Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend an Information Collection; Correction

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments; correction.

SUMMARY: The National Agricultural Statistics Service published a notice in the **Federal Register** of May 5, 2005, concerning request for comments on the revision and extension of the Livestock Slaughter Survey. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

Correction

In the **Federal Register** of May 5, 2005, in FR Doc. 05–8982, on page 23841, correct the **DATES** caption to read:

DATES: Comments on this notice must be received by July 5, 2005, to be assured of consideration.

Signed at Washington, DC, May 31, 2005.

Carol House,

Associate Administrator.

[FR Doc. 05–11132 Filed 6–3–05; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend an Information Collection; Correction.

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments; correction.

SUMMARY: The National Agricultural Statistics Service published a notice in the **Federal Register** of May 5, 2005, concerning request for comments on the revision and extension of the Mink Survey. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

Correction

In the **Federal Register** of May 5, 2005, in FR Doc. 05–8981, on page 23840, correct the **DATES** caption to read:

DATES: Comments on this notice must be received by July 5, 2005, to be assured of consideration.

Signed at Washington, DC, May 31, 2005.

Carol House,

Associate Administrator.

[FR Doc. 05–11133 Filed 6–3–05; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 04–BIS–11]

In the Matter of: Petrom GmbH International Trade, Maria-Theresa Strasse 26, Munich 81675, Germany, Respondent; Decision and Order

On March 29, 2004, the Bureau of Industry and Security (''BIS'') filed a charging letter against the respondent, Petrom GmbH International Trade (''Petrom''), that alleged one violation of Section 764.2(d), and six violations each of Sections 764.2(c) and 764.2(e) 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 from on or about March 1999 to on or about May 2000, Petrom conspired and acted in concert with others, known and unknown, to bring about acts that constitute violations of the Regulations by arranging the export from the United States to Iran via Germany of items subject to the Regulations and the Iran Transaction Regulations without the required U.S. Government authorizations. In doing so, Petrom committed one violation of Section 764.2(d) of the Regulations. These items included check valves, regulatory valves, test kits, electrical equipment, ship tire curing bladders, and other spare parts, all of which were classified as EAR99 items under the Regulations.

The charging letter also alleged that from on or about March 1999 to on or about May 2000, Petrom solicited on six separate occasions violations of the Regulations by ordering the shipment of the items at issue from the United States to Iran via Germany. Petrom thereby committed six violations of Section 764.2(c) of the Regulations. Furthermore, the charging letter alleged that in making each of these six unlawful solicitations, Petrom acted with knowledge that a violation of the Regulations was intended to occur, as Iran was the intended ultimate destination of the items. The charging letter alleged that at all relevant times, Petrom knew that prior authorization was required from the U.S. Government to ship the items at issue to Germany for further shipment to Iran, and ordered the shipment of the items knowing that the shipment would occur without the required authorizations. In doing so, Petrom violated Section 764.2(e) of the Regulations.

On July 5, 2004, Petrom filed an answer denying the formal charges. As ordered by the Administrative Law Judge (''ALJ''), on October 20, 2004, BIS filed a Memorandum and Submission of Evidence To Supplement the Record (''Agency Brief'') and, on November 26, 2004, Petrom filed its submission to

[1] The violations charged occurred in 1999 and 2000. The Regulations governing the violations at issue are found in the 1999 and 2000 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (1999–2000)). 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 remains 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.

supplement the record. On January 24, 2005, BIS filed a Memorandum of Proposed Findings of Fact and Conclusions of Law. Petrom did not submit any further filings to the ALJ.

Based on the record before it, on April 25, 2005, the ALJ issued a Recommended Decision and Order (''Recommended Decision and Order'') in which he found that Petrom committed the 13 violations of the Regulations described above. In considering the record as a whole, the ALJ found that Petrom conspired or acted in concert with others, mainly Sunshine Technology and Supplies, Inc. (''Sunshine''), to export items subject to the Regulations to Iran without authorization from the Department of Treasury's Office of Foreign Assets Control (''OFAC'') in violation of Section 746.7 of the Regulations. According to the ALJ, Petrom developed a scheme to facilitate the ordering of parts, equipment, and other items from U.S. companies, mainly through Sunshine, for export to Germany with the intent to reexport the items to Iran. The ALJ found that Sunshine was established in March 1999 to serve as a front company in the United States for procuring U.S.-origin items. *See* Recommended Decision and Order, 39. Indeed, the agreement that Petrom was the ''actual owner'' of Sunshine, and that Sunshine was established to ''exclusively carry out [the] business activities of Petrom. Petrom shall provide the necessary info, instructions, payment etc. for such business activities.'' Agency Brief, Exhibit 25.

In addition, the ALJ found that BIS proved by the preponderance of evidence that Petrom solicited on six separate occasions unauthorized exports for parts, equipment, and other items subject to the EAR from the United States to Iran via Germany in violation of Section 764.2(c) of the Regulations. According to the ALJ, based on ''pertinent, reliable, and credible'' evidence provided by the German Customs Authority, Petrom used a client identification system in its orders, invoices, and correspondence that included unique identifiers for Iranian customers. Recommended Decision and Order, 32. Based on these unique identifiers, as well as invoices, facsimiles, letters, and other documents related to the specific transactions at issue, BIS established that Petrom ordered parts, equipment, and items subject to the EAR for export to Iran, as alleged in the charging letter. *See* Recommended Decision and Order, 32–33.

In each of these six solicitations, the ALJ found by the preponderance of the evidence that Petrom ordered the parts, equipment, and other items at issue with knowledge that a violation of the Regulations was intended to occur. According to the ALJ, Petrom possessed ''actual knowledge'' that the United States maintained an embargo against Iran. Recommended Decision and Order, 38. In February 2000, in correspondence to the German Customs Authority, Petrom states that ''it is the expressed business policy of our company to also consider embargo regulations of other States,'' and that a particular transaction involving Iran would have been executed only ''after clarification if it is permissible according to American regulations.'' Agency Brief, Exhibit 28. In June 1992, Petrom directed a company in the United States to obtain export licenses from the Department of Commerce for a shipment to Iran. *See* Recommended Decision and Order, 38. In light of these facts, the ALJ held that Petrom committed one violation of Section 764.2(d), and six violations each of Sections 764.2(c) and 764.2(e) of the Regulations. He also recommended the penalty proposed by BIS—denial of Petrom's export privileges for 20 years and a civil monetary sanction of $143,000.

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,[3] I find that the record supports the ALJ's findings of fact and conclusions of law regarding the above-referenced charge.[4] I also find that the penalty recommended by the ALJ is appropriate given Petrom's severe disregard and contempt for U.S. export control laws, the extensive and far-reaching nature of the violations, 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. Specifically, Petrom attempted to circumvent U.S. export control laws by setting up and conspiring with a front company in the United States in an effort to order U.S.-origin items for ultimate delivery to Iran though Germany. It ordered these items for export to Iran knowing that such exports would violate the U.S. embargo on Iran. In addition, the proposed denial order is consistent with penalties imposed in recent cases under the Regulations involving shipments to Iran. *See In the Matter of Adbulamir Mahdi,* 68 FR 57406 (October 3, 2003) (affirming the recommendations of the ALJ that a 20-year denial was appropriate where violations involved multiple shipments of EAR99 items as part of a conspiracy to ship such items through Canada to Iran); *In the Matter of Arian Transportvermittlungs GmbH,* 69 FR 28120 (May 18, 2004) (affirming the recommendations of the ALJ that a 10-year denial order was appropriate where knowing violations involved a shipment of a controlled item to Iran); and *In the Matter of Jabal Damavand General Trading Company,* 67 FR 32009 (May 13, 2002) (affirming the recommendations of the ALJ that a 10-year denial was appropriate where knowing violations involved a shipment of an EAR99 item to Iran). 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 a civil penalty of $143,000 is assessed against Petrom GmbH International Trade (''Petrom''), which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701–3702E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Petrom will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as further described in the attached Notice.

[3] On May 12, 2005, BIS submitted a response to the ALJ's Recommended Decision and Order, but failed to file its response by the deadline set forth in the Regulations. Under Section 766.22(b) of the Regulations, parties have 12 days from the date of issuance of the ALJ's Recommended Decision and Order in which to submit a response. As the Recommended Decision and Order was issued on April 25, 2005, responses were due no later than May 9, 2005. BIS, however, filed its response on May 12, 2005. As BIS failed to file its response by the deadline set forth in the Regulations, the response was considered in the Under Secretary's deliberations concerning this matter. Petrom did not file a response to the ALJ's Recommended Decision and Order.

