Signed at Washington, DC, this 16th day of June 2006.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. E6–10220 Filed 6–28–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

[Docket Nos. 04–BIS–25 and 04–BIS–26]

Under Secretary for Industry and Security; In the Matter of: BiB Industrie-Handel Dipl.Ing M. Mangelsen GmbH and Malte Mangelsen Respondents; Decision and Order

On November 17, 2004, the Bureau of Industry and Security (''BIS'') initiated two separate administrative actions against BiB Industrie-Handel Dipl.Ing M. Mangelsen GmbH (''BiB'') and Mr. Malte Mangelsen (''Mangelsen''), in his individual capacity. BIS alleged that BiB and Mangelsen each committed nine violations of the Export Administration Regulations (Regulations) [1], issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (the Act).[2]

The charges against each Respondent are as follows:

Charge 1 alleges that from September 2001 and continuing through June 2002, BiB and Mangelsen conspired and acted in concert with others to arrange for the export from the United States to Libya of items subject to the Regulations that required U.S. Government authorization in violation of the Regulations. The items were spare parts for hydraulic shears. This was alleged as a violation of § 764.2(d) of the Regulations.

Charge 2 alleges that during the same period, BiB and Mangelsen took actions with intent to evade the Regulations by obtaining the spare parts that are the subject of Charge 1 from a U.S. manufacturer, through co-conspirators in the United States and the United Kingdom, for eventual shipment to Libya without obtaining the required U.S. Government authorization. This activity was alleged as a violation of § 764.2(h) of the Regulations.

Charges 3 and 4 allege that on two separate occasions on September 30, 2002, Mr. Mangelsen, on behalf of BiB, took actions with the intent to evade the Regulations by forwarding to the U.S. manufacturer requests for price and shipping information for spare parts intended for Libya without obtaining the required U.S. Government authorizations. These actions were alleged by BIS as a violation of § 764.2(h) of the Regulations.

Charges 5 and 6 allege that on two occasions, February 14 and 26, 2003, Mangelsen and BiB took actions with the intent to evade the Regulations by using an ''Enquiry'' to solicit pricing and shipping information for spare parts destined for Libya without obtaining the required U.S. Government authorization. In this instance, the parts were for pumping equipment located in a project in Libya. This was alleged as a violation of § 764.2(h) of the Regulations.

Charge 7 alleges that on May 12, 2003, Mangelsen, on behalf of BiB, took actions with intent to evade the Regulations by soliciting a government informant in the United States to contact a U.S. company for pricing and shipping information for spare parts destined for Libya without obtaining the required U.S. Government authorization. The parts involved in this charge were cone crusher and screen plant spare parts. This was a violation of § 764.2(h) of the Regulations.

Charges 8 and 9 allege that on two occasions on June 6, 2003, Mangelsen, on behalf of BiB, took actions with the intent to evade the Regulations by soliciting a government informant to contact U.S. companies for pricing and shipping information for two separate orders for spare parts destined for Iran without obtaining the required U.S. Government authorization. These activities were also alleged as violations of § 764.2(h) of the Regulations.

On July 12, 2005, Mangelsen, on behalf of himself and BiB, filed an answer to BIS's charging letter in which he denied any wrongdoing. On January 9, 2006, the Administrative Law Judge (''ALJ'') issued an Order consolidating the cases against BiB and Mangelsen in the interest of judicial economy. On February 9, 2006, the ALJ issued a Modified Scheduling Order that established a time frame for the submission of evidence and arguments by the parties. Pursuant to the Order, on March 10, 2006, BIS filed a Memorandum and Submission of Evidence to Supplement the Record. On April 11, 2006, Mangelsen, on behalf of himself and BiB, filed an Answer to BIS's March 10, 2006, Memorandum and Submission of Evidence. On April 25, 2006, BIS submitted a Rebuttal Memorandum to Mangelsen's April 11, 2006 Answer.

Thereafter, on May 23, 2006, based on the record before him, the ALJ issued a Recommended Decision and Order in which he found that BiB and Mangelsen each committed seven violations of the Regulations. Specifically, the ALJ found BiB and Mangelsen committed the offenses contained in Charges 1–7. The ALJ, however, found that BIS did not prove by a preponderance of the evidence Charges 8–9. The ALJ recommended each Respondent be assessed a $77,000 civil penalty and denied export privileges for a period of twenty years. In responsive pleadings, BIS did not contest the findings and recommendations made by the ALJ. In a letter dated May 29, 2006, Respondents continued to claim no wrongdoing.

The ALl's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under § 766.22 of the Regulations. I find that the record supports the ALl's findings of fact and conclusions of law. BiB and Mangelsen are each liable for violating Charges 1–7. Charges 8 and 9 have not been established by a preponderance of the evidence. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations, the lack of mitigating circumstances, and the importance of preventing future unauthorized exports.

