

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

In the Matter of:)
)
MUTCO International)
Kelenbergweg 37 1101)
EX Amsterdam, Netherlands)
)
Respondent. _____)

Docket No: 05-BIS-20

DECISION AND ORDER

In a charging letter dated November 22, 2005, the Bureau of Industry and Security (“BIS”) alleged that Respondent, MUTCO International (“MUTCO”), committed two violations of the Export Administration Regulations (“Regulations”)¹, issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”).² BIS alleged that MUTCO conspired to obtain toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under export control classification number (“ECCN”) 1C351, on behalf of a North Korean end-user and to export those toxins to North Korea. The charging letter also alleged that MUTCO solicited a violation of the Regulations by ordering the aforementioned toxins from a United

¹ The Regulations are currently codified at 15 C.F.R. Parts 730-774 (2006). The charged violations occurred in 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 through 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2006 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 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)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2005 (70 Fed. Reg. 45,273 (August 5, 2005)), has continued the Regulations in effect under IEEPA.

States company and by agreeing to complete the shipment of the toxins through the Netherlands to North Korea.

In accordance with Section 766.3(b)(1) of the Regulations, on November 22, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to MUTCO at its last known address. BIS has established that this charging letter was served in accordance with Section 766.3 of the Regulations and that BIS received the signed mail return receipt on January 9, 2006. MUTCO did not file an answer to the charging letter with the ALJ, as required by Section 766.6(a) of the Regulations.

In accordance with Section 766.7 of the Regulations, BIS filed a Motion for Default Order on April 17, 2006. This Motion for Default Order recommended that MUTCO be denied export privileges under the Regulations for a period of six years. Under Section 766.7(a) of the Regulations, “[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent’s right to appear,” and “on BIS’s motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter.”

On June 8, 2006, based on the record before him, the ALJ found the Respondent to be in default, and issued a Recommended Decision and Order in which he found that MUTCO committed one violation of Section 764.2(d) and one violation of Section 764.2(c) of the Regulations. The ALJ recommended the penalty of denial of MUTCO’s export privileges for a period of six 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. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations,

the lack of mitigating circumstances, and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the ALJ's Recommended Decision and Order.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that, for a period of six years from the date this Order is published in the Federal Register, MUTCO International, Kelenbergweg 37 1101, EX Amsterdam, Netherlands, and all of its successors and assigns, and when acting for or on behalf of MUTCO, its officers, representatives, agents, and employees ("Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

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


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 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 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.

Dated: 6.27.06



David H. McCormick
Under Secretary of Commerce
for Industry and Security

NOV 22 2005



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

REGISTERED MAIL - RETURN RECEIPT REQUESTED

MUTCO International
Kelenbergweg 37 1101
EX Amsterdam, Netherlands

Attn: *Kailsh Muttreja*
President

Dear Mr. Muttreja:

The Bureau of Industry and Security, United States Department of Commerce ("BIS") has reason to believe that MUTCO International ("MUTCO") of the Netherlands violated the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act"),² on two occasions. Specifically, BIS charges that MUTCO committed the following violations:

Charge 1 (15 C.F.R § 764.2(d) - Conspiracy to Export Toxins to North Korea without the required Department of Commerce License)

Beginning in or about late 2000 and continuing into or about September 2002, MUTCO conspired and acted in concert with others, known and unknown, to export toxins from the United States to North Korea without the required Department of Commerce license. The goal of the conspiracy was to obtain toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under export control classification number ("ECCN") 1C351, on behalf of a North Korean end-user and to export

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2005). The violations charged occurred in 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 through 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). 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 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 2, 2005 (70 Fed. Reg. 45273, August 5, 2005), has continued the Regulations in effect under IEEPA.



those toxins to North Korea. In furtherance of the conspiracy, MUTCO ordered the toxins from a co-conspirator in the United States and agreed to complete the export to North Korea once the toxins were delivered to the Netherlands from the United States. Contrary to Section 742.2 of the Regulations, no Department of Commerce license was obtained for the export from the United States to North Korea. In doing so, MUTCO committed one violation of Section 764.2(d) of the Regulations.

Charge 2 (15 C.F.R. §764.2(b) - Soliciting an Export of Toxins Without the Required Department of Commerce License)

On or about July 2002, MUTCO solicited a violation of the Regulations by ordering toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under ECCN 1C351, from a co-conspirator in the United States and agreeing to complete the export of the toxins to North Korea. Contrary to Section 742.2 of the Regulations, no Department of Commerce license was obtained for the export from the United States to North Korea. In doing, MUTCO committed one violation of Section 764.2(b) of the Regulations.

Accordingly, MUTCO 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 MUTCO 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 MUTCO defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to MUTCO. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each charge in this letter.

MUTCO is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. (Regulations, Section 766.6). MUTCO is also entitled to be

³ See 15 C.F.R. §6.4(a)(2).

