the date of this Order, Megatech Engineering & Services Pvt. Ltd., Ajay Ahuja, Ravi Shettigar, and T.K. Mohan, all of Post Bag #17652, A/2/10 Tapovan, Dongre Park, Chembur, Mumbai 400 074 India, and all of their successors or assigns, and when acting for or on behalf of Megatech Engineering & Services Pvt. Ltd., its officers, representatives, agents, and employees (“Denied Persons”), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, license exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

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

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

- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Persons acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Persons of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the Denied Persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

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

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

FIFTH, that this Order shall be served on 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 related to the Recommended Order, shall be published in the *Federal Register*.

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

Dated: 10/24/07



MARIO MANCUSO
Under Secretary for Industry and Security

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY

In the Matter of:

Megatech Engineering & Services Pvt. Ltd.,
Ajay Ahuja,
Ravi Shettigar, and
T.K. Mohan

Respondents

DOCKET NUMBERS

04-BIS-04
04-BIS-05
04-BIS-06
04-BIS-07

RECOMMENDED DECISION AND ORDER¹

Issued: October 1, 2007

Issued by: Hon. Walter J. Brudzinski, Administrative Law Judge

¹ For proceedings involving violations not relating to Part 760 of the Export Enforcement Regulations, 15 C.F.R. § 766.17(b) and (b)(2) prescribe that the Administrative Law Judge's decision be a "Recommended Decision and Order." The violations alleged in this case are found in Part 764. Therefore, this is a "Recommended" decision. That section also prescribes that the Administrative Law Judge make recommended findings of fact and conclusions of law that the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, must affirm, modify or vacate. 15 C.F.R § 766.22. The Under Secretary's action is the final decision for the U.S. Commerce Department. 15 C.F.R. § 766.22(e).

TABLE OF CONTENTS

PRELIMINARY STATEMENT.....	3
RECOMMENDED FINDINGS OF FACT.....	7
General Findings and Background.....	7
Export Administration Regulation.....	10
Business Association and History with IGCAR.....	11
Export Restrictions Imposed on Transactions with IGCAR.....	12
Negotiations for the Sale of Equipment to IGCAR.....	14
Parallel Discussions to Deliver Items to IGCAR.....	16
Negotiations for the Sale of a Second MTS Machine.....	17
IGCAR Representatives Visit MTS Facilities for Training.....	18
Sale and Delivery of the Fatigue Testing System.....	18
Investigation by Bureau of Industry and Security.....	19
ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW.....	21
DISCUSSION.....	22
RECOMMENDED SANCTION.....	36
RECOMMENDED ORDER.....	38
APPENDIX A	
<u>In the Matter of: Megatech Engineering & Services Pvt. Ltd., et al</u>	
LIST OF EXHIBITS.....	42
APPENDIX B	
NOTICE TO THE PARTIES REGARDING REVIEW BY THE UNDER SECRETARY.....	46
CERTIFICATE OF SERVICE	48

PRELIMINARY STATEMENT

On February 2, 2004, the Bureau of Industry and Security² (“BIS” or “Agency”) issued four separate Charging Letters against Respondents Megatech Engineering & Services Pvt. Ltd. (Megatech), Ajay Ahuja, Ravi Shettigar, and T.K. Mohan. The Charging Letters against Respondents Megatech and Ajay Ahuja allege identical violations of the U.S. Export Administration Act of 1979³ and the Export Administration Regulations⁴ relating to one (1) count of conspiracy, two (2) counts of evading the regulations, and one (1) count of misrepresentation and concealment of facts. The Charging Letters against Respondents Shettigar and Mohan allege identical violations relating to one (1) count of conspiracy and two (2) counts of evading the regulations.

Briefly stated, the Agency alleges all four Respondents exported equipment controlled under the Export Administration Regulations (“EAR” or “Regulations”) to a prohibited entity without the required license. In Charge 1, BIS alleges violations of 15 C.F.R. § 764.2(d) in that from April 1, 2000 through August 31, 2001, Respondents conspired to export equipment from the United States to the Indira Gandhi Centre for Atomic Research (IGCAR), an organization

² The Bureau of Industry and Security was formerly known as the Bureau of Export Administration. The name of the Bureau changed pursuant to an order issued by the Secretary of Commerce on April 16, 2002. See Industry and Security Programs: Change of Name, 67 Fed. Reg. 20630 (Apr. 26, 2002); see also In the Matter of Abdulmir Madi, et al., 68 Fed. Reg. 57406 (October 3, 2003).

³ Sections 50 U.S.C. §§ 2401-2420 (2000) (hereinafter, “the Act”). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which was extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-06 (2000)) (hereinafter, “IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002), as extended by the Notice of August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003), has continued the Regulations in effect under IEEPA. The export control laws and regulations were further extended by successive Presidential Notices. See In the Matter of Abdulmir Madi, et al., 68 Fed. Reg. 57406 (October 3, 2003).

⁴ The regulations are currently codified at 15 C.F.R. Parts 730-774 (2006). The charged violations occurred from April 1, 2000 to August 31, 2001. The Regulations governing the violations in these cases are found in the 2000 and 2001 versions of the 15 C.F.R. Parts 730-774 (2000-2001). The Regulations define the violations BIS has charged (Part 764.2) and establish procedures that apply to these cases (Part 766).

prohibited under the Regulations from receiving controlled items. In furtherance of the conspiracy, false documentation was submitted to a U.S. exporter indicating that a party other than IGCAR was the ultimate consignee for these items. In Charges 2 and 3, BIS alleges violations of 15 C.F.R. § 764.2(h) in that Respondents developed and employed the above detailed scheme to intentionally evade the export Regulations. Charge 4, which pertains only to Megatech and Ahuja, alleges that they made false statements to Agency officials regarding Respondents' knowledge and involvement in the export of items to IGCAR in violation of 15 C.F.R. § 764.2(g).

On March 3, 2004, Respondents filed their Answers to the Agency's Charging Letter denying the allegations and formally demanding a hearing. On March 15, 2004, this case was assigned to the undersigned Administrative Law Judge for adjudication pursuant to an Interagency Agreement with the Bureau of Industry and Security.

On August 13, 2004, the proceedings against Respondents Megatech, Ahuja, Shettigar, and Mohan were consolidated. Accordingly, reference to "Respondents" throughout this Recommended Decision and Order refers to Megatech, Ahuja, Shettigar, and Mohan collectively.

Over the next several months Discovery was initiated, Scheduling Orders for filing various motions were issued, and the parties continued to discuss settlement. On February 16, 2005, the Agency filed its motion to stay the proceedings for a period of 12 months due to a criminal investigation of the subject matter of the instant case. On February 28, 2005, Respondents filed a Motion for Summary Decision, which the Agency opposed, stating BIS lacks evidence to show Respondents knew the exported equipment was being diverted from a legitimate business to a prohibited entity; therefore, they cannot be held accountable for the

unknown actions of others. After additional scheduling orders and motion practice, I issued an Order on May 3, 2005 granting the Agency's request to stay for period of 12 months pending disposition of the criminal investigation and holding in abeyance any decision on Respondent's Motion for Summary Decision.

Meanwhile, on December 5, 2005, counsel for Respondents filed their Notice of Withdrawal, advising that they withdraw from further representation of the above-referenced Respondents.

Since the matter was stayed, there was no further activity until June 2, 2006, when the Agency advised that the criminal investigation was completed and that no charges would be filed against Respondents. Therefore, BIS was able to proceed with the instant administrative matter. BIS further advised that it has not been in contact with Respondents since their counsel have withdrawn from representation. Therefore, BIS requested another stay through August 31, 2006 to allow it time to contact Respondents in India and determine if they have retained new counsel and possibly to continue settlement discussions. On June 5, 2006, I granted an additional stay until August 31, 2006.

On August 23, 2006, BIS advised that efforts at reaching settlement have failed and that since Respondents are not represented, it motioned to modify the Scheduling Order so as to advance this matter toward resolution. Therefore, on September 1, 2006, I ordered Respondents to advise the undersigned in writing whether they waive their right to a hearing, and, if so, the matter would be decided "on the record;" that is, based on subsequent evidentiary submissions as provided for at 15 C.F.R. § 766.15. I further ordered Respondents to advise whether they intend to withdraw their Motion for Summary Decision. If Respondents did not reply to the Order by October 27, 2006, it would be presumed that they waive their right to a hearing, thereby allowing

this matter to proceed with a hearing and that they also withdraw their Motion for Summary Decision.

Respondents failed to respond. Therefore, on November 7, 2006, I issued an Order in invoking the presumptions made in my September 1, 2006 Order. That is, Respondents waive their right to a hearing and withdraw their Motion for Summary Judgment. Accordingly, Respondents' Motion for Summary Judgment was withdrawn and this matter proceeded to be adjudicated on the record and without a hearing.

On January 12, 2007, the Agency filed a Memorandum and Submission of Evidence to Supplement the Record together with sixty-four (64) exhibits listed in Appendix A. Copies of the Agency's exhibits were forwarded to Respondents. However, they did not submit any evidence in accordance with the scheduling order. Prior to starting work on the Recommended Decision and Order, the undersigned waited an additional, reasonable period of time for Respondents to submit evidence in the event of unexpected delays in mail delivery.

Title 15 C.F.R. 766.17(d) provides that administrative enforcement proceedings not involving Part 760 of the EAR shall be concluded within one year from submission the Charging Letter unless the Administrative Law Judge extends such period for good cause shown. In light of the above-referenced stays in the proceedings, the additional time consumed by discovery due to Respondents' residence in India, as well as the additional time required for the Agency to proceed after withdrawal of Respondents' counsel, I find that good cause exists for not concluding these proceedings within the time prescribed.

All facts and issues raised in the Agency's brief have been addressed throughout the body of this Recommended Decision and Order. After careful review of the entire record in this matter, I find BIS established by a preponderance of reliable and credible evidence that

Respondents conspired to export items subject to the Regulations to a prohibited entity without the required authorization in violation of 15 C.F.R. § 764.2(d) as alleged in Charge 1. I also find that the Agency established by a preponderance of reliable and credible evidence that Respondents took actions to intentionally evade the Regulations by employing a scheme to divert a fatigue test system, as alleged in Charge 2, and a universal testing system, as alleged in Charge 3, to a prohibited entity, in violation of 15 C.F.R. § 764.2(h). However, the preponderance of reliable and credible evidence does not establish a violation of 15 C.F.R. § 764.2(g), that Respondents Megatech and Ahuja, in Charge 4 of their Charging Letters, misrepresented and concealed facts in the course of an investigation.