I do note, however, several modifications to the ALJ's Recommended Order. First, in footnote 6 of the ALJ's decision, he states that since the charges in this case fall under Section 760 of the Regulations, ''an alternative definition for 'person' found in 15 CFR 760.1(a) will be used when analyzing the individual charges.'' The charges in this case do not fall under Section 760 of the Regulations, which is the ''Restrictive Trade Practices or Boycotts'' chapter of the Regulations. The appropriate definition of the term ''person'' to be used in deciding this

[1] The Regulations are currently codified at 15 CFR Parts 730–774 (2006). The charged violations occurred between 2001 and 2003. The Regulations governing the violations at issue are found in the 2001 through 2003 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2001–2003)). The 2006 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2005 (70 FR 45273 (August 5, 2005)) has continued the Regulations in effect under IEEPA.

case is the one found in § 772.1 of the Regulations (15 CFR 772.1). I also note that on several instances the ALJ cites to 15 CFR 160.1(a) when he discusses the term ''person''. The Code of Federal Regulations does not contain a 15 CFR 160; that section of the CFR is ''Reserved''. I assume these are typographical errors and that the ALJ intended to cite to 15 CFR 760.1(a) to which he referred in footnote 6. For the reasons previously discussed, the correct definition of ''person'' for the purposes of deciding this case is the one contained in 15 CFR 772.1 of the Regulations.

Second, the ALJ inserts knowledge as an element that the BIS needed to prove to support the conspiracy in Charge 1 (*See* ALJ Recommended Order, page 18). Case law has established that knowledge is not necessarily an element in a conspiracy offense. *In U.S.* v. *Feola,* 420 U.S. 671 (1975), the Supreme Court ruled that, if proof of knowledge is not necessary to establish a substantive offense, such knowledge does not have to be proved to establish conspiracy to commit that offense. In this case, the substantive offense would have been the export of hydraulic shears spare parts to Libya without the proper export authorization, a violation of § 764.2(a) of the Regulations. Case law has held that knowledge is not an element of proof necessary to establish a violation of § 674.2(a). *In the Matter of Yu Yi. 03–BIS–11); Iran Air* v. *Kugleman.* 996 F.2d 1253 (D.C. Cir., 1993). Therefore, the ALJ was not correct in his discussion of knowledge as an element of proof in this case.

Neither of the matters discussed above affect the findings and conclusions made by the ALJ in this case. Based on my review of the entire record, I affirm the findings of fact and ultimate conclusions of law in the ALJ's Recommended Decision and Order, consistent with this Decision.

Accordingly, *It is therefore ordered,*

First, that a civil penalty of $77,000 is assessed against each Malte Mangelsen and BiB Industrie-Handel Dipl.Ing M. Mangelsen GmbH which shall be paid to the U.S. Department of Commerce within thirty days from the date of entry of this Order.

Second, pursuant to the Debt Collections Act of 1982, as amended, 31 U.S.C. 3701–20E, the civil penalty owed under this Order accrues interest as provided and if payment is not made by the due date specified, Mr. Mangelsen and BiB will be assessed, in addition to the full amount of the civil penalty and interest, a penalty and administrative charge.

Third, that, for a period of twenty years from the date of entry of this Order, Malte Mangelsen, P.O. Box 10 55 47, Bremen, Germany, 28055, and when acting for or on his behalf, his representatives, agents, assigns, or employees and BiB Industrie-Handel Dipl.Ing M. Mangelsen GmbH, P.O. Box 10 55 47, Bremen, Germany, 28055, and all of its successors and assigns, and, when acting for or on behalf of BiB, its officers, representatives, agents, and employees (hereinafter collectively referred to as ''Denied Persons''), 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 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.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons 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 Persons 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 Persons of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Persons 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 Persons, 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.

Fifth, 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.

Sixth, 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.

Seventh, that this Order shall be served on the Denied Persons and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register.**

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

Dated: June 23, 2006.

David H. McCormick,

Under Secretary of Commerce for Industry and Security.

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Bureau of Industry and Security, Export Enforcement Team, Room H–6883, 14th Street and Constitution Avenue, NW., Washington, DC, Attn: Sharon Gardner.

Recommended Decision and Order

Before: HON. PETER A. FITZPATRICK Administrative Law Judge, United Stated Coast Guard.

Appearances: GREGORY MICHELSEN and MELISSA B. MANNINO.

For the Bureau of Industry and Security.

MALTE MANGELSEN.

For Respondents—Pro se.

II. Summary of Decision

This case involves covert operations occurring in 2001 through 2003 by Respondents BiB Industrie-Handel Dipl.Ing M. Mangelsen GmbH, of Bremen, Germany (''BiB'') and its Managing Director, Mr. Malte Mangelsen of Bremen, Germany (''Mr. Mangelsen''), to unlawfully export spare shear press machine parts to Libya by routing the shipments through Europe in violation of the Export Administration Act of 1979 (''Act'' or ''EAA'') and the Export Administration Regulations (''EAR''). *See* 50 U.S.C. app. §§ 2401–20 (1991), *amended by* Pub. L. 106–508, 114 Stat. 2360 (Supp. 2002) (EAA); 15 CFR Parts 730–74 (1997–1999) (EAR or Regulations). The EAA and its underlying regulations establish a ''system of controlling exports by balancing national security, foreign policy and domestic supply needs with the interest of encouraging export to enhance * * * the economic well being'' of the United States. *See Times Publ'g Co.* v. *United States Dep't of Commerce,* 236 F.3d 1286, 1290 (11th Cir. 2001); *see also* 50 U.S.C.. app. §§ 2401–20.[1]

Here, the Bureau of Industry and Security, United States Department of Commerce (''Bureau'' or ''BIS'') alleges nine violations of the EAR by Respondents and seeks denial of the Respondents' export privileges from the United States for a period of 20 years as well as assessment of $99,000 in civil penalties for each Respondent, Mr. Mangelsen and BiB.

