

which was subject to both the EAR and to OFAC's Iranian Transaction Regulations, from the United States through Canada to Iran, without prior authorization from OFAC, in violation of § 746.7 of the EAR, thereby each committing one violation of Section 764.2(a) of the EAR engaging in conduct prohibited by the Ear. See paragraphs 28–30 above.¹⁷ Mr. Mahdi and OTS are each accordingly liable for the violation described in Charge 3.

Ruling: Accepted and Incorporated.

54. By actions taken regarding the equipment ordered under OTS reference number 013–077–TBT, Mr. Mahdi and OTS, from on or about April 21, 1998, to on or about March 17, 1999, solicited or attempted the export of oil field equipment, which was subject to both the EAR and to OFAC's Iranian Transaction Regulations, from the United States through Canada to Iran, without prior authorization from OFAC, in violation of Section 746.7 of the EAR, thereby each committing one violation of Section 764.2(c) of the Regulations—soliciting or attempting a violation of the Regulations. See paragraphs 31–37 above. Mr. Mahdi and OTS are each accordingly liable for the violation described in Charge 4.

Ruling: Accepted and Incorporated.

55. On or about October 30, 1997, BITS and Mr. Strome, through Forward Logistics Group, Inc. caused a false material statement of the ultimate destination of the export described in Charge 2 as “Toronto,” when the export was in fact ultimately destined for Iran, on an SED submitted to the United States Customers Service regarding that export. See paragraph 23 above. In so doing, BITS and Mr. Strome, the co-conspirators of OTS and Mr. Mahdi, acted within the scope of the conspiracy, in furtherance of the conspiracy's objective of making unauthorized exports of oil field equipment from the United States to Iran via Canada, and in a manner

reasonably foreseeable by OTS and Mr. Mahdi as a natural consequence of the conspiracy.¹⁸ Accordingly, under the rule of *Pinkerton v. United States*, 328 U.S. 640, 645–46 (1946), OTS and Mr. Mahdi are liable for the violation of Section 764.2(g) of the EAR described in Charge 5: making the false statement that Toronto was the ultimate destination on the SED submitted on or about October 30, 1997.¹⁹

Ruling: Accepted and Incorporated.

56. Alternatively, Mr. Mahdi and OTS are each liable for the violations described in Charges 2, 3, and 4 because the actions taken by their co-conspirators Mr. Strome and OTS constituted the unauthorized exports and attempted export described in those charges. In taking such actions, Mr. Strome and OTS acted within the scope of the conspiracy, in furtherance of the conspiracy's objective of making unauthorized exports of oil field equipment from the United States to Iran via Canada, and in a manner reasonably foreseeable by OTS and Mr. Mahdi as a natural consequence of the conspiracy. Accordingly, Mr. Mahdi and OTS are liable for such actions of their co-conspirators under the Pinkerton rule. See BIS's Motion for Summary Decision, dated May 31, 2002, at 12 n.14, and in BIS's Pre-Hearing Memorandum, dated February 26, 2003, at 12 n.11.²⁰

¹⁸ The conspiracy count to which Mr. Mahdi plead guilty in the criminal proceeding stated that the parties conspired to ship such equipment from the United States to Canada under SED's that falsely stated the equipment's ultimate destination, see Govt. Ex. 1 at 5, paragraph 13, and Mr. Mahdi admitted in his plea agreement that this allegation was true. See Govt. Ex. 2 at 13, paragraph 9 & 18, paragraph 13.

¹⁹ The fact that Charge 5 states that OTS and Mr. Mahdi “prepared” the SED in question, rather than stating that OTS and Mr. Mahdi are liable for the actions of their co-conspirators, does not affect the application of the Pinkerton rule. Where a conspiracy is alleged, a charging document need not plead that the Government will rely on Pinkerton to establish liability for substantive offenses; the conspiracy charge itself is sufficient notice of the Pinkerton theory of liability. See *United States v. Washington*, 106 F.3d 983, 1010–12 (D.C. Cir. 1996), cert. denied, 522 U.S. 984 (1997); *United States v. Sax*, 39 F.3d 1380, 1389–90 (7th Cir. 1994). Moreover, OTS and Mr. Mahdi—even if they had participated in the hearing—could not claim prejudicial surprise, because BIS's Pre-Hearing Memorandum, dated February 26, 2003, at 13–14, made clear that BIS would rely on Pinkerton to establish liability for Charge 5.