RECOMMENDED FINDINGS OF FACT

The Findings of Fact and Conclusions of Law are based on a thorough and careful analysis of the documentary evidence, exhibits, and the entire record as a whole.

General Findings and Background

1. Megatech Engineering and Services Pvt. Ltd. (“Megatech”) is an import/export agent based in Mumbai (formally Bombay), India. (*Agency Exhibit 8*).⁵ Megatech was formed in 1991 when Respondent Ajay Ahuja left his previous employer to form his own company. In doing so, Ahuja took a Minnesota-based company, MTS Systems, Inc. (“MTS Systems” or “MTS”), as his own client. (*Agency Exhibit 37*).
2. MTS is a United States manufacturer of high-tech testing equipment sold in India. (*Agency Exhibits 7, 37*). Examples of high-tech testing equipment produced by MTS include: 1) the servo-hydraulic dynamic testing system (also known as fatigue test

⁵ Unless otherwise noted, the citations provided hereunder reference the exhibit numbers associated with the Agency’s Memorandum and Submission of Evidence to Supplement the Record, filed on January 12, 2007. Respondents neither submitted a Memorandum nor exhibits.

system); and 2) the Servo-Hydraulic Universal Testing System (also known as the universal testing machine). (*Agency Exhibit 2*).

3. Since its founding in 1991, Megatech has been solely and exclusively dedicated to representing MTS. (*Agency Exhibits 7, 8, 37*).
4. Megatech currently employs six people: three as service engineers and three as sales engineers. (*Agency Exhibit 8*).
5. At all relevant times, Respondents Ajay Ahuja, Ravi Shettigar, and T.K. Mohan were employees of Megatech. (*Agency Exhibit 7*).
6. Respondent Ahuja is the founder and primary administrator of Megatech, whose responsibilities include both management and sales. (*Agency Exhibit 7*). Mr. Ahuja works in the Bombay (Mumbai) office, along with T.K. Mohan and Ravi Shettigar. Respondent T.K. Mohan assists with sales, and Respondent Shettigar works in the service department as an engineer. (*Agency Exhibit 7*).
7. As the exclusive representative in India, Megatech handles approximately \$1.5 million in sales each year on behalf on MTS. (*Agency Exhibit 8*). In addition to sales, Megatech provides support services to more than 200 MTS machines installed throughout India (*Agency Exhibit 8*).
8. To keep track of clients, Megatech maintains a database containing the names of all companies and customers to whom products are sold. (*Agency Exhibit 7*).
9. In a typical transaction, Megatech initially meets with the client to determine the customer's intended use of the equipment, the required specifications, and the customer's available budget. (*Agency Exhibits 7, 8*).

10. This information is relayed to MTS in Minnesota, who then approves the transaction in advance. Once the parameters of the transaction are outlined, Megatech negotiates a price on behalf of MTS. (*Agency Exhibit 8*).
11. Before completing an order, MTS determines whether an export license is needed under United States export laws and restrictions. (*Agency Exhibit 7*).
12. If a license is required, MTS directs Megatech to complete the license application and obtain a signature from the end-user.⁶ (*Agency Exhibit 7*).
13. After Megatech facilitates the contract between MTS and the customer, MTS ships the desired equipment from Minnesota to the customer in India. (*Agency Exhibit 7*).
14. Once the equipment arrives in India, Megatech engineers install the equipment and train the customer how to use it. Megatech continues to provide on-call service to keep the equipment running long-term. (*Agency Exhibits 7, 8*).
15. One of Megatech's customers on the eastern coast of India is the Indira Gandhi Centre for Atomic Research ("IGCAR"). (*Agency Exhibits 7, 9*). IGCAR is based in Kalpakkam, India, approximately fifty miles from Chennai. Both Chennai and Kalpakkam are approximately 800 miles from Mumbai where Megatech is located. (*Agency Exhibits 4, 8*).
16. IGCAR was established in 1971 as a subordinate entity of the Department of Atomic Energy, Government of India. (*Agency Exhibits 5, 40*). The centre is engaged in a broad based multidisciplinary program of scientific research and advanced engineering. (*Agency Exhibit 5*).

⁶ Pursuant to the Export Administration Regulations, "end-user" is defined in part as the person abroad that receives and ultimately uses the exported items. The end-user is not a forwarding agent or intermediary but may be the purchaser or ultimate consignee. See 15 C.F.R. § 772.1.

Export Administration Regulations

17. The Department of Commerce, Bureau of Industry and Security is the federal agency primarily responsible for issuing licenses to individuals interested in exporting goods that have a “dual-use.” A commercial item has a dual-use if there is any possibility that it “can be used both in military or other strategic causes (e.g. nuclear) and in civil applications.” (*15 C.F.R. §§ 730.1 and 730.3*).
18. The Export Administration Regulations govern the export of goods with dual-use and are administered by the Bureau of Industry and Security under the authority of the Export Administration Act. (*50 App. U.S.C. § 2401; 15 CFR § 730.2*).
19. In an attempt to prevent dual-use items from falling into the wrong hands the EAR prescribes a complex set of regulations which are triggered depending on the type of item sought to be exported, the destination of the item, and the specific entity or person who receives it. (*15 C.F.R. § 732.1*).
20. All items that require an export license by the Agency receive an Export Control Classification Number (“ECCN”) and are listed on the Commerce Control List. This classification number determines what type of license is required. (*15 C.F.R. §§ 738.2 and 738.3*).
21. Items that are subject to the Regulations but not included on the Commerce Control List are classified as EAR99. (*15 C.F.R. § 774.1*).
22. On February 3, 1997, the Agency established the Entity List comprised of end-users that are ineligible to receive specified items without a license. (*Agency Exhibit 3; 62 Fed Reg. 125 (June 30, 1997); 15 C.F.R. § 736.2(b)(5)*). As a result, all exporters are required to obtain Agency authorization before any item subject to the EAR can be

exported to a listed entity. (*Agency Exhibit 3; 62 Fed Reg. 125 (June 30, 1997); 15 C.F.R. § 736.2(b)(5)*).

23. At all relevant times, IGCAR was specifically listed on the Entity List due to its involvement in unsafeguarded nuclear research and development activities. (*Agency Exhibit 3; 62 Fed Reg. 125 (June 30, 1997)*). In turn, a validated license was required to export any item to IGCAR which was subject to the Regulations, including items classified as EAR99. (*Agency Exhibits 2, 3*).

24. At all relevant times, the fatigue test system and the universal testing machine manufactured by MTS were subject to the Regulations and classified as EAR99. (*Agency Exhibit 2*).

Business Association and History with IGCAR

25. MTS System's business relationship with IGCAR began prior to being placed on the Entity List. More specifically, MTS supplied a machine to IGCAR between 1984 and 1985. While this was prior to the existence of Megatech, Respondent Ahuja participated in the sale through his former employer. (*Agency Exhibits 7, 9*).

26. Once Megatech became MTS System's sole representative in the region, Respondents began to negotiate sales on behalf of MTS. In particular, on March 28, 1991, Respondent Ahuja sent a facsimile to MTS regarding a proposed sale of MTS equipment to be used at IGCAR. (*Agency Exhibit 9*).

27. Following the sales proposal, Respondent Ahuja attended a meeting with several scientists from IGCAR on June 5, 1991. (*Agency Exhibits 7, 10*). At this meeting, the participants discussed IGCAR's specific needs and restrictions pertaining to the MTS

equipment. However, until MTS determined whether a license was required to export items to IGCAR, the project remained at a standstill. (*Agency Exhibits 10-11*).

28. In the meantime, Megatech continued to provide service on the old system installed at IGCAR. (*Agency Exhibits 7, 15*). Respondent Shettigar was the primary service engineer to visit IGCAR on two separate occasions in 1993 and 1998. (*Agency Exhibits 7, 16*).

Export Restrictions Imposed on Transactions with IGCAR

29. On January 13, 1992, MTS employees sent a facsimile to Respondent Ahuja in India regarding authorization to export goods to IGCAR. In particular, MTS received a response to an inquiry with the Department of Commerce, stating “no one will be allowed to ship goods to IGCAR.” The prohibition pertained to the USA, UK, Japan, and most other industrialized nations. (*Agency Exhibit 12*). However, MTS informed Megatech they would continue to appeal the decision through their legal office in Washington. (*Agency Exhibit 12*).

30. In the meantime, MTS continued to apply for license applications to export controlled testing equipment to IGCAR. Applications filed in February 1992 and May 1994 were both rejected by BIS, US Department of Commerce. (*Agency Exhibits 13, 18*).

31. On April 22, 1993, Respondent Ahuja requested assistance from a subsidiary of MTS in obtaining an export license to supply test equipment to IGCAR. Respondent Ahuja’s facsimile noted the equipment would be used by Dr. K.B. Rao in the Material Development Laboratory at IGCAR.⁷ (*Agency Exhibit 14*). At all relevant times, Dr. K. Bhanusankara Rao (Dr. K.B. Rao) was listed on IGCAR’s general reference guide as

⁷ All departments and staff members are listed on IGCAR’s general reference guide, published on the internet at www.igcar.ernet.in/

associate director of the Mechanical Metallurgy Division within the Materials Development Group. (*Agency Exhibit 5*).

32. Respondent Ahuja recognized that the chances for receiving a license were low but he proceeded with the sales proposal to IGCAR and submitted an offer. In turn, he requested assistance from MTS's subsidiary with completing the preliminary paper work. (*Agency Exhibit 14*). Information provided in Respondent Ahuja's facsimile included: 1) IGCAR listed as the facility name; and 2) Dr. Rao listed as the end user. (*Agency Exhibit 14*).
33. With MTS's inability to secure an export license, IGCAR turned to other manufacturers for their needed supplies. As a result, Megatech experienced a loss of potential business clients. (*Agency Exhibits 7, 17*).
34. In 1998, MTS received an official letter from the Department of Commerce informing them that IGCAR would require special export treatment due to their nuclear activities. (*Agency Exhibit 15*). Moreover, when IGCAR was placed on the Entity List, suppliers were notified that a license was required for any item sold to the listed entity; however, a license would most likely be denied. In fact, U.S. sanctions stated there is a "presumption of denial" for any Indian/Pakistani nuclear end-user. (*Agency Exhibit 15*).
35. Despite this awareness, Megatech continued to submit offers for every tender received from IGCAR, assuming that one day the U.S. Export Regulations would relax. (*Agency Exhibit 15*).
36. MTS repeatedly assured Megatech that all MTS subsidiaries and representatives were bound by U.S. Export Regulations. As such, MTS could not supply orders, spare parts,

or warranty replacement parts to any customer on the Entity List without an export license. (*Agency Exhibit 19*).