The Bureau has presented substantial, reliable and probative evidence on the record to support the first seven charges. Mr. Mangelsen filed two Answers but did not dispute the contents of the record. Most of the evidence in this record is therefore uncontested. The remaining charges (Charges 8–9), however, are not found proved. There is not a preponderance of the evidence to establish that Respondents took actions with intent to evade the Bureau's Regulations requiring a license to ship to Iran.

Overall, BIS' s request for a Denial Order and assessment of civil penalties is well founded, but the civil penalty amounts have been reduced. Since only seven of the nine violations are proved, a $77,000 civil penalty against each Respondent is deemed appropriate. Additionally, a twenty year Denial Order against each Respondent is ordered.

III. Preliminary Statement

On November 17, 2004, BIS initiated two separate administrative actions against BiB and Mr. Mangelsen, in his individual capacity. The Bureau alleged that BiB and Mangelsen both committed nine violations of the EAR by conspiring to violate the Regulations and taking actions to evade the Regulations.[2]

The charges against each Respondent are as follows:

Charge 1 alleges that from September 2001 and continuing through June 2002, BiB and Mr. Mangelsen conspired and acted in concert with others to violate the Regulations by arranging for the export from the United States to Libya of items subject to the Regulations without the required U.S. Government authorizations.

Charge 2 alleges that during the same period, BiB and Mangelsen took actions with intent to evade the Regulations by obtaining spare parts from U.S. manufacturer through an intermediary in the United Kingdom for eventual shipment to Libya without obtaining the required U.S. Government authorization.

Charges 3 and 4 allege that on two occasions on September 30, 2002, Mr. Mangelsen, on behalf of BiB, took actions with the intent to evade the Regulations by forwarding to the U.S. based supplier requests for price and shipping information for spare parts intended for Libya without obtaining the required U.S. Government authorization.

Charges 5 and 6 allege that on two occasions, on February 13 and 26, 2003, Mangelsen and BiB took actions with the intent to evade the Regulations by using an ''Enquiry'' to solicit pricing and shipping information for spare parts destined for Libya without obtaining the required U.S. Government authorization.

Charge 7 alleges that on May 12, 2003, Mr. Mangelsen, on behalf of BiB, took actions with intent to evade the Regulations by soliciting a government informant in the United States to contact a U.S. company for pricing and shipping information for spare parts destined for Libya without obtaining the required U.S. Government authorization.

Charges 8 and 9 allege that on two occasions on June 6, 2003, Mr. Mangelsen, on behalf of BiB, took actions with the intent to evade the Regulations by soliciting a government informant to contact U.S. companies for pricing and shipping information on two separate orders for spare parts destined for Iran without obtaining the required U.S. Government authorization.[3]

On July 12, 2005, Mr. Mangelsen, on behalf of himself and BiB, filed an Answer to the Bureau's charging letter denying liability for the above referenced violations. His primary defense is based on lack of the Bureau's jurisdiction and lack of applicability of the Regulations.

On August 5, 2005, the Coast Guard Chief Administrative Law Judge assigned the undersigned to preside over this matter and ordered that if ''BIS does not demand a hearing and/or Respondent does not demonstrate good cause for failing to request a hearing, this matter shall be adjudicated under 15 CFR 766.15 and proceed without a hearing.'' BIS did not request a hearing and Respondents has not shown good cause for failing to request a hearing.

Subsequently, on January 9, 2006, an Order Granting Consolidation and Scheduling Order was issued consolidating the cases involving Mangelsen and BiB. Thereafter, on February 9, 2006, the undersigned issued an Order Modifying Scheduling Order ordering the parties to submit such ''affidavits, declarations, depositions, admissions, answers to interrogatories, or stipulations to supplement the present record.'' The February 9, 2006 Order further placed the parties on notice that the case would

[1] The EAA and all regulations under it expired on August 20, 2001. *See* 50 U.S.C. app. 2419. Three days before its expiration, the President declared that the lapse of the EAA constitutes a national emergency. *See* Exec. Order. No. 13222. Exercising authority under the International Emergency Economic Powers Act (''IEEPA''), 50 U.S.C. 1701–1706 (2002), the President maintained the effectiveness of the EAA and its underlying regulations throughout the expiration period by issuing Exec. Order. No. 13222 on August 17, 2001. *Id.* The effectiveness of the export control laws and regulations were further extended by Notices issued by the President in 2002, 2003, 2004, and 2005. *See* 67 FR 53721 (Aug. 14, 2002). *See also* 68 FR 47833 (Aug. 7, 2003); 69 FR 48763 (Aug. 6, 2004); 70 FR 45273 (Aug. 2, 2005). Courts have held that the continuation of the operation and effectiveness of the EAA and its regulations through the issuance of Executive Orders by the President constitutes a valid exercise of authority. *See Wisconsin Project on Nuclear Arms Control* v. *United States Dep't of Commerce,* 317 F.3d 275, 278–79 (D.C. Cir. 2003); Times Publ'g Co. 236 F.3d at 1290 (2001).

