

United States in violation of the EAR. (Gov't PUFF 57).

7. Under the theory of respondeat superior, OTS is liable for the actions of Mr. Mahdi and the sole employee, Mr. DiMarco, who were both acting on behalf of the corporation and whose actions resulted in violations of the EAA and EAR. (Gov't PUFF 49).

8. BIS has established that denial of export privileges for 20 years against Mr. Mahdi and OTS is justified and reasonable. (Gov't PUFF 58).

## VII. Discussion

### A. Applicability of the Export Administration Act and Regulations to Respondents

Throughout these proceedings, the Respondents have contended that BIS lacks jurisdiction. More specifically, Mr. Mahdi claimed that U.S. export laws do not apply to him as a Canadian citizen or OTS operating in Canada. This argument is rejected.

The authority delegated by Congress to the President of the United States under the EAA is extensive. The EAA gives the President authority to regulate or prohibit the export of goods, technology, and information "to the extent necessary to further the foreign policy of the United States or fulfill its international obligation." See 50 U.S.C. App. Sec. 2405(a)(1). The EAA also authorizes the President to regulate or prohibit the export of goods or technology in the interest of national security. See 50 U.S.C. App. Secs. 2402(2)(A), 2404(a)(1). The statute makes clear that "[a]ny export control imposed under (the EAA) shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity."

In 1987, the President invoked import sanctions against Iran to "ensure that United States imports of Iranian goods and services will not contribute financial support to terrorism." Exec. Order No. 12613, reprinted in 52 FR 41940 (Oct. 30, 1987). In 1995, the President declared a national emergency with respect to the actions and policies of the Iranian Government. See Exec. Order No. 12957, reprinted in 60 FR 14615 (Mar. 15, 1995). The President expanded the sanctions imposed against Iran to prohibit both import of Iranian-origin products and export of U.S. origin goods, technology, or services to Iran. See Exec. Order No. 12959, reprinted in 60 FR 24757 (May 6, 1995).

Exec. Order No. 12959 and its implementing regulations generally prohibit the exportation of any goods,

technology or services from the United States to Iran without express authorization from OFAC. See 31 CFR 560.204, 560.501. This prohibition includes the exportation of any goods "to any person in a third country undertaken with knowledge or reason to know that such goods \* \* \* are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government of Iran." See 31 CFR 560.204(a).

Section 746.7 of the EAR incorporates the OFAC's Iran Transactions Regulations by reference. It provides: "No person may export or reexport items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization." 15 CFR 746.7. The term "export" means the "actual shipment, transfer or transmission of goods or technology out of the United States; (the) transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or a transfer to any person of goods or technology either with the knowledge or intent that the goods or technology will be shipped, transferred or transmitted to an unauthorized recipient." 50 U.S.C. App. sec. 2415(5); see also 15 CFR 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." 15 CFR 734.2(b)(4). BIS has authority to exercise regulatory jurisdiction over all items subject to the EAR. 15 CFR 734.2(a)(1). The regulations clearly provide that "[a]ll U.S. origin items wherever located" are subject to the EAR. 15 CFR 734.4(a)(2).

From the plain language of the export laws and regulations, it is clear that the EAA and EAR were intended to apply extraterritorially regardless of a person's nationality or locality so long as U.S. origin items are involved. Counsel for BIS accurately pointed out that the EAA and EAR have an *in rem* basis, applicable to "goods \* \* \* subject to the jurisdiction of the United States." Thus, it is immaterial that Mr. Mahdi is a naturalized Canadian citizen, OTS was a Canadian corporation, and some of the activities occurred in Canada. To hold otherwise would contravene existing law and regulation, and would undermine the effectiveness of the EAA and the EAR.

### B. Violations of the Export Administration Act and Regulations

While Mr. Mahdi refused to participate in much of the hearing and did not contest much of the evidence presented, the burden of proof remains on the Agency to prove the allegations

in the charging letter by reliable, probative, and substantial evidence. See 5 U.S.C. 556(d). The Supreme Court has held that 5 U.S.C. 556(d) adopts the traditional preponderance of the evidence standard of proof. *Steam v. S.E.C.*, 450 U.S. 91, 102 (1981). To prevail, BIS must establish that it is more likely than not that the Respondents commented the violations alleged in the charging letter. See *Herman & Maclean v. Huddleston*, 529 U.S. 375, 390 (1983). In other words, the Agency 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). To satisfy the burden of proof, BIS may rely on direct and/or circumstantial evidence. See generally *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764-765 (1984).

Here, the Agency has produced quantum evidence, including witness testimony and documentary evidence, which establish that Respondents Mahdi and OTS violated the §§ 746.7 and 764.2 of the EAR. It is well settled that a corporation can be held liable for the actions of its officers and employees committed within the scope of employment and in furtherance of the employer's business. See *United States v. BI-Co Pavers, Inc.*, 741 F.2d 730, 737 (5th Cir. 1984); *United States v. Sherpix*, 512 F.2d 1361, 1367 n. 7 (D.C. Cir. 1975). The doctrine of respondent superior is applicable in export cases.

#### 1. Conspiracy To Obtain Oil Field Equipment From the United States

Respondent Mahdi and the corporate respondent, OTS, have been charged in Count 1 with conspiracy to export goods to Iran in violation of § 746.7 of the EAR. The conspiracy regulations provide: "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 other order, license or authorization issued thereunder." 15 CFR 764.2(d). To succeed under § 764.2(d), the Agency must establish that: (1) Two or more persons formed an agreement to violate the EAA or EAR; (2) the respondent knowingly participated in the conspiracy; and (3) an overt act was committed in furtherance of a common scheme. See generally 50 U.S.C. App. 2410(a). The conspiracy charge with respect to Mr. Mahdi has already been found proved on the basis of collateral estoppel.

On September 6, 2002, summary decision was entered against Mr. Mahdi on Charge 1 on the basis of collateral