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

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Petrochemical Commercial Company (UK) Ltd.
NIOC House
4 Victoria Street
London, UK SW1H 0ne

Attention: Mr. Mohemmad Ehtiati,
Managing Director

Dear Mr. Ehtiati:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that Petrochemical Commercial Company (UK) Ltd. ("PCC") has committed two 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 PCC committed the following violations:

Charge 1 15 C.F.R. § 764.2(b) - Aiding or Abetting the Solicitation of an Unlicensed Export to Iran

On or about August 28, 2002, PCC forwarded a bid by Chemical Industries Consolidated b.v. ("CIC") to supply gas processor parts, items subject both to the Regulations (EAR99³) and the

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 2002. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002)). 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 by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003), continues 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/>.

³ The term "EAR99" refers to items subject to the Regulations that are not listed on the Commerce Control List. See 15 C.F.R. § 734.3(c).

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Iranian Transactions Regulations of the Treasury Department's Office of Foreign Assets Control ("OFAC") and located in the United States, to Tabriz Petrochemical Company in Iran. CIC was seeking to procure the export of the items from the United States to Iran without the authorization from OFAC required by Section 746.7 of the Regulations. In forwarding the bid, PCC aided or abetted the solicitation of that attempted unauthorized export, thereby committing one violation of Section 764.2(b) of the Regulations.

Accordingly, PCC is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;⁴

Denial of export privileges; and/or

Exclusion from practice before BIS.

If PCC 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. *See* 15 C.F.R.

§§ 766.6 and 766.7. If PCC defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to PCC. *See id.* The Under Secretary for Industry and Security may then impose up to the maximum penalty on the charges in this letter. *See id.*

PCC is further notified that it is entitled to an agency hearing on the record if PCC files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. PCC is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should you have a proposal to settle this case, your 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, PCC's answer must be filed in accordance with the instructions set forth in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

⁴ *See* 15 C.F.R. § 6.4(a)(2).

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

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

Philip Ankel 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.

Sincerely,



Mark D. Menefee
Director
Office of Export Enforcement

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

In the Matter of:

**PETROCHEMICAL COMMERCIAL CO.,
Ltd.,**

Docket No. 04-BIS-10

RESPONDENT

RECOMMENDED DECISION AND ORDER

Before:

HONORABLE WALTER J. BRUDZINSKI
Administrative Law Judge
United States Coast Guard

Appearances:

For the Bureau of Industry and Security

PHILIP K. ANKEL, Esq.
Office of Chief Counsel
Bureau of Industry and Security

For the Respondent

Petrochemical Commercial Co., Ltd.
Managing Director: Mr. M. Beirami
Pro se

PRELIMINARY STATEMENT

On March 31, 2004, the Bureau of Industry and Security ("BIS" or "Agency") filed a formal Complaint against Petrochemical Commercial Co., Ltd., ("Petrochemical" or "Respondent") charging one count of violation of the Export Administration Regulations ("EAR") under 15 C.F.R. § 764.2(b). The Charging Letter asserts that on or about August 28, 2002, Petrochemical forwarded a bid for Chemical Industries Consolidated, b.v. ("CIC") for the unauthorized procurement of gas compressor parts that are subject to the EAR concerning exports from the United States to the Islamic Republic of Iran ("Iran"). In so doing, Petrochemical aided or abetted in the solicitation of an unauthorized export in violation of the Export Administration Act of 1979 ("EAA") and the Export Administration Regulations.¹ See 50 U.S.C. App. §§ 2401-20 (1991), *amended by* Pub. L. 106-508, 114 Stat. 2360 (Supp. 2002); 15 C.F.R. Parts 730-74. The EAA and its underlying regulations were created to establish a "system of controlling exports by balancing national security, foreign policy and domestic supply needs with the interest of encouraging export to enhance . . . the economic well being" of the United States. See Times Publ'g Co. v. United States Dep't of Commerce, 236 F.3d 1286, 1290 (11th Cir. 2001); see also 50 U.S.C. App. §§ 2401-02.²

¹ Due to the nature of this transaction, the items in question are also subject to the Iranian Transactions Regulations under the jurisdiction of the Department of Treasury's Office of Foreign Assets Control (OFAC).