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2005). The charged violations occurred from 2001 to 2003. The Regulations governing the violations at issue are found in the 2001 to 2003 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2001–2003)). The 2005 Regulations establish the procedures that apply to this matter.

[3] The charge sheet headings for Charges 8 and 9 reference Libya whereas the allegations contained therein and in the Agency's Memorandum reference Iran.

proceed without a hearing and that ''proceeding without a hearing does not relieve the parties from the necessity of proving the facts and supporting their charges or defenses.''

On March 10, 2006, the Bureau filed a Memorandum and Submission of Evidence to Supplement the Record moving for the undersigned to recommend to the Under Secretary of Commerce for Industry and Security (''Under Secretary'')[4] that the export privileges of BiB and Mr. Mangelsen be denied for twenty (20) years and that BiB and Mangelsen each be ordered to pay a $99,000 civil penalty to the Department of Commerce.

On April 11, 2006, Mr. Mangelsen, on behalf of himself and BiB, filed an Answer to the Bureau's March 10, 2006 Memorandum and Submission of Evidence to Supplement the Record. With respect to all charges, Mangelsen asserted the overall defense of lack of jurisdiction and applicability stating that ''BiB * * * as a German Company has not violated the U.S. Laws.'' With respect to Charge 1, Mangelsen contended that because all parties involved ''knew, to which destination these parts should be delivered, there was of course no Conspiracy involved.'' With respect to Charges 2–7, Mangelsen contended that the U.S. company ''knew that this machine was located in Libya'' and that it should have informed him that it ''can't make the quote and that this Enquiry would have been closed,'' but instead that the U.S. company ''quoted knowing that they violated U.S. export regulations.'' Mangelsen further contended that the ''suggestion of Mr. Flanders was a trap to lock Mr. Mangelsen to prison for judging him guilty and issuing a penalty.''

Mr. Mangelsen did not respond to Charges 8–9 in his August 11, 2006 Answer. He did, however, indicate in his July 12, 2005 Answer to the initial Bureau complaint that ''BiB definitely never ever has supplied anything to the Iran.'' Mangelsen requested that ''no further actions be taken against [Mangelsen or] BiB.''

On April 25, 2006, the Bureau filed a Rebuttal Memorandum to Mangelsen's April 11, 2006 Answer. The Rebuttal Memorandum incorporates the same facts as the initial Complaint and adds a Rebuttal to Mangelsen's defense of entrapment. BIS argues that Mr. Mangelsen waived his right to this defense and, in the alternative, Mangelsen was predisposed to commit the prohibited conduct and therefore is barred from using the defense of entrapment.

[4] Pursuant to Section 13(c)(1) of the Act and Section 766.17(b) (2) of the Regulations, in export control enforcement cases, the ALJ issues a recommended decision and order which is reviewed by the Under Secretary, who issues the final decision for the agency.

IV. Recommended Findings of Fact

These Findings of Fact are based on the documentary evidence, such as affidavits, declarations, depositions, admissions, Answers to interrogatories, or stipulations to supplement the present record, and the entire record. The facts of this case are as follows:

1. Mr. Malte Mangelsen is a German Citizen and the managing director of BiB. (Exhibit 9 at 1; Mangelsen Answer of 4/11/2006 at 4).

2. BiB, a German company, is in the business of exporting and reexporting spare machine parts for a shear press. (Mangelsen Answer of 4/11/2006 at 4).

3. In January 1986, in response to Libya's repeated use and support of terrorism against the United States, other countries, and innocent persons, the U.S. initiated economic sanctions against Libya through the Libyan Sanctions Regulations (31 CFR 550) and the Export Administration Regulations (15 CFR 730). *See* 69 FR 23626–01 (Apr. 29, 2004).

4. On April 23, 2004, in response to Libya's continued effort to completely dismantle its weapons of mass destruction and missile programs, and adhere to its renunciation of terrorism, the President of the United States announced the termination of the application of the Iran and Libya Sanctions Act with respect to Libya. *Id.*

5. During the time period in question, it was a violation of the Regulations to export or reexport items subject to the EAR and the Libyan Transactions Regulations to Libya without a license from the Office of Foreign Assets Control of the U.S. Department of the Treasury (''OFAC''). *See* 15 CFR 746.4(b)(1) (2003).

6. During the time period in question, it was a violation of the Regulations to export items subject to both the Iranian Transactions Regulations and the EAR to Iran without a license from OFAC. *See* 15 CFR 746.7(a) (2003).

