

COMMISSION ON CIVIL RIGHTS**Agenda and Notice of Public Meeting of the South Dakota Advisory Committee**

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 12 p.m. (c.d.t.) and adjourn at 1 p.m. (c.d.t.), on Thursday, May 12, 2005. The purpose of the conference call is to provide orientation for new committee members, discuss status of commission and regional programs, and discuss current status of regional project: Confronting Discrimination in Reservation Border Town Communities.

This conference call is available to the public through the following call-in number: 1-800-473-8694; call-in ID#: 409-01828. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting John F. Dulles, Rocky Mountain Regional Office, (303) 866-1040 (TDD 303-866-1049), by 3 p.m. (m.d.t.) on Monday, May 9, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 28, 2005.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.
[FR Doc. 05-9014 Filed 5-5-05; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security**

[Docket No. 04-BIS-10]

In the Matter of: Petrochemical Commercial Co. Ltd., NIOC House, 4 Victoria Street, London, UK SW1H One, Respondent; 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

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 compression 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 § 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 746.2(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

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 CFR 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 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) (IEEPA). On November 13, 2000, the Act was reauthorized by Pub. L. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 FR 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

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 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 § 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 One, 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 no 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, or 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 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 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: May 2, 2005.

Peter Liechtenbaum,

Acting Under Secretary of Commerce for Industry and Security.

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 CFR 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 CFR parts 730-774. 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

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 CFR 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").

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 CFR at 783-784, (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 CFR at Part 306 (2003) and 68 FR 47833, August 11, 2003. Courts have held that the continued operation and effectiveness of the EAA and its regulations through the issuance of Executive 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 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.

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 CFR 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 CFR 764.2(b).

Findings of Fact

*The Underlying Solicitation*⁵

1. On July 15, 2005, Chemical Industries Consolidated, b.v. ("CIC") a company registered and located in the Dutch Netherlands made an inquiry addressed to "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).

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").

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 "provide 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 CFR parts 730-774).

2. The Bureau of Industry and Security has established by preponderance of the evidence that Respondent violated 15 CFR 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: Abdulmir Madhi, et al.*, 68 FR 57406, (October 3, 2003); *see also* 50 U.S.C. App. 2402(92)(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 FR 41940 (Oct. 30, 1987); *see also* Exec. Order No. 12959, *reprinted in* 60 FR 24757 (May 6, 1995) (expanding sanctions imposed against Iran); Exec. Order No. 12957, *reprinted in* 60 FR 14615 (Mar. 15, 1995) (declaring actions and policies with respect to the Iranian Government to be a national emergency); *see also* 31 CFR 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

⁶ No OFAC license was obtained for the proposed export as the purported buyer was apprehended before any license could be applied for.

simple terms, must demonstrate “that the existence of a fact is more probable than its nonexistence.” *Concrete Pipe and 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 engaged in any conduct prohibited by or contrary to * * * any conduct required by, the EAA, the EAR * * *.” 15 CFR 764.2(a). It is a violation of the EEA and the EAR to solicit or attempt a violation of the 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 § 734.3(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.

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 CFR 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 FR 57406 (October 3, 2003); 15 CFR 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 FR 42641–42651 (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 CFR 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 CFR 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 know 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*

Transportvermittlungs Gmbh, 69 FR 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 FR 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 FR 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]

This Recommended Decision and Order is being referred to the Under Secretary for review and final action by express mail as provided under 15 CFR 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–3808, 14th Street and Constitution Avenue, NW., Washington, DC 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, NW.,
Washington, DC 20230, Phone: 202–482–
5301.

Philip K. Ankel, Esq., Office of Chief Counsel
for Industry and Security, U.S. Department
of Commerce, Room H–3839, 14th Street &
Constitution Avenue, NW., Washington,
DC 20230, Phone (202) 482–5301,
Facsimile: (202) 482–0085, (via Federal
Express).

Petrochemical Commercial Co., Ltd., Attn: M.
Beirami, NIOC House, 4 Victoria Street,
London, UK SW1H 0NE, 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,

Done and dated this 30th day of March 2005, at New Udate Dated:

Shaniqua Jenkins,

Paralegal Specialist to the Administrative Law Judge.