² The EAA and all regulations under it expired on August 20, 2001. See 50 U.S.C. App. § 2419. Three (3) days before its expiration, the President declared that the lapse of the EAA constitutes a national emergency. See Exec. Order No. 13222, *reprinted in* 3 C.F.R. at §§ 783-84, (2002). Exercising authority under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701-06 (2002), the President maintained the effectiveness of the EAA and its underlying regulations throughout the expiration period by issuing Exec. Order No. 13222 (Aug. 17, 2001). The effectiveness of the export control laws and regulations were further extended by Notice issued by the President on August 14, 2002 and August 7, 2003. See Notice of August 14, 2002: Continuation of Emergency Regarding Export Control Regulations, *reprinted in* 3 C.F.R. at 306 (2003) and 68 Fed. Reg. 47833, August 11, 2003. Courts have held that the continued operation and effectiveness of the EAA and its regulations through the issuance of Executive

On May 3, 2004, Petrochemical filed a Statement of Answer ("Answer") with documentation denying the formal charge. In its Answer, Petrochemical did not formally demand a hearing. Therefore, this matter was assigned to the Undersigned to render a decision on the record pursuant to 15 C.F.R. § 766.15. BIS regulations provide that a written demand for hearing must be expressly provided. As in this case, Respondent's failure to formally demand a hearing is deemed a waiver of Respondent's right to a hearing and this Recommended Decision and Order is hereby issued on the basis of the submitted record.³ See id. and § 766.6(c).

On June 3, 2004, the undersigned issued an Order to File Briefs directing the parties to file the necessary, "Affidavits or declarations, depositions, admissions, answers to interrogatories and stipulations." Following the grant of several procedural stays, the time period to file the necessary briefs was extended up to and including, November 8, 2004. In keeping with the original time frame associated with the June 3, 2004 Order, the parties were provided with an opportunity to file rebuttal evidence to be due by the close of business November 30, 2004. On November 8, 2004, BIS filed its Memorandum and Submission of Evidence to Supplement the Record ("BIS Memorandum").

On January 3, 2005, an Order to File Pre-decisional Briefs was issued to provide the parties with an opportunity to file any:

1. exceptions to any ruling made by this Administrative Law Judge or to the admissibility of evidence proffered in this matter;
2. proposed findings of fact and conclusions of law;
3. supporting legal arguments for the exceptions and proposed findings and conclusions submitted; and
4. a proposed order.

Orders by the President constitutes a valid exercise of authority. See Wisconsin Project on Nuclear Arms Control v. United States Dep't of Commerce, 317 F.3d 275, 278-79 (D.C. Cir. 2003).

³ No witness testimony was received in this proceeding. The case Index of the official record provides the exclusive listing of documents received in this matter. A copy of the Index is provided as Attachment A.

On January 18, 2005, BIS filed its Memorandum of Proposed Findings of Fact and Conclusions of Law ("Pre-decisional Memorandum") which also included a proposed Recommended Decision and Order. The Pre-decisional Memorandum and proposed Recommended Decision and Order are made part of this Recommended Decision and Order and are included by reference.⁴ As of this date, Respondent has not filed any other documentation in this matter other than the original Statement of Answer that was received on May 3, 2004. Given that the parties have been provided an ample amount of time and opportunity to supplement the record, and in keeping with the procedures set forth in 15 C.F.R. Part 766, I find that this matter is now ripe for decision.

For the reasons that follow, I hereby find that the Bureau of Industry and Security has met its burden as shown in the written record by the preponderance of substantial, reliable, and probative evidence in that Petrochemical Commercial Co., Ltd. aided and abetted in the solicitation of an unlicensed export to the Islamic Republic of Iran in violation of 49 C.F.R. § 764.2(b).