7. On September 21, 2001, Mr. Malte Mangelsen, on behalf of BiB, contacted Pacific Press & Shear Co. (''Pacific Press'') to obtain a price quotation for spare machine parts for hydraulic shears, using BiB's Reference Number 213b102. (Exhibit 6). Mr. Mangelsen made the request ''CNF Bremen,'' meaning that the price quote would include Pacific Press's cost for ''cargo and freight'' to the destination port of Bremen, Germany. (Exhibit 6; Exhibit 10).

8. Pacific Press is a United States based company located in Mt. Carmel, Illinois. (Exhibit 6; Exhibit 13).

9. On September 24, 2001, Mr. Mangelsen, on behalf of BiB, submitted a revised request for a price quotation under Reference Number 213b102. The revised request was ''CNF Bremen.'' (Exhibit 7).

10. Prior to January 8, 2002, PacificPress quoted Mr. Mangelsen and BiB a price regarding Reference Number 213b102. (Mangelsen Answer of 4/11/2006 at 1).

11. On or about January 8, 2002, BiB caused a wire transfer payment of approximately $7,751 to be made to Pacific Press's bank account as payment for the spare parts. (Exhibit 8).

12. Despite the shipping term ''CNF Bremen,'' Mr. Mangelsen admitted throughout the case that Bremen was not the ultimate destination but that the spare parts in question were ultimately destined for Libya. (Exhibit 9 at 1; Exhibit 10 at 2–6; Mangelsen Answer of 2/16/2004 at 1).

13. On February 8, 2002, a BIS Special Agent, posing as a representative of Pacific Press using the name David Flanders (''Flanders''), contacted Mr. Mangelsen via telephone regarding a shipment order Pacific Press was to execute for BiB. Flanders recorded the conversation and the details are as follows. (Exhibit 10).

a. Mr. Mangelsen acknowledged that Libya was the intended destination for the shipment.

b. Flanders advised Mangelsen that it would be a crime to export the parts to Libya without an appropriate export license, even if they were shipped initially from the United States to Germany.

c. Mangelsen asked if Flanders could resolve the problem.

d. Flanders suggested that, under the veil of secrecy, Mr. Mangelsen find a company ''stateside'' so Pacific Press could make a domestic sale and the stateside company could subsequently ''do whatever they want with it.''

e. Mr. Mangelsen agreed to find a company and have that company contact Pacific Press. Mangelsen asked whether this would alleviate the problem and Flanders indicated there would be no problem.

f. Flanders reiterated that it would be illegal for Flanders to ship the items to Germany with the knowledge that they were destined for Libya.

14. On February 14, 2002, Mr. Mangelsen, on behalf of BiB, e-mailed Pacific Press advising that the stateside point of contact for domestic delivery of the parts would be Mr. John Clements

of Minequip Corporation (''Minequip''). (Exhibit 11).

15. Minequip is located in Miami, Florida. (Exhibit 16).

16. On February 25, 2002, Flanders called Mr. Clements to discuss a transaction whereby Pacific Press would sell the spare parts to Minequip domestically. Flanders advised that it would be illegal for Mr. Clements to subsequently ship to Great Britain without a U.S. license and with the knowledge that the parts were destined for Libya; Mr. Clements acknowledged this information. (Exhibit 12 at 3).

17. Subsequently, on April 22, 2002, Mr. Clements called Pacific Press and stated that he was willing to be the exporter for BIB's order, Reference Number 213b102. (Exhibit 14). On April 23, 2002, Pacific Press notified Mr. Mangelsen of the same via e-mail. (Exhibit 14). On April 26, 2002, Mangelsen responded to Pacific Press via e-mail and agreed that Mr. Clements would act as his domestic agent in obtaining the items destined for Libya. (*Id.;* Exhibit 9).

18. On April 29, 2002, Pacific Press shipped the parts to Mr. Clements on behalf of BiB. (Exhibit 16).

19. Based on the facts of the case, a Federal Grand Jury in the Southern District of Illinois indicted Mr. Mangelsen and four others for conspiracy to violate the IEEPA. (Exhibit 1 at 1).

20. The four others indicted for conspiracy to violate the IEEPA are as follows:

a. Mr. Clements and Minequip: Mr. Clements is the president of Minequip, which is the domestic company BiB used as a middleman between Pacific Press,[5] located in the U.S., and the company located in Europe that would ultimately ship to Libya. (Exhibit 1 at 1).

b. Mr. Jeffrey Woodbridge (''Mr. Woodbridge'') and Sigma Enterprises Limited (''Sigma''): Mr. Woodbridge is the general manager of Sigma, a company located in Europe which BiB used to ultimately ship to Libya after the receiving parts from the middleman in the U.S. (Exhibit 1 at 1).

21. On April 28, 2003, Mr. Clements pled guilty to conspiracy to violate the IEEPA and was sentenced to two years probation and was assessed a $1,000 fine. (Exhibit 2 at 1, 2, 4).

22. On April 28, 2003, Minequip pled guilty to conspiracy to violate the IEEPA and was sentenced to one year probation and was assessed a $4,000 fine. (Exhibit 3 at 1, 2, 4).

23. On November 13, 2002, Mr. Woodbridge pled guilty to conspiracy to violate the IEEPA and was sentenced to three years probation and was assessed a $7,000 fine. (Exhibit 4 at 1,2,4).

