

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Charlie Tyson Project; Idaho Panhandle National Forests, St. Maries Ranger District, Benewah County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Correction of the May 10, 1995—Notice of Intent, 60 FR 24829.

A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Charlie Tyson Projects was inadvertently published on May 10, 1995 (60 FR 24829). This is an error; this notice was published on March 31, 1994 (Vol. 59, No. 62, 15153) and since that time the Draft has been published and the Ranger district is now (May 15, 1995) in the process of mailing out the Final EIS and Record of Decision.

Dated: May 16, 1995.

Bradley J. Burmark,
Acting District Ranger.

[FR Doc. 95-12504 Filed 5-19-95; 8:45 am]

BILLING CODE 3410-11-M

Blue Mountains Natural Resources Institute (BMNRI), Board of Directors

AGENCY: Pacific Northwest Research Station, USDA.

ACTION: Notice of meeting.

SUMMARY: The Blue Mountains Natural Resources Institute Board of Directors will meet on June 8, 1995 at Eastern Oregon State College, Hoke Hall, Room 309, 1410 L Avenue in La Grande, Oregon. The meeting will begin at 9:00 a.m. and continue until 5:00 p.m. Agenda items to be covered include: (1) Review status as a Federal Advisory Committee; (2) presentation of Federal Advisory Committee Act guidelines and responsibilities; (3) report of research and outreach activities; (4) review mission and goals of the BMNRI and

discuss how to most effectively reach these goals; and (5) open public forum. All Blue Mountains Natural Resources Institute Board Meetings are open to the public. Interested citizens are encouraged to attend. Members of the public who wish to make a brief oral presentation at the meeting should contact John Tanaka, BMNRI, 1401 Gekeler Lane, La Grande, OR 97850, 503-963-7122, no later than 5:00 p.m. June 7, 1995 to have time reserved on the agenda.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to John Tanaka, Deputy Director, Blue Mountains Natural Resources Institute, 1401 Gekeler Lane, La Grande, Oregon 97850, 503-963-7122.

Dated: May 11, 1995.

Gary Daterman,

Program Manager.

[FR Doc. 95-12408 Filed 5-19-95; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Number AB1-89]

Final Decision and Order Affirming in Part Order of the Administrative Law Judge

In the Matter of: Town & Country Plastic, Inc., Respondent.

Before me for decision is the appeal of the Office of Antiboycott Compliance (OAC) from the decision and order of the Administrative Law Judge (ALJ). The ALJ dismissed as unproven OAC's charge that Town & Country Plastics, Inc. (T&C), violated § 769.2(d)(1)(iv) of the Export Administration Regulations (15 CFR 769.2(d)(1)(iv)) (the "Regulations").

I. Jurisdictional Issues

T&C questions my jurisdiction to entertain the appeal, alleging that the appeal was not timely filed and properly served. After having reviewed the administrative record, I have concluded that I have jurisdiction to entertain the appeal and that the decision of the ALJ should be affirmed in part, as set forth below.

a. Timeliness

The threshold question is whether OAC's appeal was timely filed and

properly served. Section 788.22(b) of the Regulations (15 CFR 788.22(b)) requires the filing of appeals within 30 days of the date on which the order appealed from was served. Applying this rule literally in this case, the appeal should have been filed on or before October 21, 1990, which happened to be a Sunday. T&C correctly points out that there is nothing in the rules explicitly extending the time for filing documents when the last day falls on a Sunday. On the other hand, OAC refers to the Federal Rules of Civil Procedure where Rule 6 provides that, when the last day allowed for filing a document falls on a Sunday, the document may be filed up until the close of business on the next business day. OAC did file its appeal on Monday, October 22, 1990.

I have concluded that the procedural rules relating to antiboycott appeals should be construed in conjunction with the Federal Rules of Civil Procedure. Accordingly, I find that the appeal was timely filed.

b. Service

T&C also argues that OAC failed to serve the appeal in accordance with the rules. In support of its argument, T&C points out that Section 788.6(a) of the Regulations (15 CFR 788.6(a)) requires that all papers served in the administrative proceedings shall be simultaneously served on other parties. While OAC appended a certificate of service to its appeal stating that it had caused a copy of the appeal to be mailed to T&C on October 22, 1990, the envelope in which the appeal was received by T&C was postmarked October 23, 1990, one day later than the last day the appeal could be filed. OAC responds that on October 22, 1990, it did cause the appeal to be mailed in accordance with customary departmental mailing procedures in which all mailings first go to the Department's centralized mailing room, and it cannot control when a mailing will be actually postmarked by the Post Office.