²⁰ If the Court were to find insufficient evidence of completed exports to Iran, as described in Charges 2 and 3, OTS and Mr. Mahdi should be found liable under Section 764.2(c) of the EAR for attempting such exports. A defendant may be found guilty of attempt even if only the completed offense is charge, provided that the attempt is itself an offense, as it is here under Section 764.2(c). See, e.g., *United States v. Marin*, 513 F.2d 974, 976 (2d Cir. 1975); *Simpson v. United States*, 195 F.2d 721, 723 (9th Cir. 1952); *Clinton Cotton Mills v. United States*, 164 F.2d 173, 177 (4th Cir. 1947).

Ruling: Accepted and Incorporated.

57. Mr. Mahdi and OTS, acting through Danzas Canada, Ltd., transferred and forwarded from Canada to Iran the oil field equipment purchased under OTS reference number 701–1320–TSI. See paragraphs 25–26 above. Mr. Mahdi knew, at a minimum, that Mr. Strome and BITS had violated the EAR by exporting this equipment from the United States to an ultimate destination of Iran without the required license. See paragraph 27 above. Thus, Mr. Mahdi committed the violation described in Charge 6: transferring and forwarding this equipment from Canada to Iran, knowing that it had been exported from the United States in violation of the EAR.²¹ Moreover, Mr. Mahdi's knowledge of Mr. Strome's violation of the EAR is attributable to OTS,²² so that OTS committed the violation described in Charge 6 also.

Ruling: Accepted and Incorporated.

58. Based on the following factors, the Court recommends that Mr. Mahdi and OTS should be denied U.S. export privileges for twenty years, per the standard terms of a denial order set out at Supplemental No. 1 to part 764 of the EAR:

a. The scope of prior efforts to acquire U.S. origin equipment to export to customers in Iraq and Iran in violation of U.S. export controls. See paragraphs 40–44 above.

b. The importance of the foreign policy objectives furthered by controlling exports to embargoed countries, such as Iran, and of preventing exports that violated export controls on embargoed countries.

c. The significant nature of the transactions at issue in these charges, as indicated by the fact that the equipment involved in Charges 2, 3, and 4 had a collective value of over \$230,000.

Certificate of Service

I hereby certify that I have served the foregoing Recommended Decision and Order by Federal Express to the following persons:

Undersecretary, Bureau of Industry and Security, U.S. Department of

²¹ Charge 6 describes the transferring and forwarding of this equipment from Canada to Iran as occurring “[o]n or about October 30, 1997.” The evidence shows that the equipment was shipped to Iran in early November 1997. As explained in footnote 18 above, this variance is immaterial to the validity of the charge.

²² See e.g., *In re Hellenic Inc.*, 252 F.3d 391, 395 (5th Cir. 2001) (“An agent's knowledge is imputed to the corporation where the agent is acting within the scope of his authority and where the knowledge relates to matters within the scope of that authority * * * [C]ourts generally agree that the knowledge of directors or key officers, such as the president and vice president, is imputed to the corporation. * * *”).

2001, and cases cited therein (“minor variances in ‘on or about’ dates” are permitted in both criminal and administrative enforcement proceedings).

¹⁷ Although BIS did not supply direct evidence that this equipment was shipped from Canada to Iran, the following facts and circumstances support the finding that such a shipment occurred: (1) Mr. Mahdi's repeated admissions that he shipped equipment obtained from BITS from Canada to Iran, see paragraph 16 above; (2) the fact that the letter “T” in this OTS reference number indicates that the customer ordering this equipment was Kala Naft in Tehran, Iran, see paragraphs 17 and 28 above; (3) the fact that Pars, the carrier that OTS and Mr. Mahdi arranged to transport the equipment from Florida to Montreal, Canada, served as the general sales agent for Iran Air, see paragraph 30 above; and (4) the fact that documentation provided to BITS by OTS indicated that the equipment would be exported from Canada, see paragraph 29 above.