MUTCO International
Charging Letter
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represented by counsel or other authorized representative who has power of attorney to represent MUTCO. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should MUTCO have a proposal to settle this case, MUTCO or its representative should transmit the offer 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, MUTCO's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

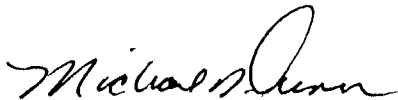
U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

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

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

James C. Pelletier is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. Mr. Pelletier may be contacted by telephone at (202) 482-5301.

Sincerely,



Michael D. Turner
Director
Office of Export Enforcement

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

In the Matter of:)
MUTCO International)
Kelenberweg 37 1101)
EX Amsterdam, Netherlands)
Respondent.)

Docket No: 05-BIS-20

RECOMMENDED DECISION AND ORDER

On November 22, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), issued a charging letter initiating this administrative enforcement proceeding against MUTCO International (“MUTCO”). The charging letter alleged that MUTCO committed two violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2006)) (the “Regulations”),¹ issued under the Export Administration Act of 1979, as amended (50 U.S.C. App. §§ 2401-2420 (2000)) (the “Act”).²

Specifically, the charging letter alleged that MUTCO conspired and acted in concert with others, known and unknown, to export toxins from the United States to North Korea without the required Department of Commerce license. BIS alleged that the goal of the conspiracy was to

¹ The charged violations occurred in 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 through 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2006 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 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)) (“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 2, 2005 (70 Fed. Reg. 45,273 (Aug. 5, 2005)), has continued the Regulations in effect under IEEPA.

obtain toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under export control classification number (“ECCN”) 1C351, on behalf of a North Korean end-user and to export those toxins to North Korea. BIS alleged that, in furtherance of the conspiracy, MUTCO ordered the toxins from a co-conspirator in the United States and agreed to complete the export to North Korea once the toxins were delivered to the Netherlands from the United States. BIS alleged that, contrary to Section 742.2 of the Regulations, no Department of Commerce license was obtained for the export from the United States to North Korea. (Charge 1).

The charging letter filed by BIS also alleged that, in or about July 2002, MUTCO solicited a violation of the Regulations by ordering toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under export control classification number (“ECCN”) 1C351, from a co-conspirator in the United States and agreeing to complete the export of the toxins to North Korea. BIS also alleged that, contrary to Section 742.2 of the Regulations, no Department of Commerce license was obtained for the export from the United States to North Korea. (Charge 2).

Section 766.3(b)(1) of the Regulations provides that notice of the issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent’s last known address. In accordance with the Regulations, on November 22, 2005, BIS mailed the notice of issuance of a charging letter by registered mail to MUTCO at its last known address: MUTCO International, Kelenberweg 37 1101, EX Amsterdam, Netherlands. BIS has submitted evidence that establishes that this charging letter was served in accordance with Section 766.3 of the Regulations and that BIS received the signed return receipt on January 9, 2006.

Section 766.6(a) of the Regulations provides, in pertinent part, that “[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter” initiating the administrative enforcement proceeding. To date, MUTCO has not filed an answer to the charging letter.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, the undersigned finds the facts to be as alleged in the charging letter, and hereby determine that those facts establish that MUTCO committed one violation of Section 764.2(d), and one violation of Section 764.2(c) of the Regulations.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (i) a monetary penalty, (ii) suspension from practice before the Bureau of Industry and Security, and (iii) a denial of export privileges under the Regulations. See 15 C.F.R. § 764.3 (2000-2002). Because MUTCO solicited the export of toxins, items controlled by BIS for Anti-Terrorism reasons for export to North Korea, BIS requests that the undersigned recommends to the Under Secretary of Commerce for Industry and Security³ that MUTCO’s export privileges be denied for six years.

BIS has suggested these sanctions because MUTCO’s role in conspiring to export toxins to North Korea, as well as its role in ordering toxins for export to North Korea, represents a significant potential harm to the essential national interests protected by U.S. export controls.⁴ BIS has noted that the items involved in the attempted export in this case involved Aflatoxins

³ Pursuant to Section 13(c)(1) of the Export Administration Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary’s action is the final decision for the U.S. Commerce Department.

⁴ See 15 C.F.R. Part 766, Supp. No. 1, III, A. (Stating that a denial order may be considered even in matters involving simple negligence or carelessness, if the violation(s) involves “harm to the national security or other essential interests protected by the export control system,” if the violations are of such a nature and extent that a monetary fine alone represents an insufficient penalty) (emphasis added).