[4] There are two minor clarifications to the Recommended Decision and Order that need to be made:

(1) On pages 9 and 28, the Recommended Decision and Order states that the Respondent's Answer to the Memorandum and Submission of Evidence To Supplement the Record Submitted by the Bureau of Industry and Security was dated November 24, 2004. The correct date of this submission was November 26.

(2) On page 39, in the second paragraph of the section entitled ''Conspiracy or Acting in Concert,'' the first sentence should read ''Further, Petrom's compliance with all German export laws does *not* shield it from violating United States export laws.'' (emphasis added).

Third, that, for a period of twenty years from the date on which this Order takes effect, Petrom GmbH International Trade, Maria-Theresa Strasse 26, Munich 81675, Germany, and all of its successors or assigns, and when acting for or on behalf of Petrom, 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.

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

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

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession, or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States.

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is 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 an that is owned, possessed, or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, ''servicing'' means installation, maintenance, repair, modification, or testing.

Fifth, that, after notice and opportunity for comment as provided in 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.

Sixth, 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 26, 2005.

Peter Lichtenbaum,

Acting Under Secretary of Commerce for Industry and Security.

Instructions for Payment of Civil Penalty

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

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

Notice

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount owed and the date by which the civil penalty is due and payable.

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

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

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

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: Dr. B. Khadjavi-Gostard, Esq., Dr. Veronika Hausmann, Esq., Khadjavi Hausmann Steinbruck, Brienner Strasse 10 (Arco-Palais).

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Preliminary Statement

On March 29, 2004, the Bureau of Industry and Security (''BIS'' or ''Agency'') filed a formal Complaint against Petrom GmbH International Trade, (''Petrom'' or ''Respondent'') charging thirteen (13) counts of violation of the Export Administration Act of 1979 (''EAA'') and the Export Administration Regulations (''EAR'' or ''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 730–74. 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 (22th Cir. 2001); *see also* 50 U.S.C. App. 2401–02.[2] The Charging Letter asserts that for the period of time from on or about March 1999 to on or about May 2000, Petrom engaged in unauthorized acts in violation of the Export Administration Regulations under 15 CFR 764.2, in that, they conspired to export items to Iran without U.S. government approval, solicited exports to Iran without U.S. government approval, and ordered parts and equipment with the knowledge that a violation was intended to occur. The March 29, 2004 Charging Letter alleges the following.

Charge 1 (15 CFR 764.2(d)–Conspiracy To Export Check Valves and Spare Parts to Iran Without the Required U.S. Government Authorization)

From on or about March 1999 to on or about May 2000, Petrom conspired and acted in concert with others, known and unknown, to bring about acts that constitute violations of the Regulations by arranging the export from the United States to Iran via Germany of items subject to the Regulations and the Iranian Transactions Regulations without the required U.S. Government authorizations. Pursuant to Section 746.7 of the Regulations, authorizations were required from the Office of Foreign Assets Control, U.S. Department of Treasury (''OFAC'') before the items could be exported to Iran. In furtherance of the conspiracy, Petrom and its co-conspirators devised and employed a scheme under which the U.S. exporter would send the items to Petrom in Germany, which would then forward the items to their ultimate destination in Iran. In so doing, Petrom committed one violation of Section 764.2(d) of the Regulations.

Charge 2 (15 CFR 764.2(c)–Soliciting an Export to Iran Without the Required U.S. Government Authorization)

On or about March 30, 1999, Petrom solicited a violation of the Regulations when it ordered check valves and spare parts from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of check valves and spare parts, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

Charge 3 (15 CFR 764.2(d)–Ordering Check Valves and Spare Parts With Knowledge That a Violation of the Regulations Was Intended To Occur)

In connection with facts referenced in Charge 2, Petrom ordered check valves and spare parts with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export the check valves and spare parts, items subject to the Regulations and the Iranian Transactions Regulations, to Iran. Petrom ordered the check valves and spare parts knowing that they would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

Charge 4 (15 CFR 764.2(c)—Soliciting an Export to Iran Without the Required U.S. Government Authorization)

On or about July 8, 1999, Petrom solicited a violation of the Regulations when it ordered a [Pyrogent] Plus test kit from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of a [Pyrogent] Plus test kit, an item subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

Charge 5 (15 CFR 764.2 (e)—Ordering [a Pyrogent Plus test kit] With Knowledge That a Violation of the Regulations Was Intended To Occur)

In connection with facts referenced in Charge 4, Petrom ordered a [Pyrogent] Plus test kit with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export a [Pyrogent] Plus Test Kit, an item subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. Petrom ordered the [Pyrogent] Plus test kit knowing that they would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

Charge 6 (15 CFR 764.2(c)—Soliciting an Export to Iran Without the Required U.S. Government Authorization)

On or about September 14, 1999, Petrom solicited a violation of the Regulations when it ordered a freight forwarder in the United States to ship tire curing bladders from the United States to Germany. The ultimate destination of the tire curing bladders was Iran and such shipment was to occur without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of the tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the intended export, which was detained prior to export by the Department of Commerce. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

Charge 7 (15 CFR 764.2(e)—Ordering Tire Curing Bladders With Knowledge That a Violation of the Regulations Was Intended To Occur)

In connection with facts referenced in Charge 6, Petrom ordered tire curing bladders to be shipped to Germany with knowledge that a violation of the Regulations was intended to occur as Iran was the intended ultimate destination of the bladders. At all times relevant hereto. Petrom knew that prior authorizaiton was required from OFAC to ship tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations, to Germany for further shipment to Iran. Petrom ordered the shipment of tire curing bladders to Germany knowing that Iran was the intended ultimate destination of the bladders and that the shipment would occur without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

[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 §§ 783–84, (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 CFR at 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).

Charge 8 (15 CFR 764.2(c)—Soliciting an Export to Iran Without the Required U.S. Government Authorization)

On or about September 1999, Petrom solicited a violation of the Regulations when it ordered tire curing bladders from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export, which was detained prior to export by the Department of Commerce. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

Charge 9 (15 CFR 764.2(e)—Ordering Tire Curing Bladders with Knowledge That a Violation of the Regulations Was Intended To Occur)

In connection with facts referenced in Charge 8, Petrom ordered tire curing bladders with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations from the United States to Iran. Petrom ordered the bladders knowing that they would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

Change 10 (15 CFR 764.2(c)—Soliciting an Export to Iran Without the Required U.S. Government Authorization)

On or about August 10, 1999, Petrom solicited a violation of the Regulations when it ordered regulator valves and repair kit from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of regulator valves and repair it, items subject to the Regulations and the Iranian Transaction Regulations, from the United States to Iran. No OFAC authorization was obtained for the export, which was detained prior to export by the Department of Commerce. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

Charge 11 (15 CFR 764.2(e)—Ordering Regulator Valves and a Repair Kit With Knowledge That a Violation of the Regulations Was Intended To Occur)

In connection with facts referenced in Charge 10, Petrom ordered regulator valves and a repair kit with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export regulator valves and repair kit, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. Petrom ordered the shipment knowing that the regulator valves and repair kit would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

Charge 12 (15 CFR 764.2(c)—Soliciting an Export to Iran Without the Required U.S. Government Authorization)

On or about June 18, 1999, Petrom solicited a violation of the Regulations when it order electrical equipment[3] from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of electrical equipment, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export, which was never shipped from the manufacturer. In so doing, Petrom committed one violation of section 764.2(c) of the Regulations.

Charge 13 (15 CFR 764.2(e)—Ordering Electrical Equipment With Knowledge That a Violation of the Regulations Was Intended To Occur)

In connection with facts referenced in Charge 12, Petrom ordered electrical equipment with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export electrical equipment, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran, Petrom ordered the equipment from a U.S. company knowing that the equipment would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

Following the grant of several extensions of time to file an Answer, on July 5, 2004, Petrom, through its attorney, Dr. B. Khadjavia-Gontard, filed a formal Answer denying ''any intention to reexport to Iran the subject goods.'' Petrom stated that the goods imported to Germany ''were not reexported to Iran'' and with regard to the Charges six (6) through nine (9), that a ''misunderstanding as to the destination of the shipment had been caused by a mistaken review of [] order reference numbers * * *'' In its Answer, Petrom did not formally demand a hearing and on July 27, 2004, this matter was assigned pursuant to 15 CFR 766.15 to the Honorable Peter A. Fitzpatrick, Administrative Law Judge (ALJ), Norfolk. BIS regulations provide that a written demand for hearing must be explicitly stated. *Id.* 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.[4] *See id.* and § 766.6(c).

