It is Further Ordered that a copy of this Recommended Decision and Order shall be served on Aluminum Company of America and the Department of Commerce in accordance with § 778.16(b)(2) of the Regulations.

Done and Dated on this 21sth day of December 1998, Alameda, California.

Hon. Parlen L. McKenna,

United States Administrative Law Judge.

To be considered in the thirty (30) day statutory review process which is mandated by 50 U.S.C.A. § 2412(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room H–3898, Washington, DC 20230, within twelve (12) days. Replies to the other party's submission are to be made within the following eight (8) days (*See* 15 CFR 766.22(b) and 50 Fed. Reg. 53134 (1985)). Pursuant to 50 U.S.C.A. § 2412(c)(3) of the Act and 15 CFR 766.22(e) of the Final Order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within fifteen (15) days of its issuance.

[FR Doc. 99–19095 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Under Secretary for Export Administration

[Docket Number 98–BXA–10]

In the Matter of: TIC LTD. Suite C, Regent Centre, Explorers Way, Freeport, Bahamas, Respondent; Decision and Order

On August 12, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), issued a charging letter initiating an administrative proceeding against TIC Ltd. (hereinafter ''TIC''). The charging letter alleged that TIC committed 112 violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730–774 (1999)) (hereinafter the ''Regulations''),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. sections 2401–2420 (1991 & Supp. 1999)) (hereinafter the ''Act'').[2]

Specifically, the charging letter alleged that, beginning in June 1994 and continuing through about July 1996, TIC conspired with Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, and TIC Ltd. to bring about acts that constituted violations of the Act, or any regulation, order, or license issued thereunder. The purpose of the conspiracy was for TIC and the others to export U.S.-origin commodities to Libya, a country subject to a comprehensive economic sanctions program. To accomplish their purpose, the conspirators devised and employed a scheme to export U.S.-origin items from the United States through the United Kingdom to Libya, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required under U.S. law, including the Regulations. *See* 15 CFR 764.4, previously codified at 15 CFR 785.7 of the former Regulations, and 15 CFR 772.1 of the former Regulations. BXA alleged that, by conspiring or acting 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 Act, or any regulation, order or license issued thereunder, TIC violated Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996) of the former Regulations.

BXA alleged that, in furtherance of the conspiracy described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC, as a co-conspirator, exported polyurethane (isocyanate/polyol) and polyether polyurethane (hereinafter collectively referred to as ''pipe coating materials'') from the United States to Libya, without obtaining from the Department the validated export licenses that TIC knew or had reason to know were required under Section 772.1(b) (redesignated as Section 772A.1(b) on March 25, 1996) of the former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act, or any regulation, order, or license issued thereunder. TIC, as a co-conspirator, violated Section 787.6 or Section 787A.6 of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC, as a co-conspirator, committed 32 violations of Section 787.6 and five violations of Section 787A.6 of the former Regulations, for a total of 37 violations.

BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transactions, TIC, as a co-conspirator, violated Section 787.4(a) or Section 787A.4(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC committed 32 violations of Section 787.4(a) and five violations of Section 787A.4(a) of the former Regulations, for a total of 37 violations.

Finally, BXA also alleged that, in furtherance of the conspiracy described above and to effect the 37 exports described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC used Shipper's Export Declarations or Bills of Lading, export control documents as defined in Section 770.2 (redesignated as Section 770A.2 on March 25, 1996) of the former Regulations, on which it represented that the commodities described thereon, pipe coating materials, were destined for ultimate end-use in the United Kingdom. In fact, the pipe coating materials were ultimately destined for Libya. BXA alleged that, by making false or misleading statements of material fact directly and indirectly to a United States agency in connection with the use of export control documents to effect exports from the United States, TIC, as a co-conspirator, violated Section 787.5(a) or Section 787A.5(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC committed 32 violations of Section 787.5(a) and five violations of Section 787A.5(a)[3] of the former Regulations, for a total of 37 violations.

Thus, BXA alleged that TIC committed one violation of Section

[1] The alleged violations occurred during 1994, 1995, and 1996. The Regulations governing the violations at issue are found in the 1994, 1995 and 1996 versions of the Code of Federal Regulations (15 C.F.R. Parts 768–799 (1994 and 1995) and 15 C.F.R. Parts 768–799 (1996), as amended (61 *Fed Reg.* 12714, March 25, 1996)) (hereinafter the ''former Regulations''). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the existing Regulations as 15 C.F.C. Parts 768A–799A. In addition, the March 25, 1996 **Federal Register** publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730–774, effective April 24, 1996. The former Regulations define the violations that BXA alleges occurred. The reorganized and restructured Regulations establish the procedures that apply to this matter.

[2] The Act expired on August 20, 1994. Executive order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)).

[3] BXA noted in its motion that, because of a typographical error, the charging letter incorrectly cites to Section 785A4(a) and requested that the ALJ authorize an amendment to the charging letter to provide the correct citation to the regulatory provision that spells out the false statement violation, Section 787A.5(a). The ALJ granted BXA's request and amended the charging letter to correct the citation to Section 787A.5(a).

787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of 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 his last known address. In accordance with that section, on August 12, 1998, BXA sent to TIC, at its last known address, notice that it had issued a charging letter against it. Although not required by the Regulations, BXA also sent a copy of the letter to TIC's last-known agent in the Bahamas.

By letter dated September 24, 1998, counsel for TIC submitted a letter to Mark D. Menefee, Director of the Office of Export Enforcement (OEE), responding to the charging letter. On September 29, 1998, BXA filed a copy of that letter, together with a response to several assertions made by TIC in the letter, with the U.S. Coast Guard ALJ Docketing Center.[4]

On October 8, 1998, the ALJ issued an Order in which he found that TIC's September 24, 1998 letter was, in essence, a motion to dismiss the charging letter. For the reasons set forth in the ALJ's October 8, 1998 Order, the ALJ denied TIC's motion to dismiss and gave TIC additional time, until November 9, 1998, to respond to the allegations set forth in the charging letter. On October 20, 1998, the ALJ amended the October 8, 1998 Order to give TIC still more time, until November 20, 1998, to file its answer. TIC did not file an answer to the charging letter. Accordingly, because TIC did not answer the charging letter within the time established by the ALJ's Order, as required by and in the manner set forth in Section 766.6 of the Regulations, BXA moved for issuance of a default order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be alleged in the charging letter, and concluded that those facts constitute one violation of Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations by TIC, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for that violation is a denial, for a period of 20 years, of all of TIC's export privileges. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

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

Accordingly, it is therefore ordered,

First, that, for a period of 20 years from the date of this Order, TIC Ltd., Suite C, Regent Centre, Explorers Way, P.O. Box F–40775, Freeport, the Bahamas, and all of its successors or assigns, officers, representatives, agents, and employees when acting for or on behalf of TIC 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 items 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 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 the 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 the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on TIC and on BXA, and shall be published in the **Federal Register.**

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: July 12, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

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[4] Although the charging letter advised TIC that a formal proceeding had been initiated against it and included the address for the U.S. Coast Guard ALJ Docketing Center so that TIC could file an answer to the charging letter with that Office, TIC addressed its response to the Director of OEE without providing a copy of that response to the U.S. Coast Guard ALJ Docketing Center.