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CONTACT PERSON FOR FURTHER

INFORMATION: Manuel Alba, Press and Communications (202) 376-8587.

David Blackwood,

General Counsel.

[FR Doc. 06-9186 Filed 11-7-06; 3:15 pm]

BILLING CODE 6335-01-M

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

[Docket No. 05-BIS-22]

**In the Matter of: Mr. Daqing Zhou;
Manten Electronics, Inc.; Beijing
Office, Suite 2-4-501, 2nd Area Cherry
Garden, Li Qiao Town, Shun Yi,
Beijing, PRC 101300, Respondent;
Final Decision and Order**

In a charging letter filed on December 1, 2005, the Bureau of Industry and Security ("BIS") alleged that the Respondent, Daqing Zhou ("Zhou"), committed three violations of the Export Administration Regulations ("Regulations"),¹ issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) (the "Act").²

Specifically, the charging letter filed by BIS alleged that Zhou conspired to export microwave amplifiers, items subject to the Regulations and classified under Export Control Classification Number ("ECCN") 3A001, from the United States to China without the

required Department of Commerce license. BIS alleged that the goal of the conspiracy was to obtain microwave amplifiers on behalf of a Chinese end-user and to export those microwave amplifiers to China. In so doing, BIS charged that Zhou committed one violation of Section 764.2(d) of the Regulations.

The charging letter also alleged that Zhou caused the doing of an act prohibited by the Regulations. Specifically, BIS alleged that Zhou ordered the aforementioned microwave amplifiers from a U.S. company for use by an end-user in China. The U.S. company then exported the microwave amplifiers to China without the Department of Commerce license required by Section 742.4 of the Regulations. In so doing, BIS charged that Zhou committed one violation of Section 764.2(b) of the Regulations.

Finally, the charging letter filed by BIS alleged that, in connection with the export of microwave amplifiers on or about May 23, 2002, Zhou ordered or financed microwave amplifiers that were to be exported from the United States with knowledge that a violation of the Regulations would occur in connection with those items. In so doing, BIS charged that Zhou committed one violation of section 764.2(e) of the Regulations.

In accordance with Section 766.3(b)(1) of the Regulations, on December 1, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to Zhou at his last known address. Although postage marks indicate that the charging letter arrived in Beijing, the letter was returned to BIS unopened. BIS then sent a copy of the charging letter to Zhou at the same address in Beijing by Federal Express on May 1, 2006. The record established that on May 17, 2006, the charging letter sent by Federal Express was signed for by a "D. Zhou."

Section 766.6(a) of the Regulations provides, in pertinent part, that "[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter" initiating the administrative enforcement proceeding. To date, Zhou has not filed an answer to the charging letter with the Administrative Law Judge (ALJ), and has not otherwise responded to the charging letter, as required by the Regulations.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, BIS filed a Motion for Default Order with the ALJ on September 11, 2006. Under Section 766.7(a) of the Regulations, "[f]ailure of the respondent to file an answer within

the time provided constitutes a waiver of the respondent's right to appear," and "on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter."

On October 17, 2006, the ALJ issued a Recommended Decision and Order in which he concluded that "BIS submitted evidence to establish delivery of the notice of the Charging Letter was constructively refused on or about December 17, 2006 and that BIS properly served notice of the Charging Letter in accordance with Section 766.3 of the Regulations." I conclude that the ALJ's reference to "December 17, 2006" was a typographical error. In this case, I find that the charges were served on the Respondent on May 17, 2006; the date that "D. Zhou" signed for the Federal Express package containing the charging letter that was sent to the Respondent's, Daqing Zhou, last known address. Thirty days having past since the charges were properly served and not answered, BIS was entitled to seek a default judgment.

Based upon the record before him, the ALJ held Zhou in default. In the Recommended Decision and Order, the ALJ found the facts to be as alleged in BIS's charging letter, and determined that those facts established that Zhou committed one violation of Section 764.2(d), one violation of Section 764.2(b), and one violation of Section 764.2(e) of the Regulations. The ALJ recommended that Zhou be denied export privileges for twenty years.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law, as modified above, with respect to each of the above-referenced charges brought against Zhou. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations, the lack of mitigating circumstances, the importance of preventing future unauthorized exports, and penalties imposed in past similar cases. Although the imposition of a monetary penalty is an appropriate option, I agree with the ALJ that in this case such a penalty may not be effective, given the difficulty of collecting payment against a party outside the United States.