[FR Doc. 05-9118 Filed 5-5-05; 8:45 am]

BILLING CODE 3510-33-M

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-848

Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

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

SUMMARY: In March 2005, the Department of Commerce ("the Department") received three requests to conduct new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China ("PRC"). We have determined that each of these requests meet the statutory and regulatory requirements for the initiation of a new shipper review.

EFFECTIVE DATE: May 6, 2005.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton at (202) 482-1386 or Kristina Boughton at (202) 482-8173; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Shanghai Sunbeauty Trading Co., Ltd., ("Shanghai Sunbeauty") (March 18, 2005), Jiangsu Jiushoutang Organisms-Manufactures Co., Ltd., ("Jiangsu JOM") (March 18, 2005), and Qingdao Wentai Trading Co., Ltd., ("Qingdao Wentai") (March 21, 2005) in accordance with 19 CFR 351.214 (c), for new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC, which has a March semiannual anniversary month. Jiangsu JOM identified itself as the producer and exporter of freshwater crawfish tail meat. Shanghai Sunbeauty identified itself as the exporter and Wuwei Xinhua

Food Co., Ltd., ("Wuwei Xinhua") as the producer of subject merchandise. Qingdao Wentai identified itself as the exporter and Nanxian Shunxiang Aquatic Food Products Co., Ltd., as the producer of subject merchandise. As required by 19 CFR 351.214(b)(2)(i), and (iii)(A), Shanghai Sunbeauty, Jiangsu JOM, and Qingdao Wentai certified that they did not export freshwater crawfish tail meat to the United States during the period of investigation ("POI"), and that each company has never been affiliated with any exporter or producer which exported freshwater crawfish tail meat to the United States during the POI. Furthermore, Shanghai Sunbeauty, Jiangsu JOM, and Qingdao Wentai have also certified that their export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to 19 CFR 351.214(b)(2)(iv), Shanghai Sunbeauty, Jiangsu JOM, and Qingdao Wentai submitted documentation establishing the date on which the subject merchandise was first entered for consumption in the United States, the volume of that first shipment and any subsequent shipments, and the date of the first sale to an unaffiliated customer in the United States. The Department conducted Customs database queries to confirm that each company's shipment had officially entered the United States via assignment of an entry date in the Customs database by U.S. Customs and Border Protection ("CBP").

Initiation of Reviews

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930 ("the Act"), as amended, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating new shipper reviews for Shanghai Sunbeauty, Jiangsu JOM, and Qingdao Wentai. See Memoranda to the File through James C. Doyle, "New Shipper Initiation Checklist," all dated April 29, 2005. We intend to issue the preliminary results of this review not later than 180 days after the date on which this review was initiated, and the final results of this review within 90 days after the date on which the preliminary results were issued.

Pursuant to 19 CFR 351.214(g)(1)(i)(B), the period of review ("POR") for a new shipper review, initiated in the month immediately following the semiannual anniversary month, will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for the new shipper reviews of Shanghai Sunbeauty, Jiangsu JOM, and Qingdao

Wentai will be September 1, 2004, through February 28, 2005.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Shanghai Sunbeauty, Jiangsu JOM, and Qingdao Wentai, including a separate rates section. The reviews will proceed if the responses provide sufficient indication that Shanghai Sunbeauty, Jiangsu JOM, and Qingdao Wentai are not subject to either *de jure* or *de facto* government control with respect to their exports of freshwater crawfish tail meat. However, if the exporter does not demonstrate the company's eligibility for a separate rate, then the company will be deemed not separate from the PRC-wide entity, which exported during the POI and its new shipper review will be rescinded. See, 19 CFR 251.214(2)(iii)(A), *see also Notice of Preliminary Results of Antidumping Duty New Shipper Review and Rescission of New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 69 FR 53669 (September 2, 2004) and *Brake Rotors From the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 64 FR 61581 (November 12, 1999). In accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), we will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by either Shanghai Sunbeauty, Jiangsu JOM, or Qingdao Wentai. We will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to entries from these three exporters for which the respective producers under review are the suppliers. Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).