FINDINGS OF FACT

The Underlying Solicitation⁵

1. On July 15, 2002, Chemical Industries Consolidated, b.v. ("CIC"), a company registered and located in the Dutch Netherlands made an inquiry addressed to

⁴ The Agency's Proposed Findings of Fact and Conclusions of Law are ACCEPTED and INCORPORATED.

⁵ The citations provided hereunder reference the exhibit numbers associated with the Agency's Memorandum and Submission of Evidence to Supplement the Record ("BIS Memorandum") and Respondent's Statement of Answer ("Answer").

- "Joy Compressor" for a quotation of compressor spare parts. (Exhibit D, BIS Memorandum).
2. The company listed in the inquiry as "Joy Compressor" and as referenced by the facsimile number and subsequent documentation was Cooper Turbocompressor, Inc. ("Cooper"), a United States company located in Buffalo, New York. (Exhibit D & F, BIS Memorandum).
 3. Upon receipt of the request, Cooper then requested further information from CIC and specifically, sought the serial numbers of the affected compressors. On July 23, 2002, CIC forwarded this information by facsimile to Cooper. (Exhibit E, BIS Memorandum).
 4. Cooper verified that the serial numbers were registered to compressors; model TAQ-70M4C/30 that are located in Iran at Tabriz Petrochemical. (Exhibit E & G BIS Memorandum, Answer Appendix 2).
 5. The spare parts and specifically the rotors listed in the inquiry request are classified under the title of "EAR99," which in turn are subject to review under the Export Administration Regulations for both, the Department of Treasury's Office of Foreign Assets Control ("OFAC") and the Bureau of Industry and Security. (Exhibit A, BIS Memorandum).
 6. The Export and Anti-boycott Coordinator from Cooper notified the Office of Export Enforcement regarding CIC's inquiry for the compressor parts. The destination for the listed parts was the Islamic Republic of Iran. (Exhibit F, BIS Memorandum).

7. Based on this information, an undercover company, IMC Global ("IMC") sent a facsimile to CIC dated July 24, 2002. The facsimile stated that Cooper had forwarded CIC's bid request to IMC for further action. (Exhibit G, BIS Memorandum).
8. The facsimile provided that the spare parts concerned two compressors, serial numbers X0-0484, and 85, located in the Islamic Republic of Iran. IMC stated, "Unfortunately, Cooper cannot sell these items directly to you once they know that they are destined for Iran" but "we can offer you these items as a domestic US sale ... and will only ship to a company in the United States." (Exhibit G, BIS Memorandum).
9. As represented by BIS, the potential sale of the spare compressor parts was "aggressively pursued" by CIC, which eventually led to the arrest and subsequent conviction of a CIC representative in connection with this matter. (Exhibit B, BIS Memorandum).
10. No authorization was obtained from the United States Government to allow the export of the spare parts to Iran. (Exhibit K, BIS Memorandum).

The Relation between Petrochemical, CIC, and the Islamic Republic of Iran

11. Petrochemical Commercial Company, Ltd. is registered and domiciled in the United Kingdom and "provides procurement and shipping services to all NPC [National Petrochemical Company] organization, namely, Iranian petrochemical companies and complexes" (Exhibit L, BIS Memorandum, Answer at 4).