I have concluded that OAC did serve the appeal in a timely fashion. In my opinion, it is sufficient that the appeal was mailed in accordance with standard departmental mailing procedures on the day when the service was required to be accomplished.

II. Furnishing Information

This brings me to the substantive issues. T&C is charged with one violation of Section 769.2(d)(1)(iv) of the Regulations which provides:

No United States person may furnish or knowingly agree to furnish information concerning his or any other person's past, present, or proposed business relationships with any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

In order to establish that T&C violated the Regulations as alleged, OAC must establish that T&C: (1) Is a United States person, (2) who, in connection with its activities in United States commerce, (3) provided information concerning its business relationships with another person known or believed to be restricted from having any business relationship with or in a boycotting country, and (4) with intent to comply with, further, or support an unsanctioned foreign boycott.

The ALJ found that OAC established the first two elements and neither party contests those findings. (Initial Decision and Order, at 15-6.) Accordingly, I affirm that portion of the ALJ's finding.

However, the ALJ found that OAC had not met its burden with regard to elements three and four listed above. This Final Decision and Order addresses the latter two issues.

The record shows that T&C sold some tanks late in 1984 to a distributor in the United States. The distributor thereafter exported the tanks to Saudi Arabia, but there is nothing in the record to indicate that T&C knew that the tanks were to be ultimately exported to Saudi Arabia at the time of the sale to the distributor.

The distributor wrote to T&C in early 1986 advising that its client was experiencing difficulty in clearing T&C tanks through Saudi Arabian customs because of confusion resulting from the similarity between T&C's name and another name, Town and Country York, Inc. (TCY). The letter read in part as follows:

A little more than one year ago we purchased some tanks from you.

Our client is having trouble clearing these goods as the Customs Department of Saudi Arabia is confusing your name with another company. The other company's name is Town & Country York, Inc.

Would you be good enough, if possible, to send us a letter certifying that Town and [sic]¹ Country Plastics, Inc. is not the same as Town and Country York, Inc., if this is the case.

Agency Exhibit 1.

¹ (The *sic* refers to the use of "and" in the correspondence instead of the ampersand which appears in Respondent's corporate name.)

T&C responded to the distributor as follows:

Town & Country Plastics, Incorporated is not associated or related to a company by the name of Town and Country York, Incorporated. Our company is sometimes confused with other companies. We hope this confusion is resolved for you.

Agency Exhibit 2, Hearing Transcript ("Transcript"), at 18-9.

It is this response that OAC charges constitutes a violation of the regulation.

a. Intent element

Both the statutory and regulatory language established intent as an element of the violation charged.

Section 8(a)(1) of the Export Administration Act provides in part:

[T]he President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States.* * *

50 U.S.C. app. § 2407.

The regulations provided in pertinent part:

* * * * *

(2) A United States person has the intent to comply with, further, or support an unsanctioned foreign boycott when such a boycott is at least one of the reasons for that person's decision to take a particular prohibited action. So long as that is at least one of the reasons for that person's action, a violation occurs regardless of whether the prohibited action is also taken for non-boycott reasons. Stated differently, the fact that such action was taken for legitimate business reasons does not remove that action from the scope of this part if compliance with an unsanctioned foreign boycott was also a reason for the action.

(3) Intent is a necessary element of any violation of this part. It is not sufficient that one take action that is specifically prohibited by this part. It is essential that one take such action with intent to comply with, further, or support a foreign boycott. Accordingly, a person who inadvertently, without boycott intent, takes a prohibited action, does not commit any violation.

(4) Intent in this context means the reason or purpose for one's behavior. It does not mean that one has to agree with the boycott in question or desire that it succeed or that it be furthered or supported. But it does mean that the reason why a particular action was taken must be established.

* * * * *

(7) In seeking to determine whether the requisite intent exists, all available evidence will be examined.

