essential inputs into the gross domestic product accounts, while the orders data are direct inputs into the leading economic indicator series. The survey also provides valuable and timely data for economic planning and analysis to business firms, trade associations, research and consulting agencies, and academia on the domestic manufacturing sector.

In this request, the total annual burden hours are adjusted downward due to decreasing panel size. Since the M3 survey is a voluntary report, we are experiencing declining coverage, but hope to partially offset this decrease through a special 1997 mailout to 650 nonreporters in our coverage improvement panel.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 20, 1997.

W. Dan Haigler,

Chief, Management Control Division, Office of Management and Organization.

[FR Doc. 97–16843 Filed 6–26–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Number 97–BXA–9]

Action Affecting Export Privileges; Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, Export Materials, Inc. and Thane-Coat, International, Ltd.; Decision and Order

IN THE MATTER OF:

Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477,
Jerry Vernon Ford, President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and with an address at 7707 Augustine Drive, Houston, Texas 77036,
Preston John Engebretson, Vice-President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and with an address at 8903 Bonhomme Road, Houston, Texas 77074,
Export Materials, Inc., 3727 Greenbriar Drive, No. 108, Stafford, Texas 77477,
and
Thane-Coat, International, Ltd., Suite C, Regent Centre, Explorers Way, P.O. Box F–40775, Freeport, The Bahamas,

Respondents

The respondents appeal from an order issued on May 5, 1997, by the Acting Assistant Secretary for Export Enforcement which temporarily denies their U.S. export privileges pursuant to Section 766.24 of the Export Administration Regulations (15 CFR Parts 730–74). I have reviewed the files and records of this matter including the Recommended Decision and Order of the Administrative Law Judge which is attached hereto. Based upon the findings and conclusions of the Administrative Law Judge, I find that the Acting Assistant Secretary's decision to issue the order was fully supported by the facts and is consistent with the applicable law. Accordingly, the issuance of the Order Temporarily Denying Export Privileges to Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, Export Materials, Inc., and Thane-Coat International, Ltd., is affirmed.

Dated this 19th day of June, 1997, Washington, D.C.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended Decision and Order

Preliminary Statement

This proceeding is an appeal from an Order Temporarily Denying Export Privileges, and brought pursuant to the Export Administration Act of 1979, (hereinafter ''The Act''), 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1997), and provisions of Section 766.24 of the Export Administration Regulations codified at 15 CFR Parts 730–774 (1997). On May 1, 1997, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce, (hereinafter ''BXA''), requested that the Acting Assistant Secretary for Export Enforcement issue an order, (hereinafter ''TDO''), temporarily denying all United States export privileges to Respondents. The Acting Assistant Secretary, on May 5, 1997, issued the TDO on an *ex parte* basis. On May 23, 1997,[1] the Respondents appealed this order to the Administrative Law Judge.

[1] The Appeal was not received in the Office of the Administrative Law Judge until May 28, 1997.

Findings of Fact[2]

1. Thane-Coat was founded in 1982 as a sole proprietorship engaged in the business of manufacturing and applying industrial paints and coatings (Respondent's Exhibit 1, hereinafter ''Resp. Ex.'').

2. The company was incorporated in Texas in 1984. *(Id.).*

3. Thane-Coat markets its products through direct sales, commission representatives, distributors, and license agreements. The products include: coatings for steel pipes; materials for the repair of steel pipe coatings; epoxy materials for coating sewer manholes; coatings for concrete pipes; liquid casting materials; truck-bed liner coatings; fiberglass replacement materials for automotive after market products; and, coal tar pipe coating paint. *(Id.).*

4. During 1991, Respondents Ford and Engebreston sought a contract with the Great Man-Made River Authority of the Government of Libya to provide coating needed for the PCCP for the second stage of the Great Man-Made River Project. (Government's Exhibit 1, hereinafter ''Gov. Ex.'').

5. Thane-Coat also sought the advice of counsel regarding corporate restructuring. *(Id.).*

6. On September 5, 1991, Thane-Coat's counsel, in memorandum, advised Respondent to apply for a license to sell products to Libya. *(Id.).* Respondents did not do so.