12. Petrochemical is a "subsidiary" of the National Petrochemical Company which itself is a subsidiary of the Iranian Petroleum Ministry owned by the Islamic Republic of Iran. (Exhibit C, L, & M, BIS Memorandum).
13. Tabriz Petrochemical Company of Iran ("Tabriz") is a "producing company" that is also a subsidiary of the NPC. (Exhibit C, BIS Memorandum).
14. On or about July 11, 2002, Petrochemical originated the transaction at issue by forwarding a request from Tabriz to CIC seeking quotations for spare parts (bull gear and shaft, and rotor assemblies) associated with "Joy compressors." (Exhibit H & K, BIS Memorandum, Answer Appendix 2).
15. By letter dated August 27, 2002, CIC provided Petrochemical with price quotations for the requested parts. In that letter, the stated country of origin for the listed spare parts was the "USA." (Exhibit I, BIS Memorandum).
16. By facsimile dated September 26, 2002, Petrochemical received confirmation from Tabriz regarding Petrochemical's offer for CIC's procurement of the spare compressor parts. (Exhibit J, BIS Memorandum).
17. Petrochemical was fully aware of the United States embargo on trade with Iran and also knew that the United States Government had not authorized the export of parts in question.⁶ (Exhibit K, BIS Memorandum).

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petrochemical Commercial Company, Ltd. 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 U.S.C. App. §§ 2401-20) and the Export Administration Regulations (15 C.F.R. Parts 730-74).

2. The Bureau of Industry and Security has established by a preponderance of the evidence that Respondent violated 15 C.F.R. § 764.2(b) by aiding and abetting in the solicitation of an unlicensed export to the Islamic Republic of Iran.
3. The Bureau of Industry and Security proposed civil penalty assessment for the denial of export privileges against Petrochemical Commercial Company, Ltd. for the period of three (3) years is justified and reasonable.

DISCUSSION

The Export Administration Act and supporting Export Administration Regulations provide extensive and broad authority for the control of exports from the United States to foreign countries. See In the Matter of: Abdulamir Madhi, et al., 68 Fed. Reg. 57406, (October 3, 2003); see also 50 U.S.C. App. §§ 2402(2)(A), 2404(a)(1) and 2405(a)(1). Also, the President of the United States provides additional authority and explicit controls with regard to exports to Islamic Republic of Iran. In 1987, the President invoked import sanctions against Iran by issuance of an Executive Order which in general prohibits the export of any goods, technology, or services from the United States to Iran without express authorization. See Exec. Order No. 12613, *reprinted in* 52 Fed. Reg. 41940 (Oct. 30, 1987); see also Exec. Order No. 12959, *reprinted in* 60 Fed. Reg. 24757 (May 6, 1995) (expanding sanctions imposed against Iran); Exec. Order No. 12957, *reprinted in* 60 Fed. Reg. 14615 (Mar. 15, 1995) (declaring actions and policies with

⁶ No OFAC license was obtained for the proposed export as the purported buyer was apprehended before

respect to the Iranian Government to be a national emergency); see also 31 C.F.R. §§ 560.204, 560.501.

The burden in this Administrative Proceeding lies with the Bureau of Industry and Security to prove the charged violation by the preponderance of the evidence. The preponderance of evidence standard is demonstrated by reliable, probative, and substantial evidence. See Steadman v. S.E.C., 450 U.S. 91, 102 (1981). The Agency, in simple terms, 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 this matter, Petrochemical is charged with aiding and abetting the solicitation of an attempted unauthorized export. As a general rule, "No person may engage in any conduct prohibited by or contrary to ... any conduct required by, the EAA, the EAR" 15 C.F.R. § 764.2(a). It is a violation of the EAA and the EAR to solicit or attempt a violation of these rules. Id. at § 764.2(c). As charged in this matter, "No person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder." Id. at § 764.2(b).

The term "Export means an actual shipment or transmission of items subject to the EAR from the United States..." Id. at § 734.2(b)(1). In this case, an actual export did not occur as CIC was thwarted in its bid to carry out the unauthorized export of the spare parts in question. However, as indicated above, it remains a violation to attempt an unauthorized export in contravention of the rules.

any license could be applied for.

BIS has jurisdiction for all items "subject to the EAR," which generally can be found listed on the Commerce Control List (CCL). However, "For ease of reference and classification purposes, items subject to the EAR which are not listed on the CCL are designated as 'EAR99.'" Id. at § 734.3(c). The spare parts at issue are classified as "EAR99", see Exhibit A, BIS Memorandum, and are "subject to the EAR" pursuant to 15 C.F.R. § 734.3(c). It is also important to note that the rules provide that a person, whether or not she or he is complying with foreign laws or regulations "is not relieved of the responsibility of complying with U.S. laws and regulations, including the EAR." Id. at § 734.12.