Section 769.1(e), 15 CFR 769(e).

To demonstrate evidence of intent, OAC relies on T&C's distributor's letter

plus T&C's prior experience in 1984 with respect to a different transaction.

In May of 1984, T&C received an express package from the Saudi Arabia Israel Boycott Office. The transmittal letter therein explained that the accompanying "boycott questionnaire" was received from "Saudi Arabian Customs Authorities." The top left corner of the "questionnaire" shows that it was issued from the Saudi Regional Israel Boycott Office. (Transcript, at 89-92; Agency Exhibit 5.)

Concerning that incident, T&C's president testified that he was offended by the questionnaire and that, not knowing the applicable Regulations, went to considerable effort to learn what action should be taken. Upon determining the correct procedure, T&C filed a Report of Request for Restrictive Trade Practice or Boycott, Form ITA-621P with OAC. (Initial Decision, at 8-9; Transcript, at 94-95; Agency Exhibit 5.) (Transcript, at 37-8.)

OAC asserts that T&C's experience rendered it sufficiently aware of the antiboycott provisions of the Regulations that T&C would or should have recognized a boycott request thereafter. T&C answers that it did not respond to the 1984 inquiry; that it reported the request to OAC on its own initiative, and that it and the 1986 incident do not relate in any fashion to one another. (Transcript, at 38.)

The legislative history provides some guidance regarding analysis of the circumstances or context in which a request is received:

Intent to comply with a boycott could be presumed, subject to rebuttal, where from all the circumstances it is reasonably clear that the information is sought for boycott enforcement purposes * * *. On the other hand where the information is sought in a context which does not make it reasonably clear that the purpose is boycott related, no illegal intent should be presumed.

S. Rep. No. 95-104, 95th Cong., 1st Sess. 40 (1978), quoted in *Briggs & Stratton v. Baldrige*, 539 F.Supp. 1307, 1313-1314 (E.D. Wis. 1982), *aff'd*, 728 F.2d 915 (7th Cir.) *cert. denied*, 469 U.S. 826 (1984).

Initial Decision and Order, at 14-15.

Referring to the regulatory language, OAC has consistently argued throughout this proceeding that boycott-related intent does not have to be the only or principal reason behind an allegedly prohibited response. A showing that the boycott played some part in T&C's decision to provide the response is enough, according to OAC. While I agree with that interpretation of the regulatory language and believe it to be an appropriate standard or measure of proof, I concur with the ALJ in this case that additional evidence is necessary to

show that the response in issue was provided with the intent to comply with, further, or support an unsanctioned foreign boycott.

The evidentiary record in this case shows that it is not reasonably clear that T&C's purpose in responding was boycott related. The legislative history excerpted above notes that, in such circumstances, illegal intent should not be inferred or presumed. OAC's witness testified that the fact that the inquiry originated from Saudi Arabian Customs would in his experience suggest that the inquiry was probably boycott related, but he could not testify from personal knowledge that the specific inquiry in question was, in fact, boycott related. (Transcript at 13-16.)

By contrast, T&C's witness testified that the inquiry was simply viewed as a routine name clarification request, and it did not occur to T&C that the inquiry might be boycott-related. (Transcript, at 96-98, 106-7.)

There is the fact, as I mentioned earlier, that there were literally dozens of requests that we get each year that people calling up wanting to know if we are Town and Country Diner, Town and Country Realty, Town and Country Hairdressers, whether we are Town and Country Chevrolet. It is spelled in different ways. Sometimes it is T-o-w-n-e. At one time we had a competitor in the tank business who was our main supplier who had the name of County Plastics. There was some confusion to that being somewhat similar to Town and Country Plastics.

Transcript, at 107.

In resolving the question of whether T&C acted with the requisite intent in favor of T&C, the ALJ relied heavily on the credibility of the T&C testimony. While not absolutely binding on me, the ALJ's findings regarding credibility are entitled to great weight. *Todd Pacific Shipyards v. Director, OWCP*, 913 F.2d 1426, 1432 (9th Cir. 1990); *Carrier Corp. v. N.L.R.B.*, 768 F.2d 778, 782 (6th Cir. 1985). See, *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474 (1951).