7. On September 20, 1991, Respondent Engebreston contacted the Bahamian Transportation Office, stating that he was interested in establishing a ''manufacturing/blending facility'' in the free trade area of Freeport. *(Id.).*

8. On, or about, October 9, 1991, the name ''Thane-Coat International Limited'' was reserved as a Bahamian Ordinary Company. *(Id.).*

9. In Mid-1992, Respondents Ford and Engebreston traveled to Libya to purse a contract to provide coating for the external surface of the PCCP for the second phase of the Great Man-Made River Project. This contract was not procured. *(Id.).*

10. On, or about, March 17, 1993, Respondents Ford and Engebreston incorporated Thane-Coat International Limited in the Commonwealth of the Bahamas. *(Id.).*

11. During 1995 and the first half of 1996, a significant portion of the company's revenues was derived from exports. (Resp. Ex. 1).

[2] Neither Respondent nor Agency submitted Proposed Findings of Fact. As a result, no rulings are made hereon.

12. On September 11, 1995, TIC, Ltd. purchased 256 drums of a corrosive, synthetic resin (hereinafter ''coating materials''), from Everest Coatings of Spring, Texas, a manufacturer of chemicals. (Gov. Ex. 1 at Ex. 4).

13. The cosignee of the shipments was Harkmel International in Middlesex, United Kingdom. *(Id.).*

14. On, or about, September 23, 1995, the coating material was exported from Houston Texas to Felixstowe, U.K., in four 40-foot containers, each containing 64 pallets. (Gov. Ex. 1 at Ex. 4).

15. In the U.K., the coating material was unloaded and taken to a warehouse by a U.K. freight forwarder, where it was repackaged into four 20-foot containers before transfer to Harwich, U.K. *(Id).*

16. At Harwick, the four 20-foot containers were loaded aboard the ''Norlandia'' for delivery to Marsa El Brega, Libya. *(Id).*

17. On July 5, 1996, the Respondents were targeted in a federal investigation regarding the alleged export of concrete pipe coating materials and technology to Libya when a search warrant was executed on Thane-Coat's business premises and a large volume of documents was seized in relation to Respondents' business Resp. Ex. 1).

18. On April 28, 1997, a civil forfeiture action was initiated by the Government in rem against certain real and personal property owned by the Respondents. *(Id).*

19. The complaint filed therein alleged that the Respondents had performed one or more contracts to provide concrete pipe coating materials and technology to the government of Libya between January 1994 and July 1996. It is further alleged that the materials were sold through certain Bahamian companies with knowledge that they would be used in connection with the construction of a large-scale aqueduct project designed to transfer freshwater from internal regions of Libya to cities related to its coast. *(Id).*

20. On April 28, 1997, United States Magistrate Judge for the Southern District of Texas, authorized the arrest and seizure of the defendant property. This order has been appealed, the resolution of which is still pending. *(Id).*

21. On May 5, 1997, based upon an ex parte application of the Bureau of Export Administration's Office of Enforcement, the Acting Assistant Secretary for Export Enforcement issued a TDO to the Respondents.

22. The TDO was issued based upon the belief of BXA that the Respondents had made approximately 100 shipments of U.S.-origin pipe coating materials, machines, and parts to a concern in Libya during the period from June 1994 through July 1996, for use in coating the internal surface of pre-stressed concrete cylinder pipe for the Government of Libya's Great Man-Made River project. (Gov. Ex. 1).

23. The TDO bars Respondents from further participation in any exports from the United States that are subject to the EAR, or engaging in any other activity that is subject to the EAR for 180 days. Gov.Ex. 1).

Ultimate Findings of Fact and Conclusions of Law

1. The Acting Assistant Secretary's decision to issue a TDO is supported by the record.

2. A violation is ''imminent'' if ''the general circumstances of the matter under investigation demonstrate a likelihood of future violations. To indicate the likelihood of future violations, BXA may show that the violation under investigation ''is significant, deliberate, covert and/or likely to occur again.''