Upon review of Respondent's Statement of Answer and the record taken as a whole, the basic tenant argued to by Respondent is that Petrochemical only acted as an agent with no liability or responsibility in the procurement of items for CIC. Petrochemical argues that CIC, "as exporter of the materials" was responsible "for all required export customs, formalities, and obtaining all necessary permits for the shipment." Petrochemical further asserts that BIS lacks jurisdiction as it is a private company incorporated and domiciled under the laws of the United Kingdom. Finally, Petrochemical attempts to apply criminal elements to this administrative proceeding by arguing that it lacked the requisite intent or "*mens rea*" necessary to commit the charged violation.

I find that Petrochemical's Answer to be unavailing and lacking legal foundation. Given the regulations and statements of law, including the findings of fact as provided above, Petrochemical was involved in the solicitation process with CIC that resulted in the failed attempt to procure unauthorized spare parts that were subject to the EAR, for

shipment from the United States to Iran. Certainly, Petrochemical cannot argue otherwise. The August 27, 2002 quotation from CIC to Petrochemical clearly indicated the country of origin as the "USA." See Exhibit I, BIS Memorandum. Petrochemical's argument that it was not aware of, or did not order, procure or attempt to procure any spare parts from the United States because it was dealing strictly with CIC, a European country, is nothing more than a veiled attempt to circumvent the exports laws of the United States.

Further, it is clear that Petrochemical cannot shield itself from the EAA or EAR by the simple fact that it is a United Kingdom corporation, see In the Matter of: Abdulmir Madhi, et al, 68 Fed. Reg. 57406, (October 3, 2003); 15 C.F.R. § 734.12, and that intent, criminal or otherwise, is an element with regard to the Charge brought in this matter. See In the matter of: Aluminum Company of America, 64 Fed. Reg. 42641-02 (Aug. 5, 1999) (finding that "liability and administrative sanctions are imposed on a strict liability basis once the Respondent commits the proscribed act"); Iran Air v. Kugelman, 996 F.2d 1253 (D.C. Cir. 1993) (reaffirming the Agency's position that knowledge is not an "essential element of proof for the imposition of civil penalties"). In the Agency's Memorandum of Proposed Findings of Fact and Conclusions of Law, it stated, "to prove that [Petrochemical] committed a violation of Section 764.2(b), BIS need not prove intent or knowledge. Rather, BIS must prove that: 1) the items in question were subject to the Regulations, 2) a proposed transaction in violation of the Regulations was solicited, and 3) [Petrochemical] aided such solicitation." I agree with the Agency's analysis and hold that the Charge for the violation of 15 C.F.R. § 764.2(b) is hereby found PROVED by the preponderance of the evidence as contained in the written record. Petrochemical

forwarded the bid for the procurement of compressor spare parts that were subject to the EAR and aided and abetted CIC in the unlawful solicitation for an attempted and unauthorized export of U.S. origin equipment to Iran.

BASIS OF SANCTION

The Bureau of Industry and Security has authority to assess civil penalties and to issue suspensions from practice, including the denial of export privileges before the Department of Commerce. See 15 C.F.R. § 764.3. Here, BIS recommends a three (3) year period of denial of export privileges be assessed against Petrochemical for its unlawful conduct in this matter. BIS argues that Petrochemical disregarded U.S. export laws and regulations with the knowledge that a major embargo existed between the United States and Iran.