Negotiations for the Sale of Equipment to IGCAR

37. In June 1999, Professor K.B. Rao contacted Megatech with specifications for a fatigue test system. (*Agency Exhibits 7-8*).
38. Although Professor Rao was listed as a faculty member on IGCAR's general reference guide, he asked Respondent Ahuja to meet him at the Indian Institute of Technology (IIT) in Chennai to further discuss the details of the order. (*Agency Exhibits 5, 7*).
39. Prior to the meeting, Respondent Ahuja sent an advance copy of Dr. Rao's specifications to MTS Systems, requesting an offer. Respondent Ahuja told MTS the request came from Professor K.B. Rao of IIT. (*Agency Exhibit 7*).
40. On July 28, 1999, Respondent Ahuja met with Dr. Rao. (*Agency Exhibit 7, 43*). At the meeting, Professor Rao reiterated his need for a fatigue test system and asked if Megatech could supply it. (*Agency Exhibit 8*). Based on Dr. Rao's specifications and concerns, Respondent Ahuja made an initial offer. (*Agency Exhibits 7, 8, 41*).
41. Discussions continued for several months through subsequent meetings and written communications. (*Agency Exhibits 8, 44*). All correspondence between Megatech and Professor Rao were addressed to the Indian Institute of Technology. (*Agency Exhibits 8, 44*).
42. On August 13, 1999, a new company was introduced into the negotiation process when Respondent Ahuja met Dr. Rao at the office of MassSpec Technologies Pvt. Ltd. (MassSpec) in Mumbai. (*Agency Exhibits 42, 43*). According to Respondent Ahuja, MassSpec is IIT's counterpart. (*Agency Exhibit 45*).

43. Two associates of Professor Rao also attended, Dr. M. Valsan and Mr. R.K. Chodankar. (*Agency Exhibits 42- 43*). At all relevant times, Dr. M. Valsan was a scientist at IGCAR in the Mechanical Metallurgy Division. (*Agency Exhibit 6*). However, at this meeting, Dr. Valsan attended in the capacity of an employee of MassSpec. (*Agency Exhibit 43*). Mr. R.K. Chodankar attended in the capacity of MassSpec's owner. (*Agency Exhibits 8, 43*).
44. On October 21, 1999, Respondent Ahuja informed MTS employees the purchase order would now be placed by MassSpec, instead of IIT. In his email to MTS, Respondent Ahuja explained that MassSpec was a private entity that would obtain a tax benefit if it purchased the equipment directly rather than give IIT the funds to place the order. (*Agency Exhibit 45*). However, the system would still be used by Professor Rao at IIT. (*Agency Exhibits 8, 45*).
45. On October 21, 1999, Respondent Ahuja emailed MTS to request the removal of all costs associated with MTS personnel visits. (*Agency Exhibit 45*). According to Ahuja, MTS visits were unnecessary since the customer using the equipment would visit MTS's facility in the U.S. for a pre-shipment inspection. (*Agency Exhibit 45*). Similarly, MTS would train one of Megatech's engineers, who, in turn, would install the equipment and receive the customer's final on-site acceptance. (*Agency Exhibits 45, 47*).
46. Respondent T.K. Mohan assisted Respondent Ahuja with the negotiations. On November 5, 1999, Respondent Mohan emailed MTS employees to discuss technical inquiries and costs associated with the sale of the fatigue test system. (*Agency Exhibit 46*). Respondent Mohan's email designated MassSpec (IIT) as the customer. (*Agency Exhibit 46*).

47. On April 6, 2000, Respondent Ahuja informed MTS that another change had been made to the transaction. The customer now wanted to place the order in the name of Technology Options (India) Pvt. Ltd. (Technology Options).⁸ Technology Options is a sister company of MassSpec.⁹ (*Agency Exhibits 7-8, 47*).
48. Mr. Chodankar, the owner of MassSpec, would continue to negotiate the deal on behalf of Technology Options, and Professor Rao would still be the person using the machine. (*Agency Exhibit 8*).

Parallel Discussions to Deliver Items to IGCAR

49. Although communications between Megatech and MTS characterized the transaction as a sale to Technology Options, parallel discussion between Respondent Ahuja and Dr. Rao revealed the fatigue test system would ultimately be delivered to IGCAR once it arrived in India. (*Agency Exhibit 48*).
50. On May 25, 2000, a price negotiation meeting was held at the Government of India Department of Atomic Energy, Madras Regional Purchase Unit (“Department of Atomic Energy”) to discuss the supply of a fatigue testing system. Notes from the meeting were signed by the attendees, who included: Dr. S.L. Mannan and Dr. K.B. Rao on behalf of IGCAR; two individuals from the Department of Atomic Energy; and Respondent Ahuja on behalf of MassSpec.¹⁰ (*Agency Exhibit 48*).

⁸ Technology Options (India) Private Limited (“Technology Options”) was established on May 13, 1999 in Mumbai and represents foreign companies for the sale of advanced analytical instrumentation in India. (*Agency Exhibit 35*).

⁹ In his deposition, Respondent Ajay Ahuja clarifies the meaning of “sister companies.” More specifically, Mr. Ajuha explains “they are of the same group of companies; they are related companies who have a common director.” (*Agency Exhibit 7*).

¹⁰ No explanation was provided in the minutes as to why Respondent Ahuja signed on behalf of MassSpec rather than on behalf of Megatech. (*Agency Exhibit 48*).

51. At all relevant times, the Department of Atomic Energy was located at 26 Haddows Road, Chennai, India. (*Agency Exhibit 48*).
52. At the meeting, the representatives from the Department of Atomic Energy indicated that the Department planned to place an order with Respondent Ahuja for the delivery of one fatigue test system. (*Agency Exhibit 48*). In turn, Respondent Ahuja agreed to provide training for one engineer at the supplier's facility. (*Agency Exhibit 48*).
53. Respondent Ahuja requested that the Department of Atomic Energy submit a Letter of Intent on or before June 6, 2000 to officially place the order with MTS. (*Agency Exhibit 48*).
54. On June 6, 2000, Mr. Chodankar of ITT wrote to MTS requesting the fatigue test system. (*Agency Exhibit 49*). Mr. Chodankar's letter clarifies that the order was placed pursuant to MTS's offer and subsequent meeting with Mr. Ajay Ahuja of Megatech. (*Agency Exhibit 49*).

Negotiations for the Sale of a Second MTS Machine

55. Concurrent with the discussions regarding the fatigue test system, Megatech discussed the shipment of a second machine. (*Agency Exhibit 61*). This time, the order was for a universal testing system to be placed by Technology Options. (*Agency Exhibits 35, 61*).
56. Respondent Mohan was the principal representative involved in the negotiations. (*Agency Exhibit 61*). On December 22, 2000, Respondent Mohan emailed MTS employees with inquiries regarding pricing, delivery, and contractual obligations for the universal testing machine. (*Agency Exhibit 61*).
57. Attached to the email was a purchase order and sales form completed by Respondent Mohan. (*Agency Exhibit 61*). The "Ship-to" category on the form was left blank, while

the "Site" and "Sold-to Customer" sections listed Technology Options in Mumbai.
(*Agency Exhibit 61*).

IGCAR Representatives Visit MTS Facilities for Training

58. In November 2000, Dr. K. B. Rao and Respondent Ravi Shettigar visited the MTS facilities in the United States to inspect the fatigue test system and be trained on installation prior to shipment. (*Agency Exhibits 41-42*).
59. Before they could enter the United States, both Dr. Rao and Respondent Shettigar needed visas approved by the U.S. Consulate. To assist with the visa process, MTS drafted letters of invitation to explain the purpose of the visit. (*Agency Exhibits 7, 53-54*). The information contained in those letters was provided directly by Respondents Mohan and Shettigar. (*Agency Exhibits 43, 53-54, 56-57*).
60. Respondents Mohan and Shettigar informed MTS that Dr. Rao was the Senior General Manager of Technology Options. (*Agency Exhibits 43, 56-57*).

Sale and Delivery of the Fatigue Testing System

61. On June 8, 2000, Respondent Ahuja submitted a sales order form to MTS regarding the sale of the fatigue test system. (*Agency Exhibit 50*). On the form, Respondent Ahuja listed Technology Options as the customer and Mumbai as the location site. (*Agency Exhibits 43, 50*).
62. Subsequently, on June 23, 2000, the Department of Atomic Energy placed an order on behalf of IGCAR with Technology Options for the fatigue test system. The order form contained the terms previously discussed at the meeting held on May 25, 2000 between Dr. K.B. Rao and Respondent Ahuja. (*Agency Exhibit 28*). In particular, the machine

would be delivered and installed at IGCAR's facility; training would be provided for the operating scientists without additional costs. (*Agency Exhibit 28*).

63. On December 31, 2000, Megatech was notified the fatigue test system arrived at Chennai. (*Agency Exhibit 8*).

64. Shortly thereafter, in January of 2001, Mr. Chodankar of Technology Options called Megatech to perform an inventory check to ensure that all components were shipped from MTS. (*Agency Exhibits 7-8*).

65. Respondent Shettigar performed the required inventory check at the customer's facility in Chennai. (*Agency Exhibits, 7-8, 56*). More specifically, this inventory check took place at 26 Haddows Road. (*Agency Exhibit 43*). This is the formal address of the Department of Atomic Energy and the same location at which Respondent Ahuja attended a meeting with IGCAR officials on May 25, 2000. (*Agency Exhibits 28-30*).

66. On January 22, 2001, Respondent Shettigar exchanged several emails with MTS employees regarding the installation of the fatigue test system. (*Agency Exhibit 64*). In his email, Shettigar informs MTS that he visited the customer's site to open the crates but the customer was not ready for the pre-installation check. He further noted the customer would not be ready for the final installation until sometime in the last week of February. (*Agency Exhibit 64*).