On August 18, 2004, an Order to File Briefs was issued directing the parties to file the necessary, ''Affidavits or declarations, depositions, admissions, answers to interrogatories and stipulations'' to supplement the record. In that Order, the parties were placed on notice that proceeding on the record ''does not relieve the parties from the necessity of proving the facts supporting their charges or defenses.'' (citation provided to § 766.15).

On September 7, 2004, Petrom filed a response, reasserting the defenses raised in their July 5, 2004 Answer and requested that ''Respondent should be informed by the Court about the facts presented to BIS'' in order to comply with the ALJ's August 18, 2004 Order to file briefs or documents. On September 8, 2004, the Honorable Peter A. Fitzpatrick issued an Order stating that the burden of proof in this administrative proceeding lies with the agency and that any submission regarding same must be served upon Respondent. Respondent was then given an opportunity to submit documentation in support of its defense following the receipt of Agency materials. On September 20, 2004, the parties were granted a thirty (30) day stay to file briefs following the parties' request to allow ''further [discussion of] the factual basis for Respondent's response and to discuss resolution of this matter.''

On October 20, 2004, the Agency filed its Memorandum and Submission of Evidence to Supplement the Record (Agency Brief). The Agency's Brief contained thirty-nine (39) exhibits. Several of the exhibits were translated from German to English by AB Si Translation Services, Inc., 8350 NW. 52nd Terrace, Suite 209, Miami, Florida 33166. Following receipt of the Agency's Brief, Respondent sought an additional extension of time in order to prepare its submission. Respondent's request for an additional extension of time was granted by Order dated November 4, 2004.

On November 24, 2004, Respondent filed its submission to supplement the record entitled, Respondent's Answer to the Memorandum and Submission of Evidence to Supplement the Record Submitted by the Bureau of Industry and Security (Respondent's Brief). At this point, Respondent's defense can

[3] In its Memorandum and Submission of Evidence to Supplement the Record, dated October 20, 2004, BIS refers to the Electrical Equipment identified in Charges 12 and 13 as ''Mercury Thermal Systems and [thermowells].''

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

generally be characterized as the failure by the Agency to show that Respondent either, exported or intended to export, or had knowledge that the items in question were to be exported to Iran and that Respondent ''does not accept and acknowledge the extraterritorial effect of the U.S. Iranian Transaction Regulations as claimed by the BIS.''

On December 28, 2004, this matter was reassigned by the Chief Administrative Law Judge to the undersigned Judge. 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 24, 2005, BIS filed its Memorandum of Proposed Findings of Fact and Conclusions of Law, which included a proposed monetary sanction in the amount of $143,000 and a denial of export privileges for twenty (20) years. Respondent did not file any proposed findings. 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 that Petrom GmbH International Trade violated the Export Administration Act and its supporting Regulations as alleged in the March 29, 2004 Charging Letter.

Findings of Fact

1. On May 6, 1995, the President of the United States signed Executive Order 12959 to prohibit certain transaction, including the export and reexport of certain items with respect to Iran (''Iranian Embargo''). Exhibit 29, Agency Brief, 60 FR 24757, May 9, 1995.[5]

2. Executive Order 12959 prohibits the export or reexport of virtually all U.S. commercial transactions with Iran, unless a license has been previously issued or the transaction is exempt by statute. Exhibit 2, Agency Brief.

3. The United States Department of Treasury, Office of Foreign Assets Control (OFAC) administers the Iranian Transactions Regulations (31 CFR Part 560) under the authority of the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*), the National Emergencies Act, (50 U.S.C. 1601 *et seq.*), and the International Security and Development Cooperation Act of 1985, (22 U.S.C. 2349aa–9). Exhibit 1 and 2, Agency Brief.

4. The OFAC is charged with administering the Iranian Embargo, which includes items subject to the Export Administration Regulation (''EAR''). The Bureau of Industry and Security also administers licensing requirements under the EAR for items that may be exported or reexported to Iran. Exhibit 2, Agency Brief, *see also* 15 CFR 746.7(a)(2).

5. The United States of America and the Federal Republic of Germany signed a mutual agreement regarding custom related activities and will end assistance to each respective Custom Agency in order to facilitate trade cooperation between nations. Exhibit 3 and 6, Agency Brief.

6. The German Customs Authority is named Zollkriminalamt or ''ZKA.'' In response is a request by the U.S. Customs Service, known presently as the Bureau of Immigration and Customs Enforcement (''ICE''), the ZKA provided assistance with regard to the activities of Petrom. The ZKA issued a report (''ZKA Report'') on March 21, 2000, which was translated by Heike Spelt and is provided as Exhibit 4 and 5, Agency's Brief.

General Findings Reported Under the ZKA Report[6]

7. Petrom GmbH International Trade is a company registered in the Commercial Registry of Muchen, Germany. Since 1997, Petrom's commercial address is Maria Theresia Str. 26, D–81675 Munchen.

8. Petrom's commercial objective is ''trade of any kind, especially import and export of industry products, raw materials and agriculture products.''

9. The sole proprietor is Majid Rashmanifar. His last name be spelled as ''Rahmani'' or ''Rahmanifar.'' The Respondent's Attorney indicates that Mr. Majid Rahmani-Far is the Chief Executive Officer of Petrom. *See* Respondent's request for extension of time, dated June 18, 2004.

10. Born April 28, 1961 in Teheran, Iran and is presently an Iranian citizen, Mr. Rashmanifar has further ventures in other companies, including one company named Petrom International Trade S.I., located in Madrid, Spain.

11. Petrom used an invoice numbering system with the following convention: '' 'client number, / ES (=Enquiry Sale) + consecutive numbers per client / RE 1 (if partial delivery then RE2. * * *' '' ''For example: 10121/ES–07 RE 1.''

12. A client list provided by the ZKA Report indicates the following pertinent information concerning Petrom's client identification numbers:

Client number	Client name and place of business
10816	Iran Tire Manufacturing Company, Teheran, Iran.
11308	Kian Tire Manufacturing Co., Teheran, Iran.
11602	Razzi Vaccine and Serum Inst., Teheran/Karaj, Iran.
10821	Iran Aircraft Manufacturing Industries, Teheran, Iran.
10332	Darou Pakhsh Co., Teheran, Iran.
10817	Iran Research Organisation for Science and Technology, Teheran, Iran.

Exhibit 5, Agency Brief.

13. The ZKA Report concerning Petrom's client numbering system that identifies Iran as an ultimate export destination was also corroborated and demonstrated by:

11602—Razzi Vaccine and Serum Inst.

a. In an undated export for 300 kg of Casamino Acid delivered to Razzi Vaccine and Serum Institute located at Karaj, Iran, the ZKA Report identified the export order number corresponding to Razzi Vaccine and Serum Institute as 11602. Exhibit 5, (ZKA Report), Agency Brief.

b. Under Invoice No. 3341/97, dated August 13, 1997, from Sunshine Textiles, Inc., to Petrom, it referenced ''YOUR ORDER P.O. 11602/ES–12.'' The order comprised of ''22 ITEMS LABORATORY CHEMICALS'' valued at ''USD 9021.95.'' Exhibit 35, Agency Brief.

The ZKA Report disclosed that ''SEVEN DAYS TRADE CO. LTD.,

[5] Unless noted, the citations provided hereunder reference the exhibit numbers associated with the Agency's Memorandum and Submission of Evidence to Supplement the Record (''Agency Brief'') and Respondent's reply to the Agency's Brief (''Respondent's Brief''). Several of the Agency's exhibits were translated from German to English as provided for by AB Si Translation Services, Inc., 8350 NW. 52nd Terrace, Suite 209, Miami, Florida 33166. To the extent provided the Agency's Proposed Findings of Facts and Conclusions of Law are accepted and incorporated herein. The Respondent did not submit any Proposed Findings of Facts and Conclusions of Law.

[6] Unless noted otherwise, all citations in this subsection pertain to Exhibit 4 (ZKA Report), Agency's Brief.

Teheran, Iran had asked PETROM in lieu of RAZZI VACCINE whether the chemical products could be delivered.'' In its communication with Seven Days Trade, Co., Ltd., Petrom referenced the invoice number ''B/1205/11602/ES–12/Q2.'' Exhibit 5, (ZKA Report), Agency Brief.

The ZKA Report identifies client no. 11602 as, Razzi Vaccine and Serum Inst., located in Teheran/Karaj, Iran. Exhibit 5, (ZKA Report), Agency Brief.