The record shows that Petrochemical knew that U.S. Government authorization had not been given for the transaction at issue. BIS notes that employees of CIC, in connection with this transaction, accepted settlement agreements that resulted in the assessment of denial privileges ranging from five (5) to fifteen (15) years. BIS proposes that a three (3) year period for the denial of export privileges for Petrochemical is appropriate and is consistent with other cases of this nature. See In the Matter of: Arian Transportvermittlung Gmbh, 69 Fed. Reg. 28120, (May 18, 2004) (assessing a ten (10) year denial period in connection with an Iranian transaction); In the Matter of: Abdulmir Madhi, et al, 68 Fed. Reg. 57406, (October 3, 2003) (assessing a twenty (20) year denial period in connection with an Iranian transaction); In the Matter of: Jubal Damavand General Trading Co., 67 Fed. Reg. 32009, (May 13, 2002) (assessing a ten (10) year

denial period in connection with an Iranian transaction). Without any countervailing evidence to the contrary, I agree with the Agency's proposed assessment and hold that a three (3) year period for the denial of export privileges against Petrochemical is reasonable and justified.

**["RECOMMENDED ORDER"
Section – REDACTED]**

**["RECOMMENDED ORDER"
Section – REDACTED]**

**["RECOMMENDED ORDER"
Section – REDACTED]**

This Recommended Decision and Order is being referred to the Under Secretary for review and final action by express mail as provided under 15 C.F.R. § 766.17(b)(2). Due to the short period of time for review by the Under Secretary, all papers filed with the Under Secretary in response to this Recommended Decision and Order must be sent by personal delivery, facsimile, express mail, or other overnight carrier as provided in § 766.22(a). Submissions by the parties must be filed with the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room H-3898, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, within twelve (12) days from the date of issuance of this Recommended Decision and Order. Thereafter, the parties have eight (8) days from receipt of any response(s) in which to submit replies.

Within thirty (30) days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order, affirming, modifying or vacating the

Recommended Decision and Order. See § 766.22(c). A copy of the Agency regulations for Review by the Under Secretary is attached.

Done and dated this 30th day of March, 2005 at
New York, New York



Walter J. Brudzinski
Administrative Law Judge
U.S. Coast Guard

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing RECOMMENDED DECISION & ORDER by Federal Express to the following persons:

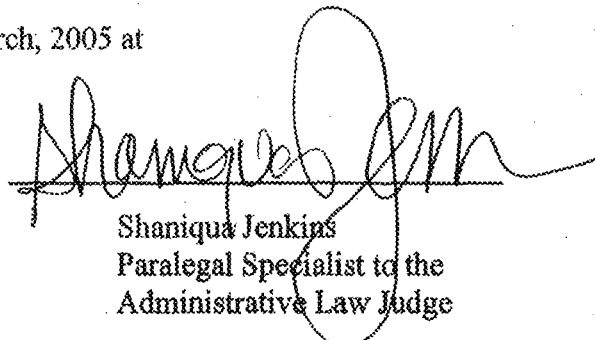
Under Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
Room H-3839
14th & Constitution Avenue, N.W.
Washington, D.C. 20230
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Philip K. Ankel, Esq.
Office of Chief Counsel for Industry and Security
U.S. Department of Commerce, Room H-3839
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Petrochemical Commercial Co., Ltd.
Attn: M. Beirami
NIOC House
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Phone: 020 7799 1717
Facsimile: 020 7233 0024
(via Federal Express – International)

ALJ Docketing Center, Baltimore
40 S. Gay Street, Room 412
Baltimore, Maryland 21202-4022
Phone: 410-962-7434

Done and dated this 30th day of March, 2005 at
New York, New York



Shaniqua Jenkins
Paralegal Specialist to the
Administrative Law Judge

UNITED STATES DEPARTMENT OF COMMERCE
UNDER SECRETARY FOR INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
)

Petrochemical Commercial Co. Ltd.)
NIOC House)
4 Victoria Street)
London, UK SW1H 0ne)
)

Respondent)
_____)

Docket No. 04-BIS-10

DECISION AND ORDER

On March 31, 2004, the Bureau of Industry and Security ("BIS") filed a charging letter against the respondent, Petrochemical Commercial Co. (UK) Ltd. ("PCC"), that alleged one violation of Section 764.2(b) of the Export Administration Regulations (Regulations),¹ which were issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act").²