24. On January 17, 2003, Sigma pled guilty to conspiracy to violate the IEEPA and was assessed to a $20,000 fine. (Exhibit 5 at 2).

25. On May 16, 2002, the Department of Treasury issued to the United States Customs Services an of OFAC license authorizing the surreptitious export of the spare parts purchased by BiB in furtherance of the law enforcement investigation. (Exhibit 15).

26. On May 22, 2002, Mr. Clements shipped the spare parts to Mr. Woodbridge of Sigma in the United Kingdom on BiB's behalf. Mr. Mangelsen repeatedly admitted that that their ultimate destination was Libya. (Exhibit 9 at 1; Exhibit 16).

27. Prior to December 16, 2004, Mr. Mangelsen received the parts from Mr. Woodbridge, and subsequently sold and shipped the spare parts to Libya. (Exhibit 9 at 1).

28. On two occasions on September 30, 2002, Mr. Mangelsen forwarded to Pacific Press requests for price and shipping information for spare parts intended for Libya with no intention of obtaining the required U.S. Government authorization. (Exhibit 10 at 2; Exhibit 18).

29. In an October 1, 2002 e-mail, Mr. Mangelsen told ''Flanders,'' the BIS Agent purportedly acting as a representative of Pacific Press, that the parts were destined for the same machines as under the previous order and that he would inform Pacific Press of the identity of the person Pacific Press could sell to domestically who would act as the U.S. exporter. (Exhibit 19). Mr. Mangelsen admitted that the machines under the previous order are located in Libya. (Exhibit.9 at 1).

30. On February 13, 2003, Mangelsen, on behalf of BiB, requested that Mr. Clements provide pricing and shipping information for spare parts ''CNF Bremen.'' (Exhibit 20). The BiB reference number was 016b302. (Exhibit 20).

31. On February 26, 2003, Mr. Mangelsen requested a another price quotation from Mr. Clements for parts for Goulds Pump 3171S Series under BiB reference number 077b2051 to be shipped ''CNF Bremen.'' (Exhibit 21).

32. On March 11, 2003, Mr. Clements placed a recorded telephone call to Mangelsen as part of an ongoing Bureau investigation. In that conversation, Mangelsen acknowledged that the items referenced in BiB order numbers 016b302 and 077b2051 were ultimately destined for Libya. Mr. Mangelsen further detailed how the items would be shipped through Germany and subsequently transshipped to Libya. (Exhibit 22 at 2–4).

33. On May 12, 2003, Mangelsen, on behalf of BiB, requested Clements to contact another U.S. company (Kolberg-Pioneer Inc. & PDQ). Mr. Mangelsen had previously been unsuccessful in retaining that company as a supplier because it ''assumed the destination'' was Libya and refused to supply the parts directly to Mangelsen and BiB. Mangelsen's request was for Mr. Clements to obtain a quote for pricing and shipping information for Cone Crusher and Screen Plant Spare Parts. (Exhibit 25; Exhibit 26).

34. Consistent with the previous course of dealings detailed above, the purpose of Mr. Mangelsen's request was for Clements to obtain a quote, purchase the items domestically from the U.S. company, and then export the items to BiB or its designee, who would eventually ship to Libya. (Exhibit 25; Exhibit 26).

35. On June 6, 2003, Mr. Mangelsen, on behalf of BiB, asked Clements to contact another U.S. company for pricing and shipping information on two separate orders for spare parts ''without informing them about the destination.'' (Exhibit 27; Exhibit 28). Mr. Mangelsen made these requests in an Enquiry under the headings ''Re: TI Kixon and Other Parts for Iran'' and ''Re: Foxboro Parts for Iran.'' (Exhibit 27; Exhibit 28). V.

V. Discussion

A. Application of the Export Administration Act and Regulations to Respondents

As a preliminary matter, Mr. Mangelsen contended on behalf of himself and BiB that the Bureau lacks jurisdiction over the relevant transactions. He asserted that because he is from Germany and BiB is a German company, U.S. export laws do not apply. This argument is rejected.

The authority delegated by Congress to the President of the United States under the EAA is extensive. The EAA gives the President authority to regulate or prohibit the export of goods, technology, and information ''to the extent necessary to further the foreign policy of the United States or fulfill its international obligation.'' *See* 50 U.S.C. app. § 2405(a)(1).

1. BIS Authority Over These Items

The instant case involves spare machine parts supplied by Pacific Press of Mt. Carmel, Illinois for shipment abroad to Libya. (Exhibit 10). Based on the above referenced authority, the

[5] Pacific Press was not indicted in the conspiracy.

Regulations specify that ''all U.S. origin items wherever located'' are subject to the EAR and are therefore ''items * * * over which BIS exercises regulatory jurisdiction under the EAR.'' 15 CFR 734.3(a)(1)–(a)(2). The Regulations further specify that ''item'' simply means ''commodities, software, and technology.'' 15 CFR 772.1. Replacement parts for a hydraulic shear press are commodities, and since their supplier was located in Illinois, they were of U.S. origin. They are therefore subject to the EAR, giving BIS regulatory authority.