In further support, a Shippers Export Declaration (''SED'') form issued on August 23, 1997 for Sunshine Textiles, Inc., which referenced laboratory chemicals valued at $9021.00. The SED lists Razi Vaccine and Serum Inst., Teheran, Iran as the ultimate consignee with a port of unloading designated as Teheran, Iran. Exhibit 36, Agency Brief.

10816—Iran Tire Manufacturing Co.

c. On February 13, 1995, Petrom sent a facsimile to Sunshine Textiles, Inc. concerning an order from Antares where they ''mention that the goods are destined for Iran.'' The facsimile referenced ''10816/ES–20.'' Exhibit 37, Agency Brief.

The ZKA Report identified customer no. 10816 as the Iran Tire Manufacturing Co., located in Teheran, Iran. Exhibit 5 (ZKA Report), Agency Brief.

d. In an invoice dated January 19, 1993, from Penberthy, Inc. to Petrom for the export of hydraulic power equipment, it referenced a customer order no. 10816/ES–05/PP12. While the invoice showed that the export was to be shipped to Petrom in Munich, Germany, it also contained the words ''EXPORT IRAN'' on the form. Exhibit 38, Agency Brief. A second document entitled, Certificate of Origin was issued by Penberthy, Inc. that provided similar information containing the words ''Export Iran'' on the form. Exhibit 39, Agency Brief.

The ZKA Report identified customer no. 10816 as the Iran Tire Manufacturing Co., located in Teheran, Iran. Exhibit 5 (ZKA Report), Agency Brief.

10821—Iran Aircraft Manufacturing Industries

e. In an invoice dated March 3, 1995, from Sunshine Textiles, Inc. to Petrom, it referenced order number 10821/ES–02. The exported item was delivered to the Iran Aircraft Manufacturing Industries located in Isfahan, Iran.

In another undated export from Sunshine Textiles, Inc. to the Iran Aircraft Manufacturing Industries, the ZKA Report identifies the export order number as 10821/ES–06/RE 1. Exhibit 5 (ZKA Report), Agency Brief.

The ZKA Report identified customer no. 10821 as the Iran Aircraft Manufacturing Industries, located in Teheran, Iran. Exhibit 5 (ZKA Report), Agency Brief.

10332—Darou Pakhsh Co.

f. In an invoice dated May 7, 1996, for an export by Petrom to Darou Pakhsh Co., Teheran, Iran, it referenced order number ''10332/ES–29/RE1.'' Exhibit 5 (ZKA Report), Agency Brief.

In another invoice dated April 16, 1996, for an export by Petrom to Darou Pakhsh Co., Teheran, Iran, it referenced order number ''10332/ES–28/RE1.'' Exhibit 5 (ZKA Report), Agency Brief.

The ZKA Report identified client number 10332 as the Darou Pakhsh Co. located in Teheran, Iran. Exhibit 5, (ZKA Report), Agency Brief.

Relationship Between Petrom and Sunshine Technology and Supplies, Inc.

14. On May 6, 1999, Petrom entered into an agreement with Mr. Hadi Sadeli and Mrs. Maray Blanco (Mr. Saheli's wife) for the purpose of establishing a United States based company to purchase products made by U.S. companies for import to Europe. The company was named, Sunshine Technology and Supplies, Inc. (''Sunshine'').[7] Exhibit 25, Agency Brief.

15. Under the agreement, it was agreed that Sunshine's business address was to be the same as Mr. Saheli's residential address, 14230 SW., 45 Terrace, Miami, Florida 33175. Sunshine was not required to ''pay any rent whatsoever.'' Exhibit 24, 25, 26, Agency Brief.

16. Petrom was the ''actual owner'' of Sunshine and bore ''all costs of registration and other costs for running the company * * * as well as corporate and other taxes as well as respective legal fees * * *.'' Sunshine was created to ''exclusively carry out business activities of Petrom. Petrom shall provide the necessary info, instructions, payment etc. for such business activity.'' In addition, Mr. Saheli would receive monthly compensation from Petrom. Exhibit 25, Agency Brief.

Solicitation of Exports to Iran

Check Valves and Parts

17. In March of 1999, Petrom through Sunshine ordered ''600 PCS CHECK VALVES AND PARTS'' as indicated by Invoice No. 1161/99 for shipment from the United States to Germany. The invoice referenced ''Your order P.O. 18016/ES–99.'' The shipment, as indicated by a Certificate of Origin was made by ''United States Postal Service Air'' to Petron's address, Maria-Theresia Str. 26, Munich 81675 Germany. The reference number provided on the Certificate of Origin was 10816/ES–99/PP01. Exhibit 7 and 8, Agency Brief.

18. The client number code for 10816 is the Iran Tire Manufacturing Company located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief.

Pyrogent Test Kit

19. In August of 1999, Petrom, directed Sunshine to contact Bio Whittaker (''BW'') to order the following, ''Pyrogent Plus, Single Test Kit, 24 Single Test Vials Lysate, 1x1 ml Vial Endotoxin, Certificate of Analysis'' (''Pyrogent Test Kit''). Exhibit 9, Agency Brief. On or about August 16, 1999, BW shipped the Pyrogent Test Kit to Sunshine. Exhibit 11, Agency Brief. On the BW shipment form, ''10332/ES–40'' was hand written along with other notes. *Id.* On or about August 18, 1999, Sunshine shipped the Pyrogent Test Kit to Petrom, Munich, Germany. Exhibit 10, Agency Brief.

20. The client number code for 10332 is the Darou Pakhsh Co. located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief.

Tire Curing Bladders

21. In September of 1999, Petrom directly contacted Danzas AG (''Danzas''), a freight forwarding firm and requested a detailed offer for shipment of one (1) palette of tire curing bladders that would be shipped from ''Bryan, OH'' to Teheran via Germany. Exhibit 12, Agency Brief. In a following letter from Petrom to Danzas, it references ''Shipment ex Cleveland'' where Petrom states, ''Please instruct Danzas in Cleveland to contact Sunshine'' regarding the shipment. Exhibit 13, Agency Brief. Danzas has an office located in Cleveland, Ohio. Respondent's Answer, dated July 5, 2004.

22. In an e-mail dated September 21, 1999 from Michael Mittasch, Danzas GmbH, Inc. to Harry Walton, Airfreight Manager, Danzas, Cleveland, Mr. Mittash states ''please contact [Sunshine for] the following shmt * * * ready at Byron, Ohio for our customer Petrom, GmbH, Munich.'' He further states, ''Please note that shmt has to go to FRA not MUC, as we have to send it from there to THR, Iran'' Exhibit 15, Agency Brief.

23. The shipment of the curing bladders from Danzas' Cleveland office was never completed as the Danzas

[7] This company is distinguished from Sunshine Textiles, Inc., who also performed considerable activities with Petrom.

Cleveland office ''decided not to serve Petrom with this transport'' as it involved ''the embargo U.S. to IRAN.'' *Id.* The shipment was however, already in route to Cleveland when that decision was made. *Id.*

24. On September 30, 1999, a shipment of four (4) tire curing bladders was seized by special agents from the Office of Export Enforcement in Middleburg Heights, Ohio. The Report of Investigation states that the curing bladders had been shipped from a U.S. tire manufacturer as requested by Sunshine for the consignee, Petrom with an ultimate destination of Iran. Exhibit 17, Agency Brief.

25. By Invoice dated September 22, 1999, Sunshine notified Petrom concerning ''Your Order P.O. 11308/ES–82/EP–01'' for ''4 pcs Curing Bladders.'' Exhibit 16, Agency Brief.

26. In addition, in a letter dated November 4, 1999, Petrom sent confirmation to Danzas referencing, ''Shipment ex Cleveland.'' Petrom's letter provided, ''Our ref.: 11308/ES–82/TI–01.'' Exhibit 14, Agency Brief.

27. The client number code for 11308 is the Kian Tire Manufacturing Co. located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief.

28. By letter dated November 4, 1999 from Danzas to Petrom, Danzas stated that a ''misunderstanding'' had occurred ''regarding a shipment by Sunshine Technology & Supplies to Petrom GmbH International Trade.'' The letter concerned a shipment and its subsequent seizure, on or about September 30, 1999, of four (4) curing bladders by the Office of Export Enforcement. Danzas stated that ''[b]ecause of a similarity in internal reference numbers, we mistakenly believed that your shipment of tire bladders was destined to Iran.'' Respondent's Answer, dated July 5, 2004.