3. The Administrative Law Judge does not have the authority to decide whether or not the Regulations as applied against the Respondents violate Due Process. *Frost* v. *Weinberg,* 375 F. Supp. 1312, 1320, (E.D.N.Y 1974), rev'd on other grounds, 515 F.2d 57 (2d Cir. 1975), cert. denied, 424 U.S. 958 (1976).

4. The Administrative Law Judge does not have the authority to determine whether or not the deprivation of Respondent's export privileges violates their right to procedural due process. *D'Amico* v. *Schweiker,* 698 F.2d 903, 906 (7th Cir. 1983); *Steiberger* v. *Heckler,* 615 F. Supp. 1315, 1386 (S.D.N.Y. 1985); *Association of Administrative Law Judges* v. *Heckler,* 594 F. Supp. 1132, 1141 (D.D.C. 1984).

5. The Administrative Law Judge does not have the authority to decide whether or not the TDO will prevent further proceedings to impose additional penalties on respondents for any alleged past violations and Fifth Amendment concerns. *Frost* v. *Weinberg,* 375 F. Supp. 1312, 1320. (E.D.N.Y 1974), rev'd on other grounds, 515 F.2d 57 (2d Cir. 1975), cert. Denied, 424 U.S. 958 (1976).

Opinion

1. Due Process and the Validity of the Regulations

Respondents initially urge vacation of the Temporary Denial of Export Privileges Order by averring that the Regulations, as applied to Respondents are inconsistent with the Act and the Constitution. First, Respondents contend that the issuance of a Temporary Denial Order based upon the regulatory requirement of a showing that a violation is ''imminent'', is in conflict with the Terms of the Act, and inconsistent with its intent. Second, Respondents contends that the allowance of the imposition of a TDO based upon ''the general circumstances of the matter under investigation,'' [3] or because the alleged violation is significant instead of technical is unconstitutionally vague and violates Due Process. Third, Respondents argue that the imposition of a TDO on an ex parte basis denies the Respondents their rights to procedural Due Process. Lastly Respondents contend that due to the Double Jeopardy clause of the Fifth Amendment, the TDO will prevent any further proceedings to impose additional penalties on Respondents for any alleged violations of the past.

Regardless of the validity, or invalidity, of these arguments, the Administrative Law Judge does not have the authority to consider them. See *Frost* v. *Weinberg,* 375 F. Supp. 1312, 1320, (E.D.N.Y. 1974), rev'd on other grounds, 515 F.2d 57 (2d Cir. 1975), cert. denied, 424 U.S. 958 (1976) (holding that an administrative law judge is precluded from passing upon the constitutionality of the very procedures he is called upon to administer);. See also *D'Amico* v. *Schweiker,* 698 F.2d 903, 906 (7th Cir. 1983); *Steiberger* v. *Heckler,* 615 F. Supp. 1315, 1386 (S.D.N.Y. 1985); *Association of Administrative Law Judges* v. *Heckler,* 594 F. Supp. II 32, 1141 (D.D.C. 1984). Wherefore, consideration of these arguments will not be undertaken.

2. The Temporary Denial Order and the Definition of ''Imminent''

Respondents contend that the purpose of this proceeding ''is not to determine whether any of the Respondents ever allegedly violated the Act, the EAR, or any order of license issued thereunder,'' but rather to determine whether ''BXA has proved that it is entitled to emergency, *ex parte* relief to prevent Respondents from commiting future, imminent, violations of the Act, the EAR, an order or a license.'' (Resp. Brief at 1). Respondents further contend that in so determining this issue, the definition of the term ''imminent'' should be ''likely to happen without delay.'' As a result, Respondents aver that a TDO may only be issued where violations are likely to happen presently and cannot be issued for past, suspected violations of the Act. I cannot agree with this statement of the issue at hand.

The Regulations provide that a Temporary Denial of Export Privileges

[3] (Respondent's Brief at 16.).

may be granted if the Secretary finds that the order is necessary in the public interest to prevent an imminent violation. 15 CFR 766.24. A Respondent may appeal the imposition of any such TDO on the grounds that the finding that the order is necessary in the public interest to prevent an imminent violation is unsupported. 15 CFR 766.24(e)(4). The relevant issue at hand, therefore, is whether or not the finding that a TDO was necessary to prevent an ''imminent'' violation is supported.