The Administrative Law Judge distinguished the two incidents, noting:

[T]he present case differs significantly from the events in 1984. In 1984, the inquiry was issued from the Saudi Regional Israel Boycott Office, a division of the Saudi Customs (Agency Ex. 5). *Both the office of origin and the content of the questionnaire affirmatively indicated a boycott relationship.* By comparison, the 1986 inquiry referred only to the Saudi Arabia Customs Service and the single inquiry referenced only a confusion of names. The evidence presented by Respondent establishes that such confusion was routine because of the frequency of the Town & Country prefix in the title of many businesses. At the hearing many pages from the nearby New York telephone directory were introduced which show a great

proliferation of the name "Town & Country" among businesses, and Respondent Mr. Mermel testified of frequent confusion by mail and telephone respecting the name (Emphasis added).

Initial Decision and Order, at 12-13.

T&C's witness testified that he was concerned with preserving the company's trademark in circumstances where companies constantly confuse T&C with similarly named entities. He stated that he specifically thought the reference to Saudi Customs had something to do with billing for duties, as he frequently encountered similar problems with the U.S. Customs Service. He averred that he would never have answered the inquiry had he suspected it to be boycott-related, as demonstrated by his conduct in reporting the 1984 incident that clearly was boycott-related to the Department of Commerce and in *not answering the inquiry*. The witness also testified concerning profound personal and family reasons for not wanting to do anything to comply with such unsanctioned boycott.

(Transcript, at 92-98; Initial Decision, at 8-10.)

OAC has failed to advance reasons sufficient for discounting the credibility attributed to the T&C testimony by the ALJ.

Accordingly, I AFFIRM the ALJ's finding that OAC did not meet its burden of proof on the intent element.

b. Knowledge Element

The ALJ also based his decision on a separate finding that OAC had failed to meet its burden of proof on another element of the violation charged. Specifically, the ALJ found that OAC failed to meet its burden of proof regarding a showing that T&C knew or believed that TCY was restricted from having any business relationship in a boycotting country, hereafter referred to as the "knowledge element". OAC argues that the ALJ misconstrued the nature of the proof required on the knowledge element.

Having decided that the ALJ should be affirmed on account of his decision relative to the intent element, however, it is unnecessary to resolve the controversy regarding the knowledge element. Accordingly, I have decided not to address that issue in this case. Should a later case turn on that issue, however, this office will not treat the ALJ's decision in this case as a precedent and will resolve the issue on the merits as presented in any later case.

Based on review of the administrative record and for the reasons stated above, the order of the ALJ dismissing the

charge against T&C is hereby affirmed in part.

Dated: May 16, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 95-12497 Filed 5-19-95; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 23-95]

Proposed Foreign-Trade Zone—Ocala/ Marion County, Florida; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Economic Development Council, Inc. (of Ocala/Marion County) (a Florida non-profit corporation), to establish a general-purpose foreign-trade zone at sites in Ocala and Marion County, Florida. Designation of the Ocala Regional Airport as a Customs user fee airport is being requested under a separate application to the U.S. Customs Service. The FTZ application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 15, 1995. The applicant is authorized to make the proposal under Section 288.36, Florida Statutes Annotated (1993).

The proposed zone would consist of 5 sites (3,634 acres) in Ocala/Marion County: *Site 1* (Ocala Regional Airport complex—1,532 acres)—1770 SW 60th Avenue, Ocala; *Site 2* (Ocala Airport Commerce Center—92 acres)—intersection of SW 60th Avenue and Highway 40, Ocala; *Site 3* (Oaks Industrial Center—225 acres)—Highway 40, 1 mile west of I-75, Ocala; *Site 4* (Dunnellon/Marion County Airport and Commerce Center—1,706 acres)—15072 SW 111th St, Dunnellon, Marion County; and, *Site 5* (Silver Springs Shores Industrial Park—79 acres)—County Road 464, Marion County. Site 1 is owned and operated by the City of Ocala. Sites 2, 3 and 5 are privately owned, and Site 4 is owned and operated by the Marion County Commission.

The application contains evidence of the need for zone services in the Ocala/Marion County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as laboratory equipment, water meters, flow measuring instruments, furniture and electronic products. Specific manufacturing approvals are not being sought at this