

estoppel arising from the guilty plea in the criminal proceeding. The evidence shows that between March 1997 and April 1998, Mr. Mahdi was acting on behalf of OTS when he entered into business arrangements with Dr. Strome of BITS to provide U.S. origin oil field equipment to customers in Iran. (Tr. 138, 241–44, 251–53; Gov't Ex. 3, at 21; Gov't Ex. 6, at 1–2; Gov't Ex. 27–28; Gov't PFF 9–12, 14; Gov't PUFF 49). Mr. Mahdi and Mr. DiMarco took several actions in furtherance of the conspiracy by submitting approximately 117 RFQs to BITS on behalf of customers in Iran. (Tr. 224–26, 244–47; Gov't Ex. 21, 21A, 25; Gov't PFF 40–41; Gov't PUFF 49). The mere fact that RFQs submitted to BITS did not all result in shipments from BITS through OTS to Iran is not crucial. Conspiracy is an inchoate offense that can be committed regardless of whether object of the venture is achieved. *See United States v. Plummer*, 221 F.3d 1298, 1306 (11th Cir. 2000); *See also Iannelli v. United States*, 420 U.S. 770, 777 (1975). Since Mr. Mahdi and DiMarco's activities were performed within the scope of employment and in furtherance of OTS's business, the violations of section 764.2(d) are attributable to OTS.

## 2. Unauthorized Export From the United States to Iran

Charges 2 and 3 allege that the Respondents violated section 764.2(a) by unlawfully exporting oil field equipment from the United States to Iran through Canada without obtaining prior authorization from OFAC on October 30, 1997 and February 2, 1998. Both charges are found proved. The relevant regulation prohibits any person from engaging in "any conduct prohibited by or contrary to \* \* \* the EAA (or) the EAR." 15 CFR 764.2(a). As previously stated, § 746.7 prohibits any person from exporting or reexporting goods to Iran without prior OFAC authorization.

The administrative record clearly establishes that neither BITS, nor OTS, nor Mr. Mahdi under any of his names, had applied for or received OFAC authorization to export from the United States to Iran. (Tr. 215–17; Gov't Ex. 20; Gov't PFF 39). Absent OFAC authorization, the export of goods to Iran constitutes a violation of the EAA and its underlying regulations.

The facts show that, in response to an irrevocable purchase order containing reference number 701–1320–TSI submitted by Mr. Mahdi, Dr. Strome of BIST sold \$42,356.56 worth of U.S. manufactured oil field equipment to OTS. The oil field equipment was exported to OTS's freight forwarder,

Danzas, located in Ontario, Canada. (Tr. 148, 152, 156–60, 166–69; Gov't Ex. 8, 11, 12; Gov't PFF 19, 22–24). The "T" in the reference number indicates that the end-user was Kala Naft, Tehran, Iran. (Tr. 148, 152; Gov't Ex. 8; Gov't PFF 19). Pursuant to Mr. Mahdi's directions, the oil field equipment was consolidated with other OTS equipment and exported to Iran via Cypress. (Tr. 153–55, 169–172, 177–178; Gov't Ex. 10; Gov't PFF 25–26). Further, to evade detection and so that Canadian law would apply, the country of origin for the products was identified as Canada when the true country of origin was the United States. *Id.*

The law contemplates that transfer of U.S. origin goods from one foreign country to another foreign country falls within the purview of the EAA and its underlying regulations. *See* 50 U.S.C. App. sec. 2415(5); *see also* 15 CFR 734.2(b). Thus, Mr. Mahdi's actions constitute a violation of § 764.2(a) on October 30, 1997 as described in Charge 2. Since the export to Iran was performed in furtherance of OTS's business, the corporate respondent is equally liable for the violation of § 764.2(a).

The Respondents are also liable for violating § 764.2(a) on February 2, 1998 as described in Charge 3. The evidence shows that, in response to purchase 702–1360–TSI, Dr. Strome of BITS sold \$69,478.20 worth of U.S. manufactured oil field equipment to OTS. (Tr. 180–184; Gov't Ex. 6, at 4; Gov't Ex. 13, 14; Gov't PFF 28). Mr. Mahdi hired Pars Maritime Cargo, Inc., a general sales agent for Iran Air, to pick up the equipment from BITS in Florida and export it on February 2, 1998. (Tr. 185–187; Gov't Ex. 6, at 4; Gov't Ex. 14, 15; Gov't PFF 29–30). Although no direct evidence was presented showing that the equipment was subsequently exported to Iran, there is sufficient circumstantial evidence that the equipment was exported to Iran.

## 3. Soliciting or Attempting an Unauthorized Export From the United States to Iran

Charge 4 is also proved. Section 764.2(c) prohibits any person from soliciting or attempting to violate the EAA or the EAR. Solicitation is defined as "asking another person to commit an offense." *In the Matter of the Sound You Company, Ltd. and Yuzo Oshima*, 58 FR 60593, 60597 (Nov. 17, 1993). "For the offense of solicitation to be completed, the (respondent) must entice, advise, incite, order or otherwise encourage another to commit an offense." *Id.* Like conspiracy, it is not necessary that the unlawful offense to actually be

completed to order to find the charge of solicitation proved. *Id.*

Attempt is another inchoate crime, like conspiracy and solicitation, which "can be committed regardless of whether the objective of the venture is achieved." *Plummer*, 221 F.3d at 1306. Attempt consists of: (1) An intent to engage in an unlawful activity; and (2) an overt act committed in furtherance of the unlawful activity. *See generally* 21 Am. Jur. 2d, Criminal Law § 175 (2003). Preparation alone or a mere statement of one's intent to commit an unlawful activity is not enough to constitute an attempt; rather the respondent must engage in some appreciable overt act. *Id.* at § 177.

Here, the activities of Mr. Mahdi and OTS go beyond mere preparation. By soliciting Dr. Strome of BITS, on March 4, 1999, to export \$120,000 worth of oil field equipment ordered by OTS under reference number 013–077–TBT to Industrial Engineering Inspection Company of Iran for inspection, Mr. Mahdi and OTS violated section 764.2(c). (Tr. 107–09, 201, 207, 210–15; Gov't Ex. 18A, at 3; Gov't Ex. 18, 19; Gov't PFF 35–36). Mr. Mahdi and OTS violated § 764.2(c) again in mid-March when Mahdi went to Florida to inspect and obtain the oil field equipment ordered under reference 013–077–TBT because Dr. Strome refused to export the equipment to Iran. (Tr. 107–09, 202; Gov't PFF 37–38). Although the Respondents committed two distinct counts of violations of § 764.2(c), BIS has charged them with a single count. That count is found proved.

## 4. Making a False Statement on a Shipper's Declaration

Charge 5 is also found proved. Section 764.2(g) prohibits any person from making a misrepresentation or false statement of any material fact on any export control document. *See* 15 CFR 764.2(1)(ii). A SED qualifies as an export control document. *See* 15 CFR 772.1.

The Agency charges Respondents Mahdi and OTS with making a false and misleading statement of material fact on an SED on October 30, 1997. The SED falsely stated that the country of ultimate destination of the oil field equipment ordered in reference number 701–1320–TSI was Toronto. However, the true country of ultimate destination was Iran. Neither OTS nor Mr. Mahdi prepared the SED on October 30, 1997. Forward Logistics prepared the SED as directed by Dr. Strome. (Tr. 156–60, 166–69; Gov't Ex. 11, 12; Gov't PFF 22–24). BIS relies on *Pinkerton v. United States*, 328 U.S. 640 (1946), to hold Mr. Mahdi and OTS liable for the violation of section 764.2(g).