Investigation by Bureau of Industry and Security

67. On August 21, 2000 and February 13, 2001, the Agency received two anonymous letters alleging violations of the export regulations by IGCAR and other Indian organizations on the Entity List. (*Agency Exhibit 21*). The letters alleged that MTS, Megatech, MassSpec, and Technology Options were among the companies involved in such activities. (*Agency*

- Exhibit 21*). As a result of the letters, BIS opened an investigation to determine the veracity of the allegations. (*Agency Exhibits 21, 25*).
68. On February 27, 2001, Special Agents met MTS employees to review recent exports to India. (*Agency Exhibit 26*). MTS volunteered to review their sales and narrow the transactions down to a small group that the Agency could review. (*Agency Exhibit 26*).
69. On March 9, 2001, MTS notified BIS it discovered a purchase order for equipment that shipped to Technology Options on 12/19/00, and a second order being prepared for shipment at the end of the month. (*Agency Exhibits 27, 32*).
70. On June 7, 2001, the universal testing machine was formally detained by BIS's Office of Export Enforcement. (*Agency Exhibit 33*).
71. On June 11, 2001, BIS requested U.S. Foreign Commercial Service officers in Mumbai to conduct a Post Shipment Verification (PSV) at Technology Options. The results of the PSV determined the fatigue test system was neither present at Technology Option's facility nor under its control. (*Agency Exhibit 34-35*).
72. On May 6, 2002, Respondent Ahuja met with Commercial Service Officers. (*Agency Exhibit 38*). At this meeting, Megatech viewed several documents evidencing the diversion of the fatigue test system to IGCAR. (*Agency Exhibit 38*). At the Agency's request, Respondent Ahuja agreed to visit IGCAR to confirm whether the machine was installed and in use at IGCAR's facility. (*Agency Exhibits 8, 38*).
73. On May 8, 2002, Megatech representatives visited IGCAR and saw the fatigue test system in use at the Materials Development Lab. (*Agency Exhibits 8, 38-39*). Pursuant to their agreement, Megatech conveyed this information to the U.S. Foreign Commercial Service. (*Agency Exhibits 8, 38-39*).

74. On November 4, 2003, Commercial Service Agents conducted an end-use check at IGCAR and viewed the fatigue test system. (*Agency Exhibit 40*). The team met with IGCAR faculty members to review documents pertaining to the purchase of the system. One document in particular listed all companies that bid on the tender, including a bid from MassSpec Technologies in Mumbai, dated March 2, 2000. (*Agency Exhibit 40*).

ULTIMATE RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondents and the subject matter of this case are properly within the jurisdiction of the Bureau of Industry and Security in accordance with the Export Administration Act of 1979 (50 App. U.S.C. §§ 2401-2420) and the Export Administration Regulations (15 CFR Parts 730-774).
2. The evidence in the record as a whole demonstrates that Respondents Megatech, Ajay Ahuja, Ravi Shettigar, T.K. Mohan conspired to export items subject to the Regulations to a person listed on the Entity List without BIS authorization.
3. The charge of conspiracy, in violation of 15 C.F.R. § 764.2(d), against Respondents Megatech, Ajay Ahuja, Ravi Shettigar, and T.K. Mohan alleging Respondents conspired to export a thermal mechanical fatigue test system and a universal testing machine from the United States to the IGCAR without the required license is **PROVED** by a preponderance of reliable and credible evidence as taken from the record considered as a whole.
4. The first offense under the charge of evading the Regulations, in violation of 15 C.F.R. § 764.2(h), alleging Respondents Megatech, Ajay Ahuja, Ravi Shettigar, and T.K. Mohan developed and employed a scheme by which a company in India not on the Entity List

would receive the fatigue test system from the United States and then divert it to the true ultimate consignee, IGCAR, is **PROVED** by a preponderance of reliable and credible evidence as taken from the record considered as a whole.

5. The second offense under the charge of evading the Regulations, in violation of 15 C.F.R. § 764.2(h), alleging Respondents Megatech, Ajay Ahuja, Ravi Shettigar, and T.K. Mohan developed and employed a scheme by which a company in India not on the Entity List would receive the universal testing system from the United States and then divert it to the true ultimate consignee, IGCAR, is **PROVED** by a preponderance of reliable and credible evidence as taken from the record considered as a whole.
6. The charge of false statements in the course of an investigation subject to the Regulations, in violation of 15 C.F.R. § 764.2(g), against Respondents Megatech and Ajay Ahuja is **NOT PROVED**. Therefore, the Administrative Law Judge recommends that those charges (violations of 15 C.F.R. § 764.2(g)) alleged against Respondents Megatech and Ajay Ahuja be **DISMISSED**.

DISCUSSION

The Export Administration Act and the supporting Export Administration Regulations provide broad and extensive authority for the control of exports from the United States. See 50 App. U.S.C. §§ 2402(2)(A); 2404(a)(1); 2405(a)(1); see also 15 CFR § 730.2. More specifically, the Act authorizes the prohibition and regulation of exported goods for the purpose of furthering U.S. foreign policy or fulfilling international obligations. See 50 App. U.S.C. § 3405(a)(1). This includes authority to regulate and prohibit the export of goods and technology in the interest of national security. See 50 App. U.S.C. §§ 2402(2)(A) and 2404(a)(1). Moreover, all U.S. origin items, wherever located, are subject to regulation. See 15 CFR § 734.3(a)(2). As such, the

governing regulations apply extraterritorially regardless of a person's nationality or locality, so long as U.S. origin items are involved. In the Matter of Abdulmir Madi, et al, 68 Fed. Reg. 57406 (October 3, 2003).

The burden in this proceeding lies with the Bureau of Industry and Security to prove the charges instituted against the Respondents by a preponderance of the evidence. In the Matter of Petrom GmbH International Trade, No. E891 (BIS Apr. 25, 2005), <http://efoia.bis.doc.gov/ExportControlViolations/TOCExportViolations.htm>; In the Matter of Abdulmir Madi, et al, 68 Fed. Reg. 57406 (October 3, 2003).¹¹ In an administrative proceeding, the preponderance of the evidence standard is demonstrated by reliable, probative, and substantial evidence. Steadman v. SEC., 450 U.S. 91, 102 (1981). In the simplest terms, the Agency must demonstrate that the existence of a fact is more probable than its nonexistence. Concrete Pipe & Products v. Construction Laborers Pension Trust, 508 U.S. 602, 622 (1993); In the Matter of Petrom GmbH International Trade, No. E891 (BIS Apr. 25, 2005), <http://efoia.bis.doc.gov/ExportControlViolations/TOCExportViolations.htm>.

In this case, Respondents are charged with violations of the Export Administration Regulations (EAR) occurring from April 1, 2000 through August 31, 2001. The EAR governs the export of goods with dual-use and is administered by the Bureau of Industry and Security under the authority of the Export Administration Act.¹² 50 App. U.S.C. §§ 2401-2420.; 15 CFR § 730.2. In an attempt to prevent dual-use items from falling into the wrong hands, the EAR

¹¹ Bureau of Industry and Security publishes Decisions and Orders pertaining to export violations on its website, located at <http://efoia.bis.doc.gov/ExportControlViolations/TOCExportViolations.htm>.

¹² 50 App. U.S.C. §§ 2401-2420; 15 CFR § 730.2.

prescribe a complex set of regulations, which are triggered depending on the type of item sought to be exported, the destination of the item, and the specific entity or person who receives it. 15 CFR § 732.1. In turn, specific conduct constitutes a violation of the EAR to which sanctions may be imposed. See 15 CFR § 764.1.

In particular, it is unlawful to conspire, or act in concert, with one or more persons to take any action that violates the Act or its underlying regulations. 15 CFR § 764.2(d). Similarly, it is unlawful to engage in any transaction, or to take any action, with the intent to evade the provisions of the Act or its regulations. 15 CFR § 764.2(h). In these proceedings, knowledge includes positive knowledge that a circumstance exists. However, knowledge also includes an awareness of the high probability that a circumstance will occur. 15 CFR § 772.1. Such awareness may be inferred from evidence of the conscious disregard of facts known to a person. Likewise, awareness may be inferred from a person's willful avoidance of facts. *Id.*

Finally, a person is prohibited from misrepresenting and concealing facts to an official of any United States Agency in the course of an investigation subject to the Regulations. See 15 CFR § 764.2(g)(i). Misrepresentation and concealment of facts are defined in part as making any false or misleading representation, statement, or certification. See 15 CFR § 764.2(g). Prohibited actions further include falsifying or concealing a material fact. See 15 CFR § 764.2(g).

In this case, the Agency charged Respondents Megatech and Ahuja with misrepresentation and concealment of facts in the course of an investigation. More specifically, BIS alleges that between August 16, 2001 and May 20, 2002, Respondents Megatech and Ahuja made false statements to the U.S. government regarding the export of a fatigue test system to IGCAR. The alleged misrepresentations are derived from statements made to U.S. Commercial

Service Agents who met with Respondent Ahuja at the Megatech office on April 19, 2002. The details of that meeting were recapped by Special Agent Richard Rothman in an email sent to another Agency official. Agency Exhibit 37.

According to Special Agent Rothman's email, Respondent Ahuja stated he was first introduced to Technology Options by an IIT professor. Afterwards, the only person with whom he negotiated at Technology Options was Mr. R.K. Chodankar. Similarly, Respondent Ahuja stated he did not meet Dr. K.B. Rao until after the fatigue test system was shipped from the United States in December 2000. Special Agent Rothman additionally notes that Respondent Ahuja claimed he was never educated on the importance of U.S. export controls nor instructed by MTS to carefully investigate potential customers. Agency Exhibit 37.

The Agency alleges these statements are false because they contradict answers supplied by Respondents in subsequent Discovery Requests. However, a full review of the record reveals insufficient evidence to support a finding that Respondents made false statements or concealed facts during the course of the investigation.

In this case, BIS relies on an email generated by Special Agent Rothman as evidence of false statements made by Respondents Megatech and Ahuja. While this email purports to summarize a meeting between Respondent Ahuja and Agent Rothman, BIS presented no further evidence detailing the interview. In my opinion, this email is susceptible to double interpretation, and I am not convinced of its accuracy.

From the start, Agent Rothman notes that his report is written without the input of Agent Srinivas who accompanied him on the interview. He further notes that if anything is missing or misstated, Agent Srinivas can provide clarification. Agency Exhibit 37. However, neither

confirmation nor clarification is provided by Agent Srinivas in the record. While the Agency is under no obligation to provide this information, without it, the credibility of this email is weak.

Of particular concern, incorrect information is contained within the body of Agent Rothman's email. For example, Rothman writes, "On Friday afternoon, Srinivas and I met with Ajay Ahuja and his senior manager Ravi Shettigar of Megatech." Agency Exhibit 37. According to the bulk of evidence provided in the record, Respondent Shettigar is not a senior manager but, rather, a service engineer. Agency Exhibits, 7, 8, 56. When this email is read in conjunction with other exhibits, it is unclear as to what Respondent Shettigar's role is at Megatech. Is he senior manager over Respondent Ahuja or is he the senior manager of Megatech's service engineer department? Did Agent Rothman simply misstate Respondent Shettigar's title or did Respondents provide incorrect answers? This information is crucial when determining whether employees shared knowledge of each other's actions. If the Agency chooses to rely on a single piece of evidence as its basis of proof, the contents of that evidence must be unequivocal.

