

4. Making a False Statement on a Shipper's Declaration
 5. Knowingly Violating the Export Administration Regulations
 VIII. Reason for the Sanction
 IX. Recommended Order
 Attachment A: exhibit List
 A. Judge's Exhibit
 B. Government Exhibit
 Attachment B: Rulings on Bureau's Proposed Findings
 A. Proposed Findings of Fact and Conclusions of Law
 B. Proposed Ultimate Findings of Fact and Conclusions of Law
 Notice to the Parties Regarding Review by Under Secretary
 Certificate of Service

II. Summary of Decision

This case involved covert operations by Respondents Abdulmir Mahdi and, his wholly owned company, OTS Refining Equipment Corporation ("OTS"), to unlawfully ship oil field equipment from the United States to Iran through Canada in violation of the Export Administration Act of 1979 ("Act" or "EAA") and the Export Administration Regulations ("EAR"). See 50 U.S.C. App. Secs. 2401–2420 (1991), *amended by* Pub. L. 106–508, 114 Stat. 2360 (Supp. 2002) (EAA); 15 CFR parts 730–74 (1997–1999) (EAR). The EAA and its underlying regulations establish a "system of controlling exports by balancing national security, foreign policy and domestic supply needs with the interest of encouraging export to enhance * * * the economic well being" of the United States. See *Times Publ'g Co. v. United States Dep't of Commerce*, 236 F.3d 1286, 1290 (11th Cir. 2001); see also 50 U.S.C. App. 2401–02.¹

Here, six violations of the EAR are alleged and the Bureau of Industry and Security, United States Department of Commerce ("Bureau" or "BIS") seeks

¹ The EAA and all regulations under it expired on August 20, 2001. See 50 U.S.C. App. 2419. Three days before its expiration, the President declared that the lapse of the EAA constitutes a national emergency. See Exec. Order No. 13222, reprinted in 3 C.F.R. at 783–784, 2001 Comp. (2002). Exercising authority under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1701–1706 (2002), the President maintained the effectiveness of the EAA and its underlying regulations throughout the expiration period by issuing Exec. Order No. 13222 on August 17, 2001. *Id.* The effectiveness of the export control laws and regulations were further extended by Notice issued by the President on August 14, 2002. See Notice of August 14, 2002: Continuation of Emergency Regarding Export Control Regulations, reprinted in 3 CFR at 306 (2003). Courts have held that the continuation of the 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); *Times Publ'g Co., supra*, 236 F.3d at 1290.

denial of the Respondents' export privileges from the United States for a period of 20 years. This case was brought while Mr. Mahdi was serving a 4-year and 3-month sentence in Federal prison based on a Plea of Guilty to one count of conspiracy to export oil field equipment from the United States to Iran and Iraq without authorization, and in accordance with the judgment and sentence of the United States District Court for Middle District of Florida on November 22, 1999. See *United States v. Mahdi*, 99–128–CF00RL–22B. Charge 1 in this administrative proceeding is nearly identical to the conspiracy charge before the District Court to which Mr. Mahdi plead Guilty and for which the court entered a judgment and sentence. At a preliminary stage in this administrative proceeding, the Bureau's Motion for Summary Decision with respect to Charge 1 was granted. The undersigned found that District Court's judgment collaterally estopped Mr. Mahdi from contesting Charge 1 relating to conspiracy. However, the Motion for Summary Decision was denied as to the remaining five charges.

At the administrative hearing, the Bureau presented substantial, reliable and probative evidence to support the remaining charges. Mr. Mahdi made a brief appearance at the hearing but refused to participate in the remainder of these proceedings. Thus, most of the evidence on this record is uncontested. Each of the remaining charges (Charges 2–6) is found Proved. The Bureau's request for a Denial Order of 20 years is well founded in view of the number of violations involved and the continuing efforts of Mr. Mahdi and his brother to unlawfully export items to Iran.

Finally, although the regulations require this proceeding to be concluded within one year from the filing of the charging letter, the undersigned Judge extended the period for issuance of the decision for good cause. See 15 CFR 766.17(d). In this case, the period was extended until January 17, 2004 to allow Mr. Mahdi to serve his Federal prison sentence, and afford him an opportunity to adequately prepare for the hearing. See Order dated October 10, 2003, at 9–10.

III. Preliminary Statement

In an amended charging letter dated November 22, 2002, the Bureau alleged that Respondents Mahdi and OTS committed six violations of the EAR.²

² The "Bureau of Export Administration" or "BXA" issued the original charging letter on January 17, 2002. Through an internal organizational order, the Department of Commerce changed the name of BXA to BIS. See Industry and Security Programs: Change of Name, 67 FR 20630

The Agency sought denial of Respondents export privileges for a period of 20 years.³ The charges were as follows:

Charge I alleged that between in or about March 1997, and in or about April 1998, the Respondents violated §§ 746.7 and 764.2(d) of the EAR by conspiring and acting in concert with others known and unknown to obtain oil field equipment from the United States and export it to Iran through Canada.

Charge 2 and 3 alleged that on or about October 30, 1997, and on or about February 2, 1998, the Respondents violated §§ 746.7 and 764.2(a) of the EAR by exporting oil field equipment from the United States through Canada to Iran without obtaining prior authorization from the Office of Foreign Assets Control ("OFAC"), a division of the Treasury Department.

Charge 4 alleged that on or about April 21, 1998, to on or about March 17, 1999, the Respondents violated §§ 746.7 and 764.2(c) of the EAR by soliciting or attempting to export oil field equipment from the United States through Canada to Iran without obtaining prior authorization from OFAC.⁴

Charge 5 alleged that on or about October 30, 1997, the Respondents violated § 764.2(g) of the EAR by making a false and misleading statement of material fact on a Shipper's Export Declaration that the country of ultimate destination of the oil field equipment was Iran.

(Apr. 26, 2002). Pursuant to the Savings Provision of the order, "Any actions undertaken in the name of or on behalf of the Bureau of Export Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Bureau of Industry and Security." *Id.* at 20631.

³ Neither the original charging letter, nor the amended charging letter specified the exact nature of relief sought by the Agency. In the Agency's "Pre-Hearing Memorandum" dated February 26, 2003, BIS revealed that it was seeking a 20-year denial of export privileges. The Agency also moved to withdraw the charges against a third respondent, Tech-Link Development Corporation ("Tech-Link") because BIS was unable obtain service of the charging letter on Tech-Link. The charges were dismissed without prejudice in an Order dated March 3, 2003.

⁴ Charge 4 in the original charging letter alleged that Respondents exported oil field equipment from the United States, through Canada, to Iran on or about April 21, 1998. Following the partial denial of summary decision, BIS filed a Motion for Reconsideration or Clarification on September 12, 2002. On September 18, 2002, BIS filed a Partial Withdrawal of the Motion for Reconsideration or Clarification with respect to Charge 4 and moved to amend that charge because the Bureau determined that the oil field equipment was not exported to Iran as alleged. The motion to amend Charge 4 was granted in an Order dated October 10, 2002. The Bureau filed a Notice of Filing Amended Charging Letter on November 22, 2002 and served the amended charging letter on Mr. Mahdi and OTS.