2. BIS Authority Over Mr. Mangelsen and BiB

At the time in question, the EAR affirmatively stated that ''[y]ou will need a license from BIS to reexport all items subject to the EAR * * * to Libya.'' 15 CFR 746.4 (2003). While there are several narrow and not pertinent exceptions to this license requirement, there are no exceptions to this requirement in the EAR for locality or nationality of the person or company responsible for the reexport. *See* 15 CFR 746.4(2)(i)–(ii). On the contrary, the term ''you'' means ''any * * * natural person, including a citizen of the United States or any foreign country [or] any firm.'' 15 CFR 772.1.

The OFAC's Iran Transactions Regulations similarly prohibited the reexportation of any goods, technology or services from the United States to Iran without express authorization from OPAC and or BIS. *See* 31 CFR 560.204–560. This prohibition includes the exportation of any goods ''to any person in a third country undertaken with knowledge or reason to know that such goods * * * are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government ofIran.'' *See* 31 CFR 560.204(a).

Section 746.7 of the EAR incorporates the OFAC's Iran Transactions Regulations by reference. It provides that ''[n]o person may export or reexport items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization.'' 15 CFR 746.7. As with the Regulations regarding Libya, there are no exceptions to this requirement in the EAR for locality or nationality of the person or company responsible for the reexport. Instead, the term ''person'' means a ''natural person, including a citizen or national of the United States or of any foreign country [or] any firm.'' 15 CFR 772.1.[6]

From the plain language of the export laws and Regulations, it is clear that the EAA and EAR were intended to apply extraterritorially, regardless of a person's or company's nationality or locality, so long as items subject to the EAR are involved. *In the Matter of Mahdi,* 68 FR 57,406–02 (Oct. 3, 2003). Thus, it is immaterial that Mr. Mangelsen is German or that BiB is located in Germany and is a German company. To hold otherwise would contravene existing law and regulations, and would completely undermine the effectiveness of the EAA and the EAR.

B. Violations of the Export Administration Act and Regulations

The Agency has the burden of proving the allegations in the Charging Letter by reliable, probative, and substantial evidence. *See* 5 U.S.C. 556(d). The Supreme Court has held that 5 U.S.C. 556(d) adopts the traditional ''preponderance of the evidence'' standard of proof. *Dir., Office of Workers' Comp. Programs* v. *Greenwich Collieries*, 512 U.S. 267, 290 (1994) (the preponderance of the evidence, not the clear-and-convincing standard, applies in adjudications under the APA) (citing *Steadman* v. *S.E.C.*, 450 U.S. 91 (1981)). To prevail under this standard, BIS must establish that it is more likely than not that the Respondents committed the violations alleged in the Charging Letter. *See Herman & Maclean* v. *Huddleston*, 459 U.S. 375, 390 (1983). In other words, the Agency must demonstrate ''that the existence of a fact is more probable than its nonexistence.'' *Concrete Pipe & Products* v. *Construction Laborers Pension Trust*, 508 U.S. 602, 622 (1993). To satisfy the burden of proof, BIS may rely on direct and/or circumstantial evidence. *See generally Monsanto Co.* v. *Spray-Rite Serv. Corp.*, 465 U.S. 752, 764–765 (1984).

The Bureau has separately charged that both Mr. Mangelsen, in his individual capacity, and BiB based on the actions ofMr. Mangelsen, as its managing director, violated Sections 764.2(d) and 764.2(h) of the EAR. The separate cases against Mr. Mangelsen and against BiB have been consolidated into a single case, but the Bureau nevertheless seeks sanction against Mangelsen and BiB separately.

The Regulations are clear that ''no person'' may conspire to violate or act to evade the Regulations. *See* 15 CFR 767.2(d)–(h). A ''person'' is ''any individual, or any association or organization, public or private, which is organized, permanently established, resident, or registered to do business, in the United States or any foreign country.'' 15 CFR 160.1(a). Despite the fact that he is German, Mr. Mangelsen is therefore a correct party to this action and separately responsible for his own actions and conduct whether or not he is acting on BiB's behalf.

Furthermore, ''any firm'' or ''organization'' is a ''person'' under the EAR, and it is well settled that a company can be held liable for the actions of its officers and employees committed within the scope of employment and in furtherance of the employer's business. 15 CFR § 772.1; *see also* 15 CFR 160.1(a); *see, e.g., United States* v. *Bi-Co Pavers. Inc.*, 741 F.2d 730, 737 (5th Cir. 1984); *United States* v. *Sherpix*, 512 F.2d 1361, 1367 n. 7 (D.C. Cir. 1975). BiB is in the international exporting and reexporting business. (Exhibit 2). Mr. Mangelsen's arrangement for the reexportation of spare machine parts falls squarely within the scope of his employment as managing director and was clearly done in the furtherance of BiB's business. Because the doctrine of respondeat superior is applicable in export cases, BiB is also a correct party and is separately responsible for Mr. Mangelsen's actions.