Regular Valves and Repair Kit

29. On August 11, 1999, Petrom contacted Sunshine directing them to send a purchase request, ''no. 10816/ES–117/ep–11'' to Copes-Vulcan, Inc. as represented by RME Associates, Inc., Lutz, Florida. Exhibit 18, Agency Brief.

30. Sunshine forwarded the purchase order requesting two (2) thermostatic regulating valves and other various parts. The request referenced purchase order no. 10816/ES–117/ep–11 and was billed as $11,147.06. Exhibit 19, Agency Brief.

31. Copes-Vulcan, Inc. sold the items in question to Sunshine as indicated by invoice signed on August 26, 1999. The billing invoice referenced Sunshine's purchase order no. 10816/ES–117/ep–11 and was billed at $11,147.00. Exhibit 20, Agency Brief.

32. By letter dated November 12, 1999, Sunshine notified Petrom regarding Invoice No. 4162/99 which referenced ''2 VALVES AND ONE SET REPAIR KIT'' in the amount of ''USD 11,147.06.'' Exhibit 21, Agency Brief.

33. On November 18, 1999, special agents from the Office of Export Enforcement seized the shipment in Hapeville, Georgia. The shipment was destined to Sunshine and was labeled ''P/O: 10816/ES–117/EP–11.'' Exhibit 22, Agency Brief.

34. The client number code for 10816 is the Iran Tire Manufacturing Company, located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief.

Mercury Thermal Systems and Thermowells

35. On September 25, 1997, Petrom contacted Sunshine Textiles, Inc. and inquired about ordering pen recorders, mercury thermal system and thermowells, and bourdon pressure elements. Petrom stated they initially tried to contact ''Tom at ABB'' and requested that Sunshine Textiles, Inc. inform ABB that ''we need the following for export South America—Brazil.'' Exhibit 23, Agency Brief.

It is noted that the ZKA Report stated that Sunshine Textiles, Inc. had previously listed Brazil, on or about August 30, 1997, as the ultimate destination for a Petrom export, which was later determined to be a reexport to Teheran, Iran via Germany. Exhibit 4, (ZKA Report), Agency Brief. It is further noted that Sunshine Textiles, Inc. employed a similar strategy in another order to Petrom, where it provided the end user as ''R.P.C. comercio Ltda, Rio de Janeiro/Brazil.'' According to the Airway bill dated April 30, 1996, the export was initially delivered to Germany, but was later forwarded on May 10, 1996 to Darou Parhsh in Iran. *Id.*

36. Although Petrom initially contacted Sunshine Textiles, Inc., it was Sunshine, who later issued a purchase order providing, ''Our Ref: 11308/ES–26/PP–01A'' and ''Your Ref.: Fax quotation dated Oct. 07, 1999.'' The purchase order was directed to ABB Instrumentation, Inc., Rochester, NY and ordered eighty (80) Mercury Thermal Systems (plus thermowells) and seventy (70) Bourdon pressure elements. Exhibit 26, Agency Brief.

37. On September 23, 1999, an order acknowledgment was printed by ABB Automation Inc., Warminster, PA for Sunshine detailing a shipment that contained, among other items, eighty (80) ''04A–WELL PER PRINT,'' seventy (70) ''BOURDON SPRING PRESSURE,'' and eighty (80) ''CONSTR. CARD–MERCURY SYSTEM.'' Exhibit 27, Agency Brief.

38. As referenced by the ABB order acknowledgment, it indicated ''REF., P.O. #11808/ES–26/PP01.'' On the last page of the order acknowledgment is a hand written correction, with an arrow and question mark pointing to the reference P.O. number. The handwritten number provided was 11308 versus the printed number, 11808. Exhibit 27, Agency Brief.

39. As referenced earlier by the agreement signed between Petrom and Sunshine (May 6, 1999), Mr. Saheli, who represented Petrom's direct interest in Sunshine, ''received an amount of USD 25,000 for relaying to ABB/Taylor, as down payment for order no. 11308/ES–26.'' This amount was paid to ABB/Taylor, Exhibit 25, Agency Brief.

40. The client number code for 11308 is the Kian Tire Manufacturing Co. located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief.

Acting With Knowledge That a Violation Was Intended To Occur

41. On June 15, 1992, prior to the issuance of the United States embargo on Iran, Petrom had contacted Sunshine Textiles, Inc. regarding a shipment destined for Iran. Petrom later requested that Sunshine Textiles, Inc. obtain export license applications from the International Trade Administration, U.S. Department of Commerce to export these materials to Iran. Exhibit 30 and 31, Agency Brief.

42. On August 5, 1992, Sunshine received a facsimile transmission from DIFCO Laboratories that provided excerpts from the Regulations governing exports to Iran. Exhibit 32, Agency Brief. In the facsimile, Sunshine was appraised of the license requirements concerning exports to Iran. DIFCO Laboratories later stated, ''We regret to inform you that due to current governmental restrictions, we cannot enter into any business proceedings with your country.'' Exhibit 33, Agency Brief.

43. On February 13, 1998, Petrom sent payment instructions for the Commerzbank Corp. to credit the Republic Bank of Miami for the designated beneficiary of Mr. Hadi Saheli in the amount of $73,937.00. The instructions stated, ''Intended use P.O. No. 10816/ES–78/PP01, 10816/ES–81/PP04, PP05, 11308/ES–58, Down Payment for 11308/ES–26.'' The country of purchase was listed as ''Iran.'' Exhibit 34, Agency Brief.

44. By letter dated February 15, 2000, Mr. Rahmanifar, on behalf of Petrom indicated ''that it is the expressed business policy of our company to also consider embargo regulations of other States.'' Exhibit 28, Agency Brief.

Items Subject to the EAR

45. By letter dated July 26, 2000, the Office of Export Enforcement (OEE) received a response from the Office of Strategic Trade and Foreign Policy Controls regarding the OEE's request for export classification for the following equipment:

> Ethyl cellulose for use as either an adhesive or a protective coating in tire manufacturing; tire curing bladders, electrical spare parts for the curing press used in tire manufacturing equipment, a two-inch CL 250 class iron threaded B1 regulator/W type ''R'' thermostat, and a strut tension relief and repair kit consisting of plugs, cages, pins, packing and gaskets, all for export to Iran between January 1, 1995 and February 15, 2000* * *

The Office of Strategic Trade and Foreign Policy Controls stated that ''all of the commodities are classified as EAR99.'' Exhibit 1, Agency Brief.

Request for Office of Foreign Assets Control Licenses

46. By letter dated January 14, 2000, the Office of Export Enforcement (OEE) received a response from the Office of Foreign Assets Control (OFAC) stating that a review of their files from ''August 1995 to the present'' revealed that no OFAC licenses had ever been issued to either:

a. Mary Blanco.
b. Mary Saheli.
c. Hadi Saheli.
d. Sunshine Technology Supply Inc.
e. Petrom GmbH.
f. Petrom International.
g. The Iran Tire Manufacturing Co.
h. Milano International Co.
i. Sunshine Textiles Inc.

OFAC further states that ''the above names were checked against the current list of OFAC Specially Designated Nationals (''SDN''). None of the names appear on the list.'' Exhibit 2, Agency Brief.

Ultimate Findings of Fact and Conclusions of Law

1. Petrom GmbH International Trade 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 730–74).

2. The Bureau of Industry and Security established by a preponderance of the evidence that Petrom GmbH International Trade violated 15 CFR 764.2(d) by conspiring or acting in concert with others in a manner or for the purpose of bringing about or doing an act to export items subject to the EAR without U.S. Government authorization in violation of the EAA, or the EAR, or any order, license or authorization issued thereunder.

3. The Bureau of Industry and Security established by a preponderance of the evidence that Petrom GmbH International Trade violated 15 CFR 764.2(c) by soliciting in the unauthorized export of equipment and items subject to the Export Administration Regulations from the United States to the Islamic Republic of Iran.

4. The Bureau of Industry and Security established by a preponderance of the evidence that Petrom GmbH International Trade violated 15 CFR 764.2(e) by acting with knowledge that a violation of the EAA, the EAR or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur by the unauthorized export of equipment and items subject to the Export Administration Regulations from the United States to the Islamic Republic of Iran.

5. Given the facts and circumstances of this matter, the Bureau of Industry and Security's proposed assessment of civil penalties for the denial of export privileges against Petrom GmbH International Trade for the period of twenty (20) years and a civil monetary penalty of $143,000 is justified and reasonable.