(M1, P1, Q1) and Staphylococcal Enterotoxins (A and B). These items are controlled by BIS for Anti-Terrorism reasons. Furthermore, BIS has noted that MUTCO's role in conspiring and soliciting the export of these items for delivery to North Korea—a country that the United States Government has designated a state sponsor of international terrorism—represents significant harm to the national interests protected by U.S. export controls.⁵ Furthermore, BIS believes that the imposition of a six-year denial order is particularly appropriate in this case since BIS may face difficulties in collecting a monetary penalty, as MUTCO is not located in the United States. Finally, BIS believes that the recommended denial order is particularly appropriate in this case, since MUTCO has failed to respond to the charging letter filed by BIS. In light of these circumstances, BIS believes that the denial of MUTCO's export privileges for six years is an appropriate sanction.

On this basis, the undersigned concurs with BIS and recommends that the Under Secretary enter an Order denying MUTCO's export privileges for a period of six years. Such a denial order is consistent with penalties imposed in past cases under the Regulations involving shipments to countries designated as "Terrorist Supporting Countries."⁶ See In the Matter of Petrom GmbH International Trade, 70 Fed. Reg. 32,743 (June 6, 2005) (affirming the recommendations of the Administrative Law Judge that a twenty year denial order and a civil monetary sanction of \$143,000 were appropriate where knowing violations involved a shipment of EAR99 items to Iran); In the Matters of Yaudat Mustafa Talyi a.k.a. Yaudat Mustafa a.k.a. Joseph Talyi, 69 Fed. Reg. 77,177 (Dec. 27, 2004) (affirming the ALJ's recommendations that a twenty year denial order and the maximum civil penalty of \$11,000 per violation were

⁵ See id. ("Destination Involved: BIS is more likely to seek a greater monetary penalty and/or denial or export privileges . . . in cases involving: (1) exports or reexports to countries subject to anti-terrorism controls . . .") (emphasis in original).

⁶ BIS's list of Terrorist Supporting Countries is set forth in 15 C.F.R. Part 740, Supp. No. 1, Country Group E:1.

appropriate where an individual exported oil field parts to Libya without authorization, in violation of a BIS order temporarily denying his export privileges and with knowledge that a violation would occur; and solicited a violation of the Regulations by ordering oil field parts from a U.S. manufacturer without authorization and with knowledge that a violation would occur); In the Matter of Arian Transportvermittlungs, GmbH, 69 Fed. Reg. 28,120 (May 18, 2004) (affirming the recommendation of the Administrative Law Judge that a ten year denial order was appropriate where knowing violations involved a shipment of a controlled item to Iran); In the Matter of Jabal Damavand General Trading Company, 67 Fed. Reg. 32,009 (May 13, 2002) (affirming the recommendation of the Administrative Law Judge that a ten year denial order was appropriate where knowing violations involved shipments of EAR99 items to Iran); In the Matter of Adbulmir Mahdi, 68 Fed. Reg. 57,406 (Oct. 3, 2003) (affirming the recommendation of the Administrative Law Judge that a twenty year denial order was appropriate where knowing violations involved shipments of EAR99 items to Iran as a part of a conspiracy to ship such items through Canada to Iran). A six year denial of MUTCO's export privileges is warranted because MUTCO's violations, like those of the respondents in the above-cited case, involved exports made to Terrorist Supporting Countries in violation of U.S. export control laws.

The terms of the denial of export privileges against MUTCO should be consistent with the standard language used by BIS in such orders. The language is:

[REDACTED SECTION]

[REDACTED SECTION]

[REDACTED SECTION]

[REDACTED SECTION]

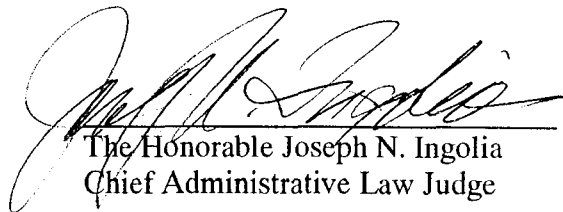
This Order, which constitutes the final agency action in this matter, is effective upon publication in the Federal Register.

Accordingly, the undersigned refers this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the respondent, as provided in Section 766.7 of the Regulations.

Within 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 15 C.F.R. § 766.22(c).

Dated:

June 8, 2006


The Honorable Joseph N. Ingolia
Chief Administrative Law Judge

ORIGINAL

CERTIFICATE OF SERVICE

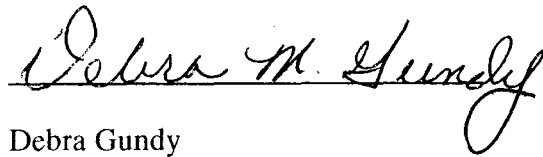
I hereby certify that I have served the foregoing RECOMMENDED DECISION & ORDER by DHL Express to the following person:

James C. Pelletier, Esq.
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

I hereby certify that I have served the foregoing RECOMMENDED DECISION & ORDER by U.S. First Class Mail to the following person:

MUTCO International
Kelenberweg 37 1101
EX Amsterdam, Netherlands

Attn: Kailash Muttreja
President



Debra Gundy
Paralegal Specialist

Done and dated June 8, 2006 at
Baltimore, Maryland