Moreover, given the informal nature of emails, I am hesitant to apply significant weight to this exhibit. Unlike an official report, emails are often written in haste and tend to paraphrase events. The email written by Agent Rothman is a short summary of his interview with Respondent Ahuja, which briefly restates the conversation that transpired during the meeting. There is no credible and substantial evidence in the record of what information was actually conveyed during the interview. From this exhibit alone, it is impossible to determine what words were actually used by either the Agents or Respondent Ahuja. Similarly, it is uncertain whether Respondent Ahuja fully understood the questions being asked or if the interview was complicated by a language barrier. Likewise, did the Agents fully comprehend Respondent

Ahuja's answers? When an interview of this magnitude is simply paraphrased in an email, rather than transcribed or, at the very least, notarized, it is indeterminate whether assertions made by an individual were misstated or taken out of context.

In addition, it is important to note that Agent Rothman's email was written in response to a co-worker's inquiry of a previous email from Agent Srinivas. The co-worker wrote, "I was going by Srinivas's email where he said Rao was asked to "float a company" and import all the equipment for an IGCAR test center. Is that what Rao told Srinivas?" Agency Exhibit 37. In turn, Agent Rothman drafted his report to recap the details of his meeting with Respondent Ahuja. As such, the email describes Respondent Ahuja's statements in the interview and contains minimal reference to Rao. Likewise, there is no mention of Rao stating he was asked to "float at company."

In reviewing this email chain, it is unclear why Agent Rothman focuses on Respondent Ahuja statements when his co-worker's inquired about Rao. Did the co-worker misunderstand the original correspondence from Agent Shrinivas or are there additional emails that were a part of this chain but not included in the record? With these questions in mind, I find the reliability of this exhibit to be minimal. More importantly, the information provided within it is inadequate to establish whether Respondents made misleading representations or concealed facts. Therefore, the Agency failed to prove by a preponderance of the reliable and credible evidence that Respondents Megatech and Ahuja wrongfully made false statements during the course of an investigation.

However, the Agency successfully established that Respondents conspired to export goods to a person listed on the Entity List without the required authorization. Likewise, Respondents committed acts of evasion when they developed and employed a scheme in which a

company in India not on the Entity List would receive the items from the United States and then divert them to the true consignee, IGCAR.

In defense of their actions, Respondents raise the following argument, which will be addressed in further detail:

1. Respondents did not Know They were Dealing with IGCAR Representatives nor Intended Controlled Items to be Re-Exported to a Prohibited Entity.

For the reasons stated herein, Respondents' argument is rejected.

1. Respondents Knew They were Dealing with IGCAR Representatives and Intended to Divert Controlled Items to a Prohibited Entity.

The Agency alleges Respondents conspired with others to export high-tech testing equipment from the United States to IGCAR, an entity in India that is prohibited to receive these items without the required license. In furtherance of the conspiracy, Respondents met and engaged in various correspondences with their co-conspirators, reaching an agreement to acquire the equipment without proper authorization. BIS further contends that Respondents developed and employed a scheme by which front companies in India would receive the exported equipment and then divert it to IGCAR, the true ultimate consignee. According to the Agency, Respondents' actions were taken with the specific intent to evade export regulations and avoid the licensing requirements. BIS additionally contends Respondents were knowledgeable of the U.S. export control laws and knew, or should have known, that the items required a license before being exported to IGCAR. Respondents also knew that license applications for exports to this entity would likely be denied.

In their Answer to the Agency's Charging Letters, Respondents argue they did not know the machines would be diverted to IGCAR. Rather, Respondents contend they were a victim of a

sophisticated scheme whereby IGCAR set up legitimate front companies through which it conducted all its negotiations. As such, Respondents assert they did not know they were dealing with anyone other than legitimate businesses that were not listed as prohibited entities under U.S. law. Respondents claim they never received any knowledge to the contrary and no red flags were raised that would cause them to distrust the information received.

Although Respondents filed an Answer to the Charging Letters on March 3, 2004, no further evidence was provided throughout the course of this proceeding to support their arguments. On November 7, 2006, it was presumed Respondents withdrew their Motion for Summary Judgment and waived their right to a hearing after they failed to respond to numerous pleadings and court orders. Similarly, Respondents failed to avail themselves of the opportunity to submit a Memorandum and Submission of Evidence to Supplement the Record. As such, the only evidence in the record as to what transpired in this matter is provided by the Agency. This evidence refutes Respondents' claim they lacked knowledge and intent to evade the Regulations when they diverted controlled items to a prohibited entity without a required license.

In particular, Respondents' familiarity and knowledge of IGCAR representatives dates as far back as the 1980's. More specifically, when MTS supplied a machine to IGCAR around 1985, Respondent Ahuja participated in the sale through his former employer. See Agency Exhibits 7, 9. Once Megatech became MTS System's sole representative in the region, Respondents began to negotiate additional sales on behalf of MTS. For instance, in June 1991, Respondent Ahuja attended a meeting with several scientists from IGCAR to discuss the sale of equipment that would be used at IGCAR's facility. Agency Exhibit 9. Although the project remained at a standstill until a license could be obtained, Respondents continued to provide support service on the old system installed at IGCAR. Agency Exhibits 10, 11, 15. In providing

the support service, Respondent Shettigar personally visited IGCAR on at least two separate occasions in 1993 and 1998. See Agency Exhibits 7, 16.

Although the likelihood of obtaining an export license grew increasingly difficult, Respondents continued to submit offers to IGCAR for the supply of test equipment. In April 1993, Respondent Ahuja requested assistance from an MTS subsidiary to complete the preliminary paperwork for a sale's proposal, Agency Exhibit 14. In his request letter, Respondent Ahuja noted the equipment would be used by Dr. K.B. Rao in the Material Development Laboratory at IGCAR. Id. Further, Respondents kept track of their clients' information over the years through a database, which filed the names of all companies and customers to whom products were sold. Agency Exhibit 7.

While Respondents continued their sales efforts, they knew U.S. regulations prevented the export of items to IGCAR without a license. Similarly, Respondents were aware that license applications would most likely be denied. In particular, Respondents' knowledge of U.S. export restrictions began in 1992 when their U.S. supplier notified them of the difficulty in obtaining authorization to export goods to IGCAR. MTS received a response to an inquiry with the Department of Commerce, stating "no one will be allowed to ship goods to IGCAR." In turn, MTS sent a facsimile to Respondent Megatech informing them that the prohibition pertained to the USA, UK, Japan, and most other industrialized nations. See Agency Exhibit 12.

Moreover, on February 3, 1997, BIS established the Entity List comprised of end-users that were ineligible to receive specified items without a license. As a result, all exporters were put on notice that a validated license was required before any item subject to the Regulations could be exported to a listed entity. IGCAR was specifically included on the list due to its involvement in unsafeguarded nuclear research and development activities. 62 Fed Reg. 125

(June 30, 1997). The following year, this information was reiterated when MTS received an official letter for the Department of Commerce informing them that IGCAR would require special export treatment due to their nuclear activities. Agency Exhibit 15. The letter additionally noted there was a “presumption of denial” for any Indian/Pakistani nuclear end-user. Id. In turn, MTS repeatedly assured Respondent Megatech that all MTS subsidiaries and representatives were bound by U.S. Export Regulations. As such, they could not supply orders, spare parts, or warranty replacement parts to any customer on the Entity List without an export license. Agency Exhibits 15, 19.

According to the evidence in record, Megatech grew increasingly frustrated with MTS’s inability to secure a license to export items to entities in India. Without export authorization, Megatech experienced a loss of potential business clients. Agency Exhibits 7, 17. To combat this loss, Megatech continued to submit sales proposals to IGCAR. In June 1999, Megatech met with Professor K.B. Rao to discuss specifications for a Thermal Mechanical Fatigue System. Agency Exhibits 7, 43. Prior to the meeting, Respondent Ahuja sent an advance copy of Dr. Rao’s specifications to MTS Systems, requesting an offer in which he informed MTS the request came from Professor K.B. Rao of the Indian Institute of Technology. Agency Exhibit 7. In addition, Respondent Ahuja addressed all subsequent correspondence to Dr. Rao at the IIT. Agency Exhibits 8, 44. Given that Megatech maintains client information in its database, Respondent Ahuja knew, or should have known, that Professor Rao actually worked for IGCAR. As such, all communication regarding Dr. Rao should have included reference to IGCAR rather than IIT.

With the knowledge they were dealing with IGCAR representatives, Respondents intentionally developed a plan to evade the Regulations. In particular, high-tech equipment was

purchased by front companies that were not listed on the Entity List. Once these companies received the equipment from the United States, they diverted the goods to IGCAR. For instance, a new company was introduced into the transaction on August 13, 1999 when Respondent Ahuja met Dr. Rao at the office of MassSpec Technologies Pvt Limited. See Agency Exhibits 42, 43. Following the meeting, Respondent Ahuja informed MTS that the purchase order would no longer be placed by IIT but, rather, by MassSpec. Respondent Ahuja claimed MassSpec was IIT's counterpart that would receive a tax benefit if it purchased the equipment directly. Shortly thereafter, on April 6, 2000, Respondent Ahuja told MTS that yet another change had been made to the transaction. This time, the customer wanted to place the order in the name of Technology Options, a sister company of MassSpec. See Agency Exhibits 7-8, 47. However, Respondent Ahuja assured MTS the system would still be used by Professor Rao at IIT. See Agency Exhibits 8, 45.

The diversion of goods was further developed when Respondent Ahuja declined routine services typically associated with the sale and installation of a fatigue test system. As seen on October 21, 1999, Respondent Ahuja emailed MTS to request the removal of costs associated with MTS personnel visits to the customer in India. See Agency Exhibit 45. Instead, Respondent Ahuja suggested a representative from Technology Options visit MTS's facility in the U.S. for a pre-shipment inspection. During this time, the customer would become familiar with how the equipment functioned and its features. See Agency Exhibit 45. Similarly, MTS would train one of Megatech's engineers, who, in turn, would install the equipment and receive the customer's final on-site acceptance. See Agency Exhibits 45, 47. With this new arrangement there would be no need for MTS to visit the customer's facility in India to ensure the machine was properly installed at the end-user's site.