Discussion

The Export Administration Act and the supporting Export Administration Regulations provides broad and extensive authority for the control of exports from the United States. *See In the Matter of: Abdulamir Madhi,* et al. 68 FR 57406 (October 3, 2003); *see also* 50 U.S.C. App. 2402(2)(A), 2404(a)(1), 2405(a)(1), and 15 CFR 730.2. Additional authority, providing explicit export controls by regulations and Executive Orders apply specifically to exports to Iran and other restricted countries. In 1987, the President, through an Executive Order, invoked import sanctions against Iran, which in general, prohibited the export of any goods, technology or services from the United States to Iran without expressed 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. Iran is listed under the EAR as a country having special export and embargo controls. *See* 15 CFR 746.7.

The burden in this Administrative Proceeding lies with the Bureau of Industry and Security to prove the charged violations by the preponderance of the evidence. *See In the Matter of: Abdulamir Madhi* et al., 68 FR 57406 (October 3, 2003). 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, Petrom is charged with thirteen (13) violations of the Export Administration Regulations occurring from, on or about, March 1999 to, on or about, May 2000. Briefly stated, the March 29, 2004 Charging Letter charges Petrom with one count of conspiracy under 15 CFR 764.2(d), six (6) counts of solicitation under 15 CFR 764.2(c), and six (6) counts of acting with knowledge that a violation of the Regulations would occur under 15 CFR 764.2(e).

Petrom's Response

At the onset, Petrom stated that it is ''a German limited company duly established and registered in accordance with German law.'' Petrom's position is that it has ''acted in accordance with the applicable German laws and regulations and had no knowledge and/or intention to violate any export regulations of other countries such as the United States of America, when performing its trade activities which to the understanding of [Petrom] have no binding force on [] its management as a German legal entity and/or German individuals.'' Petrom's Request for Extension of Time, dated April 7, 2004.

In its formal Answer, dated July 5, 2004, Petrom denied the allegations charged by BIS. It specifically addressed Charges six (6) through nine (9) (tire curing bladders) as a simple mistake made by a freight forward company because of the ''similarity in internal reference numbers.'' Petrom stated, ''Acting on this mistaken information, the Danzas office in Cleveland, Ohio notified the U.S. Government that the shipment was destined for Iran.'' Respondent's Answer, dated July 5,

2004. Petrom included a letter from Danzas, dated November 4, 1999, which was provided in response to a request from Petrom. The Danzas letter stated, this ''is to clarify a misunderstanding regarding a shipment by Sunshine Technology & Supplies to Petrom GmbH International Trade of four curing bladders, which we understand was seized and detained in Cleveland, Ohio * * *. Because of a similarity in internal reference numbers, we mistakenly believed that your shipment of tire bladders was destined for Iran.'' Danzas further provided, ''to the best of our knowledge, the four curing bladders are intended for use in Germany, not in Iran.''

With regard to the remaining charges, Petrom denied in its Answer any intent to reexport the items in question from Germany to Iran and that ''the mere fact that Petrom has done business in the past also with Iranian national is obviously not sufficient to prove such an intention.'' Categorically stated, Petrom denies that it intended to reexport the subject items to Iran and that none of the items were, in fact, reexported to Iran.

On November 24, 2004, Petrom filed its response to the Agency's Brief entitled, Respondent's Answer to the Memorandum and Submission of Evidence to Supplement this Record Submitted by the Bureau of Industry and Security (Respondent's Brief). Respondent's opposition was divided into three (3) main arguments; Applicable Export Controls, Evidentiary Submission by the BIS, and Extraterritorial effect of the Regulations.

Applicable Export Controls

Petrom states that it ''understands that during the time period in question * * * it has been a violation of the Regulations to export items subject to both the Iranian Transactions Regulations and the Regulations without a license * * * [and that items] intended specifically for transshipment to Iran are items subject to both the Iranian Transactions Regulations and the Regulations and were not allowed [to] be exported without an OFAC license.'' Petrom concludes that BIS failed to sufficiently prove ''the crucial question in these proceedings'' which is to demonstrate that Petrom had any intent ''to transship to Iran the items imported from the United States.''

Evidentiary Submission by the BIS

Responding to the Agency's Brief and Exhibits, Petrom states that the invoice numbering system detailed by the ZKA ''that forms the basis for the charges'' is not ''sufficient evidence to prove the intention of Respondent to transship the respective items from Germany to Iran. Even if the client number used in [a] transaction between Respondent and [a] U.S. export firm referred to an Iranian customer, this does not prove that the respective items imported from the United States to Germany were definitely destined to be transshipped afterwards from Germany to the respective Iranian client.''

Petrom argues that ''If a criminal offense does not refer to certain acts committed by the charted person, but only to the intention of such person to commit certain acts in the future, the evidence of such intention has to be clearly established. This requirement is not met by the mere reference to certain client numbers in the invoices made out by the U.S. export firm to Respondent.''

Regarding Charges 3, 5, 7, 9, 11, and 13 (knowledge that a violation was to occur), Petrom ''clearly denies to have had actual knowledge of the specific restrictions and limitations contained in the Regulations with regard to the reexport to Iran * * *.'' Petrom acknowledged that the United States ''announced certain restrictions for the export to Iran'' but it ''has not been aware * * * that the mere intention to transship goods imported from the U.S. to Germany at a future date to Iran had been sufficient to be charged under the Regulation.'' Petrom argues that it is common knowledge that certain military equipment and items were covered by the Regulations but that it had ''no knowledge that the items [in question] imported from the U.S. * * * [were also covered].''

Extraterritorial Effect of the Regulations

Petrom ''takes the view that Respondent, as a German company with seat and business establishment in Munich, only had to comply with the requirements of German and international law as far as export restrictions are concerned.'' ''As a German company acting from its German business establishment Respondent cannot be expected, by contrast, to be informed about regulations on foreign trade of third countries, like the U.S., when doing business with Iran.'' Petrom's overall legal position is that it ''does not accept and acknowledge the extraterritorial effect of the U.S. Iranian Transaction Regulations as claimed by the BIS * * *.''

Applicable Laws and Regulations

The Regulations provide that ''No person may engage in any conduct prohibited by or contrary to * * * any conduct required by, the EAA,* * *.'' 15 CFR 764.2(a). Specifically, as it pertains to this matter;

> No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder. *Id.* at § 764.2(d).
>
> No person may solicit or attempt a violation of the EAA, the EAR, or any order, license or authorization issued thereunder. *Id.* at § 764.2(c).
>
> No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any item exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with this item. *Id.* at 764.2(e).

The term ''Export means an actual shipment or transaction of items subject to the EAR from the United States * * *.'' *Id.* at § 734.2(b)(1). The term ''Reexport means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country * * *.'' *Id.* at § 734.2(b)(4). The export or reexport of items subject to the EAR through another country for the purpose of transshipping the items to a new country is considered to be an export to that new country. *Id.* at § 734.2(b)6).

BIS has jurisdiction for all items ''subject to the EAR,'' which generally are listed on the Commerce Control List (CCL), but for certain items that are not so listed, the Regulations provide, ''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 items at issue in this matter are classified as ''EAR99,'' *see* Exhibit 1, Agency Brief, and are therefore, ''subject to the EAR'' pursuant to 15 CFR 734.3(c). In addition, the items in question are also subject to the Iranian Transactions Regulations administered by the OFAC and may not be exported without an OFAC license. 15 CFR 734.3(b)(1)(ii) and 746.7, and 31 CFR 560.204.

Given the response by Petrom, it is important to note that the rules provide that a person, whether or not they are 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.

Solicitation of an Unauthorized Export or Reexport

In considering the record taken as a whole, BIS has proved by the preponderance of evidence that Petrom solicited unauthorized exports for equipment and items subject to the EAR from the United States to Iran via Germany in violation of 15 CFR 764.2(c). By mutual agreement between the United States of America and the Federal Republic of Germany, the German Customs Authority, the Zollkriminalamt (''ZKA''), provided pertinent, reliable, and credible evidence to establish that Petrom used a client identification numbering system in its orders, invoices, and correspondence. The client identification system was clearly demonstrated by Petrom's own use and business practice to associate its Iranian customers with unique identifiers. As shown by the ZKA Report, Petrom used the client identification system for shipments and orders that occurred prior to and during the present embargo against Iran. Some of the documents form the basis of the Charges presented, while others were provided for illustrative or other evidentiary purposes. For example, in certain facsimile transmissions, invoices, forms, or communications, Petrom would list Iran as the utimate destination and use the client identifiers as outlined by the AKA Report. *See* Exhibit 4, 36, 37, 39, Agency's Brief. Concerning the pertinent exports charged here, Petrom's continued use of the same client identifiers is evidenced by its own invoices, documents, and correspondence. All of which reliably indicate by the preponderance of the evidence that Petrom continued to order parts, equipment, and items, which were subject to the EAR for export to Iran.