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

¹ The Regulations are currently codified at 15 CFR Parts 730-774 (2006). The violations charged occurred in 2001 and 2002. The Regulations governing the violations at issue are found in the 2001 through 2002 versions of the Code of Federal Regulations (15 CFR Parts 730-774 (2001-2002)). The 2006 Regulations establish the procedures that apply to this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 FR 44,551 (August 7, 2006)) has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)).

Accordingly, it is therefore ordered: *First*, that, for a period of twenty years from the date this Order is published in the **Federal Register**, Daqing Zhou (a/k/a "David Zhou"), Manten Electronics, Inc., Beijing Office, Suite 2-4-501, 2nd Area Cherry Garden, Li Quiao Town, Shun Yi, Beijing, PRC 101300, and when acting for or on his behalf, his representatives, agents, assigns, or 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.

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

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

B. Take any action that facilitates the acquisition or attempted acquisition by the 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 the 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 the Denied Person of any item subject to the Regulations that has been exported from the United States;

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

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

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

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

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

Dated: November 3, 2006.

Mark Foulon,

Acting Under Secretary of Commerce for Industry and Security.

Recommended Decision and Order

On December 1, 2005, the Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), issued a Charging Letter initiating this administrative enforcement proceeding against Daqing Zhou ("Zhou"). The Charging Letter alleged that Zhou committed three violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (2006)) ("Regulations"),¹ issued under the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401-2420 (2000)) ("Act").²

¹ The charged violations occurred in 2001 through 2002. The Regulations governing the violations at issue are found in the 2001 through 2002 versions of the Code of Federal Regulations (15 CFR Parts 730-774 (2001-2002)). The 2006 Regulations establish the procedures that apply to this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44,551 (Aug. 7, 2006)), has continued the

Specifically, the Charging Letter alleged that Zhou conspired and acted in concert with others, known and unknown, to export microwave amplifiers from the United States to China without the required Department of Commerce license. BIS alleged that the goal of the conspiracy was to obtain microwave amplifiers on behalf of a Chinese end-user and to export those microwave amplifiers to China. BIS alleged that in furtherance of the conspiracy, Zhou negotiated with individuals from China and developed a plan to acquire the amplifiers for shipment from the United States to China. BIS alleged that, contrary to Section 742.4 of the Regulations, no Department of Commerce license was obtained for the export of the amplifiers from the United States to China. (Charge 1).

The Charging Letter filed by BIS also alleged that, on or about May 23, 2002, Zhou caused a violation of the Regulations by ordering microwave amplifiers, items subject to the Regulations and classified under export control classification number ("ECCN") 3A001, from a U.S. company for use by an end-user in China. At the time of the export caused by Zhou, the microwave amplifiers in question were controlled on the Commerce Control List for National Security reasons. BIS alleged that, contrary to Section 742.4 of the Regulations, no Department of Commerce license was obtained for the export of the amplifiers from the United States to China. (Charge 2).

Finally, the Charging Letter filed by BIS also alleged that, in connection with the export of microwave amplifiers on or about May 23, 2002, Zhou ordered or financed microwave amplifiers that were to be exported from the United States with knowledge that a violation of the Regulations would occur. Specifically, BIS alleged that Zhou knew that a violation of the Regulations would occur as Zhou notified the U.S. exporter that the items in question were classified as ECCN 3A001, and was aware that the exporter was not going to obtain a license for the export. (Charge 3).

Section 766.3(b)(1) of the Regulations provides that notice of the issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address. Further, the date of service is the date of its delivery or of its attempted delivery is refused. *See* 15 CFR 766.4(c).

Here, BIS mailed the Charging Letter by registered mail on December 1, 2005 to Zhou at his last known address: Mr. Daqing Zhou, Manten Electronics, Inc., Beijing Office, Suite 2-4-501, 2nd Area Cherry Garden, Li Qiao Town, Shun Yi, Beijing, PRC 101300. Although postage marks indicate that the letter arrived in Beijing, the letter was returned to BIS unopened. BIS sent a courtesy copy of the Charging Letter to the same address in Beijing by Federal Express on May 1, 2006.³ This time a person named

Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)).

³ Furthermore, on May 1, 2006, BIS sent a courtesy copy of the charging letter to Zhou at the last known e-mail address: *david.zhou@163.com*.

"Dr. Zhou" signed for the delivery on May 17, 2006. The undersigned concludes, BIS submitted evidence to establish delivery of the notice of the Charging Letter was constructively refused on or around December 17, 2006 and that BIS properly served notice of the Charging Letter in accordance with Section 766.3 of the Regulations.