In accordance with this new arrangement, Dr. K. B. Rao and Respondent Ravi Shettigar visited the MTS facilities in November 2000 to inspect the fatigue test system and be trained on installation prior to shipment. See Agency Exhibits 41-42. However, before they could enter the United States, both Dr. Rao and Respondent Shettigar needed visas approved by the U.S. Consulate. To assist with the visa process, MTS drafted letters of invitation to explain the purpose of the visit. See Agency Exhibits 7, 53-54. The information contained within those letters was false and was provided directly by Respondent's Mohan and Shettigar. Specifically, Respondents told MTS employees that Dr. K.B. Rao was the Senior General Manager of Technology Options. See Agency Exhibits 43, 56-57. Given Respondents' level of involvement with both IGCAR and Dr. Rao, Respondents knew, or should have known, that Dr. K.B. Rao was not an employee of Technology Options but, rather, an employee of IGCAR.

Although Respondents' communications to MTS characterized the transaction as a sale to Technology Options, parallel discussion between Respondent Ahuja and Dr. Rao revealed the fatigue test system would ultimately be delivered to IGCAR. See Agency Exhibit 48. The record reveals a price negotiation meeting occurred on May 25, 2000 at the Department of Atomic Energy to discuss the supply of a fatigue testing system. IGCAR is a subordinate entity of the Department of Atomic Energy. See Agency Exhibits 5, 40. Moreover, notes from the meeting were signed by the attendees, who included: Dr. S.L. Mannan and Dr. K.B. Rao on behalf of IGCAR; two individuals from the Department of Atomic Energy; and Respondent Ajay Ahuja. See Agency Exhibit 48.

At the meeting, the Department of Atomic Energy indicated it planned to place an order with Respondent Ahuja for the delivery of one fatigue test system. See Agency Exhibit 48. In turn, Respondent Ahuja agreed to provide training for one engineer at MTS's facility in the

United States. See Agency Exhibit 48. As seen in November 2000, the person to visit MTS's facility for training was Dr. Rao from IGCAR. See Agency Exhibit 42.

Moreover, Respondent Ahuja requested the Department of Atomic Energy submit a Letter of Intent on or before June 6, 2000 to officially place the order with MTS. See Agency Exhibit 48. In accordance with Respondent Ahuja's request, a Letter of Intent was written and sent to MTS on June 6, 2000. However, the letter was not drafted by the Department of Atomic Energy but, rather, by Mr. Chodankar of ITT. See Agency Exhibit 49. In addition, Mr. Chodankar's letter clarifies that the order was placed pursuant to MTS's offer and subsequent meeting with Mr. Ahuja of Megatech. See Agency Exhibit 49.

Throughout the negotiation process, Respondent T.K. Mohan assisted Respondent Ahuja and personally took part in the plan to divert items to IGCAR. For instance, on November 5, 1999, Respondent Mohan emailed MTS employees to discuss technical inquiries and costs associated with the sale of the fatigue test system. See Agency Exhibit 46. However, Respondent Mohan's email designated MassSpec (IIT) as the customer instead of IGCAR. See Agency Exhibit 46. Likewise, Respondent Mohan was the principal representative involved in the negotiations of a second machine to be purchased by Technology Options. See Agency Exhibits 35, 61. These negotiations involved the sale of a universal testing machine and ran concurrent with the discussions for the fatigue test system. See Agency Exhibit 61. To help facilitate the transaction, Respondent Mohan emailed MTS employees with inquiries regarding pricing, delivery, and contractual obligations for the universal testing machine. See Agency Exhibit 61. Attached to the email was a purchase order and sales form completed by Respondent Mohan. See Agency Exhibit 61. In the sections entitled "Site" and "Sold-to Customer,"

Respondent Mohan listed Technology Options in Mumbai. However, no explanation was provided as to why the section entitled "Ship-to" was left blank. See Agency Exhibit 61.

In furtherance of the conspiracy, Respondent Shettigar also took actions to evade the Regulations and avoid licensing requirements. In particular, On January 22, 2001, Respondent Shettigar exchanged several emails with MTS employees regarding the installation of the fatigue test system. See Agency Exhibit 64. In his email, Shettigar informed MTS that the system was placed at Technology Option's facility but that the customer was not fully ready for the pre-installation check. He further noted Technology Options would not be ready for the final installation until sometime in the last week of February. See Agency Exhibit 64.

In response to subsequent discovery requests from the Agency, Respondents identified the location of the site referred to in Respondent Shettigar's email. More specifically, Respondents claim the inventory check took place at a warehouse in the ground floor at 26 Haddows Road, Chennai. See Agency Exhibit 43. However, this is the formal address of the Department of Atomic Energy and the same location at which Respondent Ahuja attended a meeting with IGCAR officials Dr. K.B. Rao and Dr. S.L. Mannan on May 25, 2000. See Agency Exhibits 28-30.

Finally, Respondents submitted false documentation to its supplier, which provided a party other than IGCAR was the ultimate consignee for the exported items. In particular, on June 8, 2000, Respondent Ahuja submitted a sales order form to MTS regarding the purchase of a fatigue test system. See Agency Exhibit 50. On the form, Respondent listed Technology Options as the customer and Mumbai as the location site. See Agency Exhibits 43, 50. However, the record reveals that the item was actually sold to IGCAR, located in Chennai. More specifically, on June 23, 2000, the Department of Atomic Energy placed an order on behalf of

IGCAR with Technology Options for the fatigue test system. The order form contained the terms previously discussed at the meeting held on May 25, 2000 between Dr. K.B. Rao and Respondent Ahuja. See Agency Exhibit 28. In particular, the machine would be delivered and installed at IGCAR's facility and training would be provided for the operating scientists without additional costs. See Agency Exhibit 28.

In light of the above listed circumstances, Respondents' assertion they did not know they were dealing with IGCAR representatives is unavailing. Rather, the evidence provided in the record clearly establishes Respondents conspired to export high-tech equipment to IGCAR without the required authorization in violation of 15 CFR § 764.2(d). Moreover, the evidence demonstrates Respondents intentionally evaded the Regulations by developing a scheme to export controlled items to front companies that would receive the goods from the United States then divert them to IGCAR. As such, the Agency proved by a preponderance of reliable and credible evidence that Respondents violated 15 CFR § 764.2(h).

RECOMMENDED SANCTION

The Bureau of Industry and Security has authority to assess sanctions against individuals who violate the export regulations. See 15 CFR § 764.3. Sanctions may include civil penalties, denial of export privileges, and revocation of export licenses. See 15 CFR § 764.3. Here, the record shows Respondents did not apply for U.S. Government authorization to export high-tech testing equipment to IGCAR, an entity prohibited to receive these items without the required license. Instead, Respondents conspired with others to set up front companies that would receive the exported equipment and then divert them to IGCAR, the true ultimate consignee. In furtherance of the conspiracy, Respondents met and corresponded with their co-conspirators, reaching an agreement to acquire the equipment without proper authorization. Likewise,

Respondents submitted false information and documentation to their supplier in the U.S., whereby they indicated a party other than IGCAR was the ultimate consignee for these items.

The record further demonstrates Respondents were provided notice of the U.S. restrictions against IGCAR and knew the items required a license before being exported to IGCAR. Because these items are useful in the development and production of nuclear weapons, Respondents knew a license application for export to IGCAR would most likely be denied. As such, the record demonstrates Respondents' actions were done with the express purpose and intent to evade U.S. export control laws.

There are no mitigating factors on the records that would justify a sanction lighter than the denial of export privileges. Further, the imposition of a civil penalty in this case may not be effective, given the difficulty in collecting payment against a party outside the United States. In light of the above circumstances, I find that Megatech Engineering & Sciences Pvt. Ltd, Ajay Ahuja, Ravi Shettigar, and T.K. Mohan have demonstrated a severe disregard for U.S. export control laws; therefore, a denial of U.S. export privileges for a period of fifteen (15) years against each Respondent is an appropriate sanction.

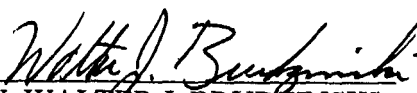
WHEREFORE,

RECOMMENDED ORDER

[REDACTED SECTION]

[REDACTED SECTION]

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary for review and final action for the agency, without further notice to the Respondent, as provided in 15 C.F.R § 766.22.


HON. WALTER J. BRUDZINSKI
Administrative Law Judge

Done and dated this /st day of October 2007
New York, NY

APPENDIX A

In the Matter of: Megatech Engineering & Services Pvt. Ltd., et al

LIST OF EXHIBITS

AGENCY EXHIBITS

1. Federal Register, Vol. 69, No. 230 (Dec. 1, 2004)
2. Letters (2x) Written to Mr. Mark Menefee, Director of the Office of Export Enforcement from Steve Clagett (Mar. 18, 2002 and May 1, 2002)
3. Federal Register, Vol. 62, No. 125 (June 30, 1997)
4. The World Factbook Reference Material on India
5. Reference Material on Indira Gandhi Centre for Atomic Research (IGCAR) from IGCAR's Internet Site
6. Letter from M. Valsan of the Mechanical Metallurgy Division at IGCAR to Mr. Y. Bharat, Mass Spec Technology Pvt. Ltd. (Oct. 13, 1999)
7. Deposition of Ajay Ahuja (Oct. 19, 2004)
8. Megatech Engineering & Services Pvt. Ltd Answer to Agency's Charging Letter (Mar. 3, 2004)
9. Facsimile from Ajay Ahuja to Don Hall at IGCAR (Mar. 28, 1991)
10. Visit Report to IGCAR, drafted by Ajay Ahuja
11. Memo from Gary Stewart to Save Santo (June 7, 1991)
12. Facsimile from Scott Anderson, Sintech, to Ajay Ahuja (Jan. 13, 1992)
13. License Application Report from Donald E. Hall
14. Facsimile from Ajay Ahuja to Mark Prow at Sintech (Apr. 22, 1993)
15. Electronic Mails (3x) between Megatech employees and Don Hall (July 9, 1998 through July 13, 1998)
16. International Field Service Reports, Number 001457, and Field Activity Report