The Agency submitted reliable, probative and substantial evidence, which in its entirety, demonstrate that Petrom solicited orders for:

1. Check valves and parts for client number 10816, which was identified by the ZKA Report as the Iran Tire Manufacturing Company, Teheran, Iran;

2. Pyrogent test kit for client number 10332, which was identified by the ZKA Report as the Darou Pakhsh Company, Teheran, Iran;

3. Tire curing bladders ordered directly by Petrom through a freight forwarder and indirectly through Sunshine for client number 11308, which was identified by the ZKA Report as the Kian Tire Manufacturing Company, Teheran, Iran;

4. Regulator valves and repair kit for client number 10816, which was identified by the ZKA Report as the Iran Tire Manufacturing Company, Teheran, Iran; and

5. Mercury thermal systems, thermowells, and other equipment for client number 11308, which was identified by the ZKA Report as the Kian Tire Manufacturing Company, Teheran, Iran.

Regarding Charges six (6) through nine (9) concerning the orders for the tire curing bladders, Petrom submits the November 4, 1999 letter by Danzas as a defense. The Danzas letter indicates that Danzas made a mistake regarding an order reference number where it mistakenly believed that the tire curing bladders were destined to Iran. Based on this mistaken belief, Danzas contacted local U.S. Government authorities. Upon review of the record taken as a whole, the Danzas letter, which was prompted by a request from Petrom does not comport with the evidence submitted by BIS. In Exhibit 12, Agency's Brief, a telefax sent by Petrom to Danzas, documents ''inquiry No. 11308/ES–82/T1–01,'' and states that the shipment of tire curing bladders will be made from Byron, Ohio, ''to Germany via air freight'' and ''Onward to: from Germany ''collect'' via Iran Air to Teheran.'' In addition, Sunshine sent an invoice to Petrom, dated September 22, 1999, for purchase order number 11308/ES–82/EP–01, which listed ''4 pcs Curing Bladders'' valued at $1851.04. The client identifier listed in both communications is the Kian Tire Manufacturing Company, located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief. Based on the above, the November 4, 1999 Danzas letter is outweighed by the evidence demonstrating that Petrom possessed the knowledge that the shipments were ordered for an Iranian client.

In addition, BIS charged Petrom with two separate violations of soliciting orders for tire curing bladders, Charges six (6) and eight (8). The first solicitation was a direct order from Petrom to the freight forwarding company, Danzas, AG. *See* Exhibit 12, Agency Brief. This order was labeled as ''inquiry No. 11308/ES–82/T1–01'' for ''1 palette'' of curing bladders. In a separate communication from Petrom to Danzas, Petrom instructs Danzas ''to contact Sunshine so that they can have the merchandise delivered to Cleveland.'' Exhibit 13, Agency Brief. The record does not show whether or not this communication ever occurred. However, Sunshine would send an invoice to Petrom referencing, ''4 pcs Curing Bladders'' for ''Your Order P.O. 11308/ES–82/EP–01.'' Exhibit 16, Agency Brief. The ''enquiry sale'' numbers (ES–82) are the same for both documents; however, the last part of the invoice numbers are different, T1–01 versus EP–01. Looking to the ZKA Report, no further definition is provided except to state that this section can indicate partial delivery by using the code ''RE.'' The record also does not indicate whether or not ''1 palette'' of curing bladders is equivalent to ''4 pcs Curing Bladders.'' Given the distinctions presented, the record demonstrates that Sunshine was solicited at some point to procure tire curing bladders in addition to Petrom's direct solicitation to Danzas.

The Regulations proscribing the acts charged apply to a ''person'' and provide separate and distinct sanctions for ''each violation.'' 15 CFR 764.2, 764.3. The Regulations therefore contemplate separate violations to allow for cumulative penalties. *See FAA* v. *M. Marshall Landy & Int'l Aircraft Leasing, Inc.*, 705 F.2d 624, 636 (2nd Cir. 1983). In this instance, each solicitation of the tire curing bladders required an additional act on the part of Petrom. The record supports the position that Petrom acted on at least two (2) occasions to solicit orders for tire curing bladders. The issue as to whether or not the solicitations were directed to the same order does not have to be reached. *See United States* v. *Technic Services, Inc.*, 314 F.3d 1031, 1046 (9th Cir. 2002) (holding that ''The test for multiplicity is whether each count 'requires proof of an additional fact which the other does not.' '') (quoting *Blockburger* v. *United States*, 284 U.S. 299, 304 (1932)). A person can be charged under the same regulation based on related conduct and may be sanctioned with multiple violations ''if the conduct underlying each violation involves a separate and distinct act.'' *Id. see also United States* v. *Vaughn*, 797 F.2d 1485 (9th Cir. 1986) and *United States* v. *Wiga*, 663 F.2d 1325 (9th Cir. 1981).

Based on the above, it is hereby held that Petrom committed two (2) solicitations regarding the order for tire curing bladders.

Petrom also raises the argument that the items in question were never actually reexported from Germany to Iran. While the record demonstrates that certain transactions did not occur due to the intervention by the Department of Commerce, the record provides that other transactions were in fact exported to Germany. The facts presented however, are that all of the items in question were ultimately destined for delivery to Iran. Under the Regulations, it is a violation to solicit or attempt a

violation of the EAA or EAR. The fact that a shipment never reached its final destination is not an element of the charged act. *See* 15 CFR 764.2(c).

Given all of the reliable and credible information presented, it is found that Petrom solicited exports, either directly or indirectly from U.S. companies for export to Germany, with an ultimate destination of Iran. All of which occurred without U.S. government authorization in violation of the EAA and EAR.

Acting With Knowledge of a Violation

One of Petrom's main arguments is that BIS has failed to demonstrate that Petrom possessed the intent to transship or reexport the items in question to Iran. In one of its responses, Petrom also refers to a ''criminal offense'' and states, ''evidence of such intention has to be clearly established.'' This proceeding however, is not criminal in nature and the evidentiary standards presented here are certainly different from those required in a criminal proceeding.

Here, Petrom is charged with acting with knowledge that a violation ''has occurred, is about to occur, or is intended to occur * * *.'' 15 CFR 764.2(e). From the previous discussion, it is clear that Petrom ordered the items in question for export to its clients located in Iran. Petrom's argument that the client or invoice numbering system cannot support the position that Petrom intended to transship or reexport the items in question to Iran fails on several points.

a. First, it was the German Customs Authority (''ZKA'') who compiled and identified the client information concerning Petrom's order numbering system. The ZKA compiled this information from Petrom's own records. The ZKA Report demonstrates Petrom's ongoing business practice and reasonably and reliably indicates that Pertom was soliciting exports from the Unites States with an ultimate destination of Iran without the required U.S. Government authorization in violation of the EAA and EAR. It is the customer identification number along with the compilation of documents, invoices, facsimiles, and letters that provide by a preponderance of evidence that Petrom ordered equipment and items from U.S. companies with the intent to transship or reexport the items to Iran without the required U.S. Government authorization. In one of many examples presented in the record, Petrom was shown to issue payment instruments to Commerzbank, in which Petrom provided purchase order numbers for payment. The client identifiers presented in the purchase order numbers follow the same format outlined in the ZKA Report. The ZKA Report designates the client identifiers in the payment instruction as Iranian customers. In further support of the record, Petrom provides in the payment instructions to Commerzbank that the country of purchase is ''Iran.'' Exhibit 34, Agency Brief.

b. Second, the formation of Sunshine Technology and Supplies, Inc. is nothing more than a corporate front established by Petrom to foster its ability to deal directly with U.S. companies. The record clearly demonstrates that Sunshine was exclusively owned, controlled, organized funded, and operated by Petrom.

In addition to the above, the record shows that Petrom possessed actual knowledge that a U.S. embargo was present against Iran. In a telefax issued prior to 1995, Petrom directed Sunshine Textile, Inc. to contact the International Trade Administration for the Department of Commerce to obtain export license applications to allow it to export to Iran. Exhibit 30 and 31, Agency Brief. Petrom's own policy statement issued by Mr. Rahmanifar is that Petrom will consider ''embargo regulations of other states.'' Exhibit 28, Agency Brief. Furthermore, in a 1992 transaction, Sunshine, who acted on behalf of Petrom, was given with a copy of the Regulations concerning certain export controls to Iran. In the facsimile sent from DIFCO Laboratories, Sunshine was appraised of the Regulations that required export licenses for Iran. *See* Exhibit 32, Agency Brief. DIFCO Laboratories would later inform Sunshine ''that due to current governmental restrictions, we cannot enter into any business proceedings with your country.'' Exhibit 33, Agency Brief.