The Regulations provide that a violation is ''imminent'' if:

[T]he general circumstances of the matter under investigation demonstrate a likelihood of future violations. *To indicate the likelihood of future violations, BXA may show that the violation under investigation is significant, deliberate, covert and/or likely to occur again,* rather than technical or negligent, and that it is appropriate to give notice to companies in the United States and abroad to ceased along with the person in U.S.-origin items in order to reduce the likelihood that a person under investigation continues to export or acquire abroad such items, risking subsequent disposition contrary to export control requirements.

15 CFR 766.24(b)(3) (emphasis added).

The BXA introduced the following in suppport of its argument that the violation under investigation is significant, deliberate and covert. First, BXA avers, and I concur, that the activities under question involved exports of U.S.-origin commodities to Libya. Libya, is a country which is subject to restrictive economic controls. See Libyan Sanction Regulations, 31 CFR Part 550 (1996). Under the regulation virtually all exporting and re-exporting to Libya are monitored and controlled, requiring a license issued by the Office of Foreign Assets Control (hereinafter ''OFAC''). This off ice has no record of Thane-Coat, Inc. or TIC, Ltd. ever requesting such a license. Gov. Ex. 1, Ex. 15).

Second, an export scheme was undertaken to complete the export of pipe coating materials to Libya. Thane-Coat, Inc. through Ford and Engebretson, using TIC, Ltd. as the exporter of record, obtained coating products from U.S. manufacturers and had those items delivered to U.S. ports for export to Fleixstow, United Kingdom, (Gov. Ex. 1). Once in the U.K., Harkmel International ''re-stuffed'' the cargo, unloading it from 40-foot containers at the U.K. port of Felixstowe and reloading it into 20-foot containers. These containers were re-stuffed based upon the advice from Harkmel that use of the same containers would be ''a flag for person following movements to country.'' (Gov. Ex. 1). The repackaged containers were then sent to Marsa El Brega, Libya. *(Id.).*

Based upon the above evidence, BXA has shown that Respondents committed a violation that was both significant, deliberate and covert. In light of this, the Acting Assistant Secretary's decision to issue a TDO is clearly supportable.

Conclusion

In light of the fact that Respondents entered into a scheme of violations which were not only deliberate, but also covert, it is hereby strongly recommended that the decision of the Acting Assistant Secretary to temporarily deny export privileges to the Respondents for a period of 180 days be affirmed.

Recommendation

It is Hereby Recommended That the issuance of the Order Temporarily Denying Export Privileges to Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, Export Materials, Inc. and Thane-Coat International, Ltd., *be Affirmed.*

Dated on the 11th day of June 1997, Baltimore, Maryland.

Hon. Joseph N. Ingolia,

Chief Administrative Law Judge, United States Coast Guard.

Certificate of Mailing

I hereby certify that I forwarded the attached document by federal express to the following persons:

Jeffrey M. Joyner, Esq., Office of Chief Counsel for Export Administration, Bureau of Export Administration, United States Department of Commerce, H3839, 14th and Constitution, NW., Washington, DC 20230.

Samuel J. Buffone, Thomas B. Smith, Ropes & Gray, 1301 K Street, NW., Suite 800 East, Washington, DC 20005.

Undersecretary for Export Administration, Bureau of Export Administration, United States Department of Commerce, 14th and Constitution, NW., Washington, DC 20230.

Dated this 11th day of June 1997, Baltimore, Maryland.

Joi L. Johnson,

Legal Assistant to Chief Judge Ingolia.

[FR Doc. 97–16822 Filed 6–26–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Lamont-Doherty Earth Observatory of Columbia University Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–033. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Palisades, NY 10964. *Instrument:* ICP Mass Spectrometer, Model Plasma 54. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* See notice at 62 FR 27237, May 19, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The *foreign instrument provides:* (1) an ICP ion source, (2) a double focusing magnet sector mass analyzer and (3) a detection system equipped with nine Faraday detectors and a Daly detector. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–16932 Filed 6–26–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.