17. Speed Post to MATS (Apr. 23, 1994)
18. Application Submitted by Don Hall to BXA, US Dept of Commerce (May 10, 1994).
19. Electronic Mail (5x) between Ajay Ahuja and Becky Scott (July 19, 1999 through July 27)
20. Electronic Mail (2x) from Becky Scott to BXA Agent, Regarding Export License Application (July 19, 1999)
21. Anonymous Letter to U.S. Department of Commerce, Regarding Export Violations (Aug. 21, 2000)
22. Report of Investigation Activity (Sept. 25, 2000)
23. Report of Investigation Activity (Nov. 16, 2000)
24. Electronic Mail (2x) Between Becky Scott and Randy Strop (Nov. 28, 2000 – Nov. 29, 2000)
25. Anonymous Letter to U.S. Department of Commerce, Regarding Export Violations (Feb.13, 2001)
26. Report of Investigation Activity (Feb. 27, 2001)
27. Bookmarks from the Desktop of Becky Scott, Containing Seven (7) Memos
28. Purchase Order Form, from the Department of Atomic Energy (June 23, 2000)
29. Customs Duty Exemption Certificate
30. Custom Duty Exemption Cover Letter (Aug. 4, 2000)
31. Purchase Order (Nov. 15, 2000)
32. MTS Facsimile to Office of Export Enforcement (Mar. 9, 2001)
33. Letter from Bureau of Export Administration (June 7, 2001)
34. Facsimile from Office of Export Enforcement, (June 11, 2001)
35. Unclassified Document from Department of Commerce (3 pages)
36. Unclassified Document from Department of Commerce (1 page)

37. Interagency Electronic Mails from the Bureau of Export Administration, Between Richard Rothman and Perry Davis (Apr. 19, 2002 – Apr. 22, 2002)
38. Unclassified Document from Department of Commerce (1 page)
39. Letter from Ajay Ahuja to Richard Rothman, Commercial Consul & Trade Commissioner (May 20, 2002)
40. PSV Activity Report
41. Electronic Mail (2x) Between Steve Trout and Ajay Ahuja (July 28, 1999 – July 29, 1999)
42. Electronic Mail (2x) Between Ravi Shettigar and T.K. Mohan (Nov. 27, 2000 – Nov. 28, 2000)
43. Respondents' Responses to Bureau of Industry and Security's First Requests for Admissions, Interrogatories, and Production of Documents (Oct. 4, 2004)
44. Letter from Steven Trout, MATS Applications Engineer, to Indian Institute of Technology (June 7, 2000)
45. Electronic Mail (7x) Between Ajay Ahuja and Steve Trout (Oct. 21, 1999 – Oct. 27, 1999)
46. Electronic Mail (2x) Between Steve Trout and T.K. Mohan (Nov. 5, 1999 – Nov. 10, 1999)
47. Electronic Mail (3x) Between Ajay Ahuja and MTS Employees (Apr. 6, 2000)
48. Minutes from Negotiation Meeting by Government of India Department of Atomic Energy Madras Regional Purchase Unit (May 25, 2000)
49. Letter from R.K. Chodankar of Technology Options with Purchase Order (June 6, 2000)
50. Sales Order Submittal Form–2000, submitted by Ajay Ahuja (June 8, 2000)
51. Letter of Invitation for Ravi Shettigar with Facsimile Coversheet (Oct.10, 2000)
52. Facsimile from Technology Options (Aug. 18, 2000)
53. Electronic Mail (2x) Between Randy Strop and T.K. Mohan (Aug. 19, 2000)
54. Letter of Invitation from MTS with Facsimile Coversheet (Aug. 23, 2000)

55. Electronic Mail (5x) Between Ravi Shettigar and Randy Strop (Oct. 31, 2000 – Nov. 6, 2000)
56. Deposition of Ravi Shettigar (Oct. 20, 2004)
57. Electronic Mail (3x) Between T.K. Mohan and Randy Strop (Nov. 15, 2000 – Nov. 20, 2000)
58. Electronic Mail (2x) Between T.K. Mohan and Ravi Shettigar (Nov. 15, 2000)
59. Letter of Invitation from Karen Odash, International Coordinator, MATS (Nov. 16, 2000)
60. Letter from United States Department of State, Regarding Certificate of Visa Records of the Bureau of Consular Affairs with Attachments (Feb. 16, 2005)
61. Electronic Mail(3x) with Attachments (2x) from T.K. Mohan to Steve Trout (Dec. 21, 2000)
62. Customer's Declaration Form (Dec. 23, 2000)
63. Letter from Technology Options to the Lufthansa, Air Cargo Section (Jan. 2, 2001)
64. Electronic Mail (4x) between Ravi Shettigar and Randy Strop (Jan. 22, 2001 – Jan. 30, 2001)

APPENDIX B

NOTICE TO THE PARTIES REGARDING REVIEW BY THE UNDER SECRETARY

**TITLE 15--COMMERCE AND FOREIGN TRADE
SUBTITLE B - - REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE
CHAPTER VII - - BUREAU OF INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE
SUBCHAPTER C - - EXPORT ADMINISTRATION REGULATIONS
PART 766 - - ADMINISTRATIVE ENFORCEMENT PROCEEDINGS**

15 CFR § 766.22

Section 766.22 Review by Under Secretary.

- (a) Recommended decision. For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.
- (b) Submissions by parties. Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.
- (c) Final decision. Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.
- (d) Delivery. The final decision and implementing order shall be served on the parties and will be publicly available in accordance with Sec. 766.20 of this part.

(e) Appeals. The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. Sec. 2412(c)(3).

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing RECOMMENDED DECISION & ORDER via express mail courier to the following persons and offices:

Under Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
Room H-3839
14th & Constitution Avenue, N.W.
Washington, D.C. 20230
Telephone: (202) 482-5301
(Via Federal Express)

John R. Masterson, Jr., Esquire, Chief Counsel for Industry and Security
Glenn Kaminsky, Esquire, Senior Attorney
Office of Chief Counsel for Industry and Security
U.S. Department of Commerce, Room H-3839
14th Street & Constitution Avenue, N. W.
Washington, D. C. 20230
Telephone: (202) 482-5301
(Via Federal Express)

ALJ Docketing Center
40 S. Gay Street, Room 412
Baltimore, Maryland 21202-4022
Telephone: (410) 962-7434
(Via Federal Express)

Megatech Engineering & Services Pvt. Ltd.
PB # 17652
A/2/10 Dongre Park
Chembur, Mumbai 400 074 INDIA
(Via Federal Express International)

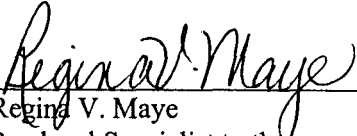
Ajay Ahuja
Megatech Engineering & Services Pvt. Ltd.
PB# 17652
A/2/10 Dongre Park
Chembur, Mumbai 400 074 INDIA
(Via Federal Express International)

CERTIFICATE OF SERVICE (continued)

Ravi Shettigar
Megatech Engineering & Services Pvt. Ltd.
PB# 17652
A/2/10 Dongre Park
Chembur, Mumbai 400 074 INDIA
(Via Federal Express International)

T.K. Mohan
Megatech Engineering & Services Pvt. Ltd.
PB# 17652
A/2/10 Dongre Park
Chembur, Mumbai 400 074 INDIA
(Via Federal Express International)

Done and dated this / st day of October, 2007
New York, NY



Regina V. Maye
Paralegal Specialist to the
Administrative Law Judge

FEB 2 2004



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

COPY

Megatech Engineering & Services Pvt. Ltd.
Post Bag No. 17652
A/2/10 Tapovan, Dongre Park
Chembur
Mumbai 400 074
India

Attention: *President or Chief Executive Officer*

Dear Sir or Madam:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that Megatech Engineering & Services Pvt. Ltd. ("Megatech") committed four violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that Megatech committed the following violations:

Charge 1 (15 C.F.R. §764.2(d) – Conspiracy to Export Items Subject to the Regulations to a Person Listed on the Entity List Without BIS Authorization)

From on or about April 1, 2000 through on or about August 31, 2001, Megatech conspired with others, known and unknown, to export from the United States to the Indira Gandhi Centre for

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The charged violations occurred in 2000 and 2001. The Regulations governing the violations at issue are found in the 2000 and 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2001)). The Regulations define the violations that BIS has charged and establish the procedures that apply to this matter.

² 50 U.S.C. app. 2401- 2420 (2000). 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 C.F.R., 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 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. p. 783 (2002)), as extended by the Notice of August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.

RECEIVED
FRONT DESK
2004 FEB - 3 P 3: 00
ALJ - ELLIMORE



Atomic Research ("IGCAR") a thermal mechanical fatigue test system ("fatigue test system") and a universal testing machine, both items subject to the Regulations, without a BIS export license as required by Section 744.11 of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations ("Entity List"). In furtherance of the conspiracy, false documentation was submitted to the U.S. exporter that provided that a party other than IGCAR was the ultimate consignee for the items to be exported from the United States. By conspiring to bring about an act in violation of the Regulations, Megatech committed one violation of Section 764.2(d) of the Regulations.

Charge 2 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about June 13, 2000, in connection with the export of the fatigue test system to IGCAR, Megatech took actions to evade the Regulations. Specifically, Megatech, with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the fatigue test system from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a BIS license was required for the export. In engaging in this transaction, Megatech committed one violation of Section 764.2(h) of the Regulations.

Charge 3 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about December 21, 2000, in connection with the attempted export of a universal testing machine to IGCAR, Megatech took actions to evade the Regulations. Specifically, Megatech, with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the universal testing machine from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a license was required for the export. In engaging in this transaction, Megatech committed one violation of Section 764.2(h) of the Regulations.

Charge 4 (15 C.F.R. §764.2(g) - False Statements in the Course of an Investigation Subject to the Regulations)

On or about August 16, 2001 through on or about April 8, 2002, in connection with the export of the fatigue test system referenced above, Megatech made false statements to the U.S. Government regarding its knowledge of and involvement in the export. Specifically, Megatech falsely asserted to U.S. Foreign Commercial Service Officers a lack of knowledge regarding the

intended diversion of the items involved to ICGAR. Specifically, Megatech made inconsistent and false statements regarding the end user of the fatigue test system. In doing so, Megatech committed one violation of Section 764.2(g) of the Regulations.

Accordingly, Megatech is hereby notified that an administrative proceeding is instituted against it 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 \$11,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Megatech fails 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. (Regulations, Sections 766.6 and 766.7). If Megatech defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to Megatech. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

Megatech is further notified that it is entitled to an agency hearing on the record if Megatech files a written demand for one with its answer. (Regulations, Section 766.6). Megatech is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Megatech have a proposal to settle this case, it or its representative should transmit it to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Megatech's answer 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

³ See 15 C.F.R. §6.4(a)(2).

Megatech Engineering & Services Pvt. Ltd.
Charging Letter
Page 4

In addition, a copy of Megatech's answer must be served on BIS at the following address:

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

Glenn Kaminsky is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301, by facsimile at (202) 482-0085, or by email at gkaminsk@bis.doc.gov.