¹ The violation charged occurred in 2002. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002)). The 2005 Regulations establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 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 by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 FR 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

Specifically, the charging letter alleged that on or about August 28, 2002, PCC, a British company, forwarded a bid by Chemical Industries Consolidated b.v. ("CIC"), of the Netherlands, for gas compressor spare parts ("compressor parts") to be exported from the United States to Tabriz Petrochemical Company in Iran ("Tabriz"). CIC was attempting to arrange for the export of the items from the United States to Iran without authorization from the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") as required by Section 746.7 of the Regulations. The compressor parts are items subject both to the Regulations and the Iranian Transactions Regulations administered by OFAC. In forwarding the bid, BIS charged that PCC aided the solicitation of that attempted export to Tabriz in violation of the Regulations, thereby committing one violation of Section 764.2(b) of the Regulations.

On May 3, 2004, PCC filed a Statement of Answer ("Answer") denying the formal charge. As ordered by the Administrative Law Judge ("ALJ"), on November 8, 2004, BIS filed a Memorandum and Submission of Evidence to Supplement the Record and, on January 18, 2005, it filed a Memorandum of Proposed Findings of Fact and Conclusions of Law. PCC did not submit any further filings to the ALJ.

Based on the record before it, on March 30, 2005, the ALJ issued a Recommended Decision and Order in which he found that PCC committed the violation described above. First, based on uncontested evidence, the ALJ determined that CIC solicited certain compressor parts for export to Tabriz in Iran in violation of the Regulations. On July 15, 2002, CIC faxed a request for a bid for the compressor parts to a company in the United States, and subsequently indicated to the U.S. company that the items were destined for Iran. A CIC representative was eventually arrested and pled guilty to a violation of IEEPA for his attempt to export the

compressor parts to Iran in violation of the U.S. embargo on that country. Second, also based on uncontested evidence, the ALJ determined that PCC assisted in CIC's solicitation of the spare compressor parts. On or about July 11, 2002, PCC originated the transaction at issue by forwarding a request from Tabriz to CIC seeking quotations for space parts associated with certain "Joy compressors." By letter dated August 27, 2002, CIC provided PCC with price quotations for the requested parts, indicating that the parts were of U.S.-origin. On August 28, PCC forwarded the quotations to Tabriz, which subsequently confirmed the transaction with PCC by facsimile. PCC stated during the underlying administrative proceeding that it was fully aware of the U.S. embargo on trade with Iran and also knew that the U.S. Government had not authorized the export of the space parts in question. In light of these facts, the ALJ held that PCC committed one violation of Section 764.2(b) of the Regulations. He also recommended the penalty proposed by BIS -- denial of PCC's export privileges for three years.

Pursuant to Section 766.22 of the Regulations, the ALJ's Recommended Decision and Order has been referred to me for final action. Based on my review of the entire record, I find that the record supports the ALJ's findings of fact and conclusions of law regarding the above-referenced charge. I also find that the penalty recommended by the ALJ is appropriate given the nature of the violation and the importance of preventing future unauthorized exports to Iran, a country against which the United States maintains an economic embargo because of its support for international terrorism. In light of these circumstances, I affirm the findings of fact and conclusions of law of the ALJ's Recommended Decision and Order.

IT IS HEREBY ORDERED,

FIRST, that, for a period of three years from the date on which this Order takes effect, Petrochemical Commercial Company (UK) Ltd. ("PCC"), NIOC House, 4 Victoria Street, London, UK SW1H 0NE, and all of its successors or assigns, and when acting for or on behalf of PCC, its officers, representatives, agents, and employees (individually referred to as "a Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

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

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

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 a Denied Person 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 shall be served on the Denied Person 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 upon publication in the *Federal Register*.



Peter Lichtenbaum

Acting Under Secretary of Commerce
for Industry and Security

Dated: May 2, 2005