Given the above, I find that Petrom was in possession of the knowledge that the United States had placed an embargo and other trade restrictions for exporting or reexporting items from the United States to Iran. It is hereby held that Petrom, with this knowledge, continued to order equipment and items without the required U.S. Government authorization knowing that a violation of the EAA, the EAR or any order, license or authorization issued thereunder would occur.

Conspiracy or Acting in Concert

Given that Petrom solicited the items in question for the period of time starting on or about March 1999, it is clear that Petrom conspired or acted in concert with others, mainly Sunshine Technology and Supplies, Inc. to export items subject to the EAR to Iran without U.S. Government authorization in violation of the EAA and EAR. Petrom developed a scheme to facilitate the ordering of equipment and items from U.S. companies, mainly through Sunshine Technology and Supplies, Inc., for export to Germany without the knowledge and or intent that it would reexport the items to Iran.

Further, Petrom's compliance with all German export laws does shield it from violating United States export laws. *See In the Matter of: Abdulamir Madhi,* et al, 68 FR 57406, (October 3, 2003); 15 CFR 734.12. In addition, without any expressed requirements to demonstrate knowledge or intent, the Regulations on their face can be treated on the basis of strict liability with regard to the imposition of civil penalties. *See In the matter of: Aluminum Company of America,* 64 FR 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''). ''Moreover, knowledge of the Act and Regulations properly may be impouted to a Respondent who, from abroad, was actively engaged in an effort to export an unlicensed controlled commodity from the United States.'' *In the Matter of Doron Rotler Individually a/d/a/ Ram Robotics Ltd., aka Ram Robotic Automation Manufacturing Systems Ltd.,* 58 FR 62095, 62099 n.16 (November 24, 1993).

Given all of the above, which demonstrates that Petrom solicited and acted with knowledge that a violation would occur and acted in concert with Sunshine and others, it is hereby held that Petrom conspired in a manner or purpose that was designed to bring about or commit an act in violation of the EAA or EAR in prohibition of 15 CFR 764.2(d).

Basis of Sanction

The Bureau of Industry and Security has authority to assess civil penalties and suspensions from practice, including the denial of export privileges before the Department of Commerce. *See* 15 CFR 764.3. Here, BIS recommends a twenty (20) year period of denial of export privileges and a civil monetary sanction of $143,000 against Petrom GmbH International Trade for its unlawful conduct in this matter. BIS argues that Petrom GmbH International Trade disregarded U.S. export laws and Regulations with the knowledge that a

major embargo exists between the United States and Iran.

The record shows that Petrom did not apply for any U.S. Government authorization to export the items from the United States to Iran. It instead chose to create and conspire with others, including Sunshine Technology and Supplies, Inc. in a scheme to order U.S. equipment and items for export to Germany with the knowledge or intent that these items would be reexported to Iran. BIS proposes the above civil penalty sanctions due to Petrom's ''severe disregard and contempt for U.S. export control laws.'' BIS argues that a twenty (20) year period of denial is also 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: Abdulamir 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).

Of particular note and by all appearances, the record demonstrates that Petrom sought to circumvent U.S. export control laws by setting up a front company in Sunshine Technologies and Supplies, Inc. in an effort to order U.S. origin equipment and parts for eventual export to Iran. While the burden rests with the Agency to prove the facts alleged, Petrom offered very little, if not any, countervailing evidence in its defense. Petrom could not challenge the ZKA Report which outlines Petrom's own business practice and methodology. It was shown that Petrom possessed knowledge of the U.S. embargo on Iran when it sought export license approvals prior to the incidents in question. The record also demonstrates that Sunshine was provided copies of the Regulations concerning the export of certain materials to Iran. The Agency contends that Petrom ''has not taken responsibility for its actions'' and ''cannot be trusted to comply with U.S. export control laws'' and, in particular, dealing with a country that this nation maintains an embargo against due to its support for international terrorism. *See also* 15 CFR 746.7 (stating ''Iran has been designated by the Secretary of State as a country that has repeatedly provided support for acts of international terrorism'').

Due to the severe nature of the violations and the veiled arguments raised by Petrom, I find that the Agency's proposed assessment is fair, reasonable, and justified.

Recommended Order

Wherefore, it is hereby recommended that the Under Secretary for Export Administration issue a *denial order* and *civil penalty assessment* as follows:

First, that a civil penalty of $143,000 is assessed against Petrom GmbH International Trade which shall be paid to the U.S. Department of Commerce within thirty (30) days from the date of entry of this Order.

Second, pursuant to the Debt Collection Act of 1982, as amended, 31 U.S.C. 3701–20E, the civil penalty owed under this Order accrues interest as provided and if payment is not made by the due date specified, Petrom will be assessed, in addition to the full amount of the civil penalty and interest, a penalty and administrative charge.

Third, that for a period of twenty (20) years from the date of this Order, Petrom GmbH International Trade, Maria-Theresa Strasse 26, Munich 81674, Germany and all of their successors or assigns, and when acting for or on behalf of Petrom, 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.

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

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

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

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

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that after notice and opportunity for comment as provided in 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.

Sixth, that this Order does not prohibit any 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.

Seventh, that the Charging Letter and this Order shall be made available to the public.

Eighth, that this Order shall be served on the Denied Persons and on BIS, and shall be published in the **Federal Register**.

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–3898, 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 Regualtions for Review by the Under Secretary is attached.

Done and dated this 25th day of April 2005 in New York, New York.

Walter J. Brudzinski,

Administrative Law Judge, U.S. Coast Guard.

[FR Doc. 05–10983 Filed 6–3–05; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review

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

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from Korea. The period of review is May 1, 2003, through April 30, 2004. This review covers imports of certain polyester staple fiber from one producer/exporter. We have preliminarily found that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to assess antidumping duties. Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: June 6, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Yasmin Bordas, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1174 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2000, the Department of Commerce (''Department'') published an antidumping duty order on certain polyester staple fiber (''PSF'') from Korea. (*See* 65 FR 33807). On May 3, 2004, the Department published a notice of ''Opportunity to Request Administrative Review'' of this order. (*See* 69 FR 24117). On May 28, 2004, Wellman, Inc.; Arteva Specialties, Inc. d/b/a KoSa; and DAK Fibers, LLC (collectively, ''the petitioners'')[1] requested administrative reviews of Huvis Corporation (''Huvis'') and Saehan Industries, Inc. (''Saehan''). On May 28, 2004, Huvis and Saehan made similar requests for administrative reviews. On June 30, 2004, the Department published a notice initiating the review for the aforementioned companies. (See 69 FR 39409). The period of review (''POR'') is May 1, 2003, through April 30, 2004.

On June 30, 2004, we issued antidumping questionnaires in this review. On September 27, 2004, Saehan withdrew its request for review. On September 28, 2004, the petitioners withdrew their request for administrative review of Saehan. *See* ''Partial Rescission'' section, below.

As a result of certain below–cost sales being disregarded in the previous administrative review, we instructed Huvis to respond to the cost questionnaire. We received a questionnaire response from Huvis on September 10, 2004.

In October 2004, December 2004, and February 2005, we issued supplemental questionnaires to Huvis. We received responses to these supplemental questionnaires in November 2004, January 2005, and March 2005.

Scope of the Order

For the purposes of this order, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from this order. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Partial Rescission

As noted above, Saehan withdrew its request for review, and the petitioners also withdrew their request for review of Saehan. Because these withdrawals were timely filed and no other party requested a review of this company, pursuant to 19 CFR 351.213(d)(1), we are rescinding this review with respect to Saehan. We will instruct U.S. Customs and Border Protection (''CBP'') to liquidate any entries from this company during the POR and to assess antidumping duties at the rate in effect at the time of entry.

Revocation

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Tariff Act of 1930 (''the Act''), as amended. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) a certification that the company has sold the subject merchandise at not less than normal value (''NV'') in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the

[1] On March 11, 2005, the Department was informed that Arteva Specialties, Inc. d/b/a KoSa had changed its name to Invista S.a.r.l. Presently, the petitioners are Wellman, Inc.; Invista S.a.r.l.; and DAK Fibers.