Sincerely,



Mark D. Menefee
Director
Office of Export Enforcement

FEB 2 2004



UNITED STATES DEPARTMENT OF COMMERCE
Under Secretary for Industry and Security
Washington, D.C. 20230

COPY

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Mr. Ajay Ahuja
Megatech Engineering & Services Pvt. Ltd.
Post Bag No. 17652
A/2/10 Tapovan, Dongre Park
Chembur
Mumbai 400 074
India

RECEIVED
FRONT DESK
2004 FEB - 3 P 3:40
ALJ-BALTIMORE, MD

Dear Mr. Ahuja:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that you, Ajay Ahuja, employee of Megatech Engineering & Services Pvt. Ltd., in your individual capacity (referred to as "Ahuja" in the charges below) committed four violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that you committed the following violations:

Charge 1 (15 C.F.R. §764.2(d) – Conspiracy to Export Items Subject to the Regulations to a Person Listed on the Entity List Without BIS Authorization)

From on or about April 1, 2000 through on or about August 31, 2001, Ahuja, acting in his capacity as an employee of Megatech Engineering & Services Pvt. Ltd., ("Megatech"), conspired

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The charged violations occurred in 2000 and 2001. The Regulations governing the violations at issue are found in the 2000 and 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2001)). The Regulations define the violations that BIS has charged and establish the procedures that apply to this matter.

² 50 U.S.C. app. 2401- 2420 (2000). 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 C.F.R., 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 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. p. 783 (2002)), as extended by the Notice of August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.



with others, known and unknown, to export from the United States to the Indira Gandhi Centre for Atomic Research ("IGCAR") a thermal mechanical fatigue test system ("fatigue test system") and a universal testing machine, both items subject to the Regulations, without a BIS export license as required by Section 744.11 of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations ("Entity List"). In furtherance of the conspiracy, false documentation was submitted to the U.S. exporter that provided that a party other than IGCAR was the ultimate consignee for the items to be exported from the United States. By conspiring to bring about an act in violation of the Regulations, Ahuja committed one violation of Section 764.2(d) of the Regulations.

Charge 2 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about June 13, 2000, in connection with the export of the fatigue test system to IGCAR, Ahuja took actions to evade the Regulations. Specifically, Ahuja, with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the fatigue test system from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a BIS license was required for the export. In engaging in this transaction, Ahuja committed one violation of Section 764.2(h) of the Regulations.

Charge 3 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about December 21, 2000, in connection with the attempted export of a universal testing machine to IGCAR, Ahuja took actions to evade the Regulations. Specifically, Ahuja with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the universal testing machine from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a license was required for the export. In engaging in this transaction, Ahuja committed one violation of Section 764.2(h) of the Regulations.

Charge 4 (15 C.F.R. §764.2(g) - False Statements in the Course of an Investigation Subject to the Regulations)

On or about August 16, 2001, through on or about April 8, 2002, in connection with the export of the fatigue test system referenced above, Ahuja made false statements to the U.S. Government regarding his knowledge of and involvement in the export. Specifically, Ahuja made

inconsistent and false statements to U.S. Foreign Commercial Service Officers regarding the end user of the fatigue test system. In doing so, Ahuja committed one violation of Section 764.2(g) of the Regulations.

Accordingly, you are hereby notified that an administrative proceeding is instituted against you 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 \$11,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If you 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. (Regulations, Sections 766.6 and 766.7). If you default, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to you. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

You are further notified that you are entitled to an agency hearing on the record if you file a written demand for one with your answer. (Regulations, Section 766.6). You are also entitled to be represented by counsel or other authorized representative who has power of attorney to represent you. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing BIS named below.

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

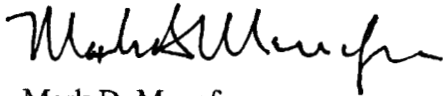
³ See 15 C.F.R. §6.4(a)(2).

Ajay Ahuja
Charging Letter
Page 4

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

Glenn Kaminsky is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301, by facsimile at (202) 482-0085, or by email at gkaminsk@bis.doc.gov.

Sincerely,



Mark D. Menefee
Director
Office of Export Enforcement

FEB - 2 2004



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Mr. Ravi Shettigar
Megatech Engineering & Services Pvt. Ltd.
Post Bag No. 17652
A/2/10 Tapovan, Dongre Park
Chembur
Mumbai 400 074
India

COPY
RECEIVED
FRONT DESK
2004 FEB - 3 P 3:41
BALTIMORE, MD

Dear Mr. Shettigar:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that you, Ravi Shettigar, employee of Megatech Engineering & Services Pvt. Ltd., in your individual capacity (referred to as "Shettigar" in the charges below) committed three violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that you committed the following violations:

Charge 1 (15 C.F.R. §764.2(d) – Conspiracy to Export Items Subject to the Regulations to a Person Listed on the Entity List Without BIS Authorization)

From on or about April 1, 2000 through on or about August 31, 2001, Shettigar, acting in his capacity as an employee of Megatech Engineering & Services Pvt. Ltd., ("Megatech"), conspired

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The charged violations occurred in 2000 and 2001. The Regulations governing the violations at issue are found in the 2000 and 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2001)). The Regulations define the violations that BIS has charged and establish the procedures that apply to this matter.

² 50 U.S.C. app. 2401- 2420 (2000). 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 C.F.R., 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 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. p. 783 (2002)), as extended by the Notice of August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.



with others, known and unknown, to export from the United States to the Indira Gandhi Centre for Atomic Research ("IGCAR") a thermal mechanical fatigue test system ("fatigue test system") and a universal testing machine, both items subject to the Regulations, without a BIS export license as required by Section 744.11 of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations ("Entity List"). In furtherance of the conspiracy, false documentation was submitted to the U.S. exporter that provided that a party other than IGCAR was the ultimate consignee for the items to be exported from the United States. By conspiring to bring about an act in violation of the Regulations, Shettigar committed one violation of Section 764.2(d) of the Regulations.

Charge 2 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about June 13, 2000, in connection with the export of the fatigue test system to IGCAR, Shettigar took actions to evade the Regulations. Specifically, Shettigar, with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the fatigue test system from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a BIS license was required for the export. In engaging in this transaction, Shettigar committed one violation of Section 764.2(h) of the Regulations.

Charge 3 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about December 21, 2000, in connection with the attempted export of a universal testing machine to IGCAR, Shettigar took actions to evade the Regulations. Specifically, Shettigar, with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the universal testing machine from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a license was required for the export. In engaging in this transaction, Shettigar committed one violation of Section 764.2(h) of the Regulations.

Accordingly, you are hereby notified that an administrative proceeding is instituted against you 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:

Ravi Shettigar
Charging Letter
Page 3

The maximum civil penalty allowed by law of \$11,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If you 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. (Regulations, Sections 766.6 and 766.7). If you default, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to you. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

You are further notified that you are entitled to an agency hearing on the record if you file a written demand for one with your answer. (Regulations, Section 766.6). You are also entitled to be represented by counsel or other authorized representative who has power of attorney to represent you. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing BIS named below.

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


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

³ See 15 C.F.R. §6.4(a)(2).

Ravi Shettigar
Charging Letter
Page 4

Glenn Kaminsky is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301, by facsimile at (202) 482-0085, or by email at gkaminsk@bis.doc.gov.

Sincerely,



Mark D. Menefee
Director
Office of Export Enforcement

FEB - 2 2004



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

COPY

Mr. T.K. Mohan
Megatech Engineering & Services Pvt. Ltd.
Post Bag No. 17652
A/2/10 Tapovan, Dongre Park
Chembur
Mumbai 400 074
India

Dear Mr. Mohan:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that you, T. K. Mohan, employee of Megatech Engineering & Services Pvt. Ltd., in your individual capacity (referred to as "Mohan" in the charges below) committed three violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that you committed the following violations:

Charge 1 (15 C.F.R. §764.2(d) – Conspiracy to Export Items Subject to the Regulations to a Person Listed on the Entity List Without BIS Authorization)

From on or about April 1, 2000 through on or about August 31, 2001, Mohan, acting in his capacity as an employee of Megatech Engineering & Services Pvt. Ltd., ("Megatech"), conspired

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The charged violations occurred in 2000 and 2001. The Regulations governing the violations at issue are found in the 2000 and 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2001)). The Regulations define the violations that BIS has charged and establish the procedures that apply to this matter.

² 50 U.S.C. app. 2401- 2420 (2000). 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 C.F.R., 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 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. p. 783 (2002)), as extended by the Notice of August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.



RECEIVED
FRONT DESK
2004 FEB - 3 P
ALL-BALTIMORE

with others, known and unknown, to export from the United States to the Indira Gandhi Centre for Atomic Research ("IGCAR") a thermal mechanical fatigue test system ("fatigue test system") and a universal testing machine, both items subject to the Regulations, without a BIS export license as required by Section 744.11 of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations ("Entity List"). In furtherance of the conspiracy, false documentation was submitted to the U.S. exporter that provided that a party other than IGCAR was the ultimate consignee for the items to be exported from the United States. By conspiring to bring about an act in violation of the Regulations, Mohan committed one violation of Section 764.2(d) of the Regulations.

Charge 2 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about June 13, 2000, in connection with the export of the fatigue test system to IGCAR, Mohan took actions to evade the Regulations. Specifically, Mohan with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the fatigue test system from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a BIS license was required for the export. In engaging in this transaction, Mohan committed one violation of Section 764.2(h) of the Regulations.

Charge 3 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about December 21, 2000, in connection with the attempted export of a universal testing machine to IGCAR, Mohan took actions to evade the Regulations. Specifically, Mohan, with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the universal testing machine from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a license was required for the export. In engaging in this transaction, Mohan committed one violation of Section 764.2(h) of the Regulations.

Accordingly, you are hereby notified that an administrative proceeding is instituted against you 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 \$11,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If you 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. (Regulations, Sections 766.6 and 766.7). If you default, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to you. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

You are further notified that you are entitled to an agency hearing on the record if you file a written demand for one with your answer. (Regulations, Section 766.6). You are also entitled to be represented by counsel or other authorized representative who has power of attorney to represent you. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing BIS named below.

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

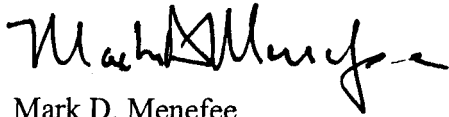
Office of the Chief Counsel for Industry and Security
Attention: Glenn Kaminsky
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

³ See 15 C.F.R. §6.4(a)(2).

T.K. Mohan
Charging Letter
Page 4

Glenn Kaminsky is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301, by facsimile at (202) 482-0085, or by email at gkaminsk@bis.doc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Menefee". The signature is written in a cursive style with a long horizontal stroke at the end.

Mark D. Menefee
Director
Office of Export Enforcement