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

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I find the facts to be as alleged in the Charging Letter, and hereby determine that those facts establish that Zhou committed one violation of Section 764.2(d), one violation of Section 764.2(b), and one violation of Section 764.2(e) of the Regulations.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (i) A monetary penalty, (ii) suspension from practice before the Bureau of Industry and Security, and (iii) a denial of export privileges under the Regulations. *See* 15 CFR 764.3 (2001–2002). Because Zhou caused the export of microwave amplifiers, items controlled by BIS for national security reasons for export to China, BIS requests that I recommend to the Under Secretary of Commerce for Industry and Security⁴ that Zhou's export privileges be denied for twenty years.

BIS suggested this sanction because Zhou's role in conspiring to export amplifiers to China, as well as his role in ordering amplifiers for export to China, represents a significant harm to U.S. national security. BIS further argued that Zhou knowingly engaged in conduct prohibited by the Regulations by conspiring to, and causing the export of microwave amplifiers to China with knowledge that a violation of the Regulations would occur. The items involved in this unlicensed export—microwave amplifiers—required a license for export to China for national security reasons. Accordingly, BIS asserted that Zhou's actions represented a significant potential harm to the essential national security interests protected by U.S. export controls.⁵ Furthermore, BIS believes that the recommended denial order is particularly appropriate in this case, since

⁴ Pursuant to Section 13(c)(1) of the Export Administration Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary's action is the final decision for the U.S. Commerce Department.

⁵ *See* 15 CFR Part 766, Supp. No. 1, III, A. (Stating that a denial order may be considered even in matters involving simple negligence or carelessness, if the violation(s) involves "harm to the national security or other essential interests protected by the export control system," if the violations are of such a nature and extent that a monetary fine alone represents an insufficient penalty * * *) (emphasis added).

Zhou failed to respond to the Charging Letter filed by BIS, despite evidence indicating that Zhou received actual service of the Charging Letter. Finally, BIS believes that the imposition of a twenty-year denial order is particularly appropriate in this case since BIS would likely face difficulties in collecting a monetary penalty, as Zhou is not located in the United States. In light of these circumstances, BIS believes that the denial of Zhou export privileges for twenty years is an appropriate sanction.

On this basis, I concur with BIS and recommended that the Under Secretary enter an Order denying Zhou's export privileges for a period of twenty years. Such a denial order is consistent with penalties imposed in similar cases. *See In the Matter of Mark Jin a/k/a Zhongda Jin et al*, 66 FR 40,971 (Aug. 6, 2001) (affirming the recommendation of the ALJ that a twenty-five year denial order was appropriate where the respondent knowingly exported items to China without a license and defaulted on the BIS charging letter); *In the Matter of Petrom GmbH International Trade*, 70 FR 32,743 (June 6, 2005) (affirming the recommendations of the ALJ that a twenty year denial order and a civil monetary sanction of \$143,000 were appropriate where knowing violations involved a shipment of EAR99 items to Iran); *In the Matter of Adbulamir Mahdi*, 68 FR 57,406 (Oct. 3, 2003) (affirming the recommendation of the ALJ that a twenty year denial order was appropriate where knowing violations involved shipments of EAR99 items to Iran as a part of a conspiracy to ship such items through Canada to Iran).

[Redacted Section]

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

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

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming modifying, or vacating the Recommended Decision and Order. *See* 15 CFR 766.22(c).

Dated: October 17, 2006.

The Honorable Joseph N. Ingolia, Chief Administrative Law Judge.

[FR Doc. 06–9121 Filed 11–8–06; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–827)

Notice of Amended Final Results in Accordance With Court Decision: Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China

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

SUMMARY: On July 12, 2006, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the decision of the Court of International Trade (CIT) to sustain the Department of Commerce's (the Department's) remand redetermination in the 1999–2000 antidumping duty administrative review of certain cased pencils (pencils) from the People's Republic of China (PRC). In its redetermination, the Department assigned Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong) a cash deposit rate of 13.91 percent, rather than the PRC-wide rate assigned to the company in the contested administrative review. As there is now a final and conclusive court decision in this case, the Department is amending the final results of the 1999–2000 antidumping duty administrative review of pencils from the PRC.

EFFECTIVE DATE: November 9, 2006.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Howard Smith at (202) 482–4162 or (202) 482–5193, respectively; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1994, the Department published in the **Federal Register** the antidumping duty order on pencils from the PRC. *See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66,909 (December 28, 1994). The Department excluded from this order Guangdong's U.S. sales of pencils produced by Shanghai Three Star Stationery Industry Corp. (Three Star). However, in the final determination that gave rise to the antidumping duty order, the Department stated that if Guangdong sold subject merchandise to the United States that was produced by manufacturers other than Three Star, such sales would be subject to a cash