1. Conspiracy To Export Spare Parts to Libya Without the Required U.S. Government Authorization

Mr. Mangelsen and the company Respondent, BiB, have been charged under EAR § 764.2(d) with conspiracy to violate the EAR. The charge alleges that Mangelsen and BiB conspired to export spare parts to Libya without the required government authorization in violation of § 746.4 (2003) of the EAR. The undersigned finds the charge proved by a preponderance of the evidence against both Mangelsen and BiB.

The Regulations provide: ''No person may conspire or act 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 EAA, the EAR, or any other order, license or authorization issued thereunder.'' 15 CFR 764.2(d). Conspiracy is an inchoate offense that can be committed regardless of whether the object of the venture is achieved. *See United States* v. *Plummer*, 221 F.3d 1298, 1306 (11th Cir. 2000). *See also*

[6] This definition does riot apply to part 760 of the EAR (Restrictive Trade Practices or Boycotts). 15 CFR 772.1. Since the actual charged offenses fall in part 760 of the EAR, an alternative definition for ''person'' found in 15 CFR 760.1(a) will be used when analyzing the individual charges. The differences between the definition of ''person'' found in Section 760.1 and that which is found in Section 772.1 is irrelevant for the purposes of this proceeding.

Iannelli v. *United States*, 420 U.S. 770, 777 (1975). Thus, to succeed under § 764.2(d), the Agency must merely establish that: (1) Two or more persons formed an agreement to violate the EAA or EAR; (2) the Respondent knowingly participated in the conspiracy; and (3) an overt act was committed in furtherance of a common scheme. *See generally* 50 U.S.C. app. 2410(a).

a. *Agreement to Violate the EAA or EAR.* On September 21, 2001 and on September 24, 2001, Mr. Mangelsen, on behalf of BiB, contacted Pacific Press to obtain a price quotation for spare machine parts for hydraulic shears, using BiB's Reference Number 213b102. (Exhibit 6; Exhibit 7).

On February 8, 2002, a Bureau Special Agent, posing as a representative of Pacific Press and using the name David Flanders (''Flanders''), contacted Mr. Mangelsen via telephone regarding the above referenced shipment order and recorded the conversation. During the conversation, Mr. Mangelsen acknowledged that Libya, not Germany, was the intended final destination for the shipment. (Exhibit 10). Flanders advised Mr. Mangelsen that it would be a crime to export the parts to Libya without an appropriate export license, even if they were shipped initially from the United States to Germany. Mr. Mangelsen asked if Flanders could resolve the problem. (Exhibit 10). Flanders suggested that, under the veil of secrecy, Mr. Mangelsen find a company ''stateside'' so Pacific Press could make a domestic sale and the stateside company could subsequently ''do whatever they want with it.'' (Exhibit 10).

Mr. Mangelsen agreed to find such a company and have that company contact Pacific Press. (Exhibit 10). Mr. Mangelsen asked whether this would alleviate the problem and Flanders affirmed, but Flanders reiterated that it would be illegal for him to ship the items with the knowledge that they were destined for Libya. (Exhibit 10).

In the face of this information, on February 14, 2002, Mr. Mangelsen, on behalf of BiB, e-mailed Pacific Press advising that the stateside point of contact for domestic delivery of the parts would be Mr. John Clements of Minequip, a Miami company. (Exhibit 11; Exhibit 16). On February 25, 2002, Flanders called Mr. Clements to discuss a transaction whereby Pacific Press would ship the spare parts to Minequip domestically. (Exhibit 12). Flanders advised that it would be illegal for Mr. Clements to subsequently ship to Europe without a license and with the knowledge that the parts were destined for Libya; Mr. Clements acknowledged this information. (Exhibit 12).

Based on the conversation between Flanders and Mr. Clements, it is clear that Mr. Mangelsen and Clements previously formed an agreement whereby Clements would receive the parts from Pacific Press and would export those parts to Mr. Mangelsen in Germany, who would reexport them to Libya without obtaining a license. The agreement between Mr. Mangelsen and Mr. Clements clearly qualifies as an agreement between two or more persons to create conspiracy liability under the EAR.

The agreement discussed above between Mr. Mangelsen and Mr. Clements would, if carried out, violate both the EAA and EAR. At the time in question, the EAR affirmatively stated that ''[y]ou will need a license from BIS to reexport all items subject to the EAR * * * to Libya.'' 15 CFR 746.4 (2003). As discussed above, the parts in the instant case are subject to the EAR by virtue of being of U.S. origin and Mr. Mangelsen and BiB both fit the definition of ''you.'' *See* 15 CFR 772.1; *Id.* at 734.3(a)(1)–(a)(2). The term ''reexport'' means ''an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country.'' 15 CFR 734.2(b)(4). Thus, if Mr. Mangelsen were to carry out the agreement to its full extent and actually ship the replacement parts from Germany to Libya without a license, the Regulations would be violated.

b. *Knowing Participation and Overt Act.* On February 14, 2002, Mr. Mangelsen, on behalf of BiB, e-mailed Pacific Press advising that the stateside point of contact for domestic delivery of the parts would be Mr. John Clements of Minequip. (Exhibit 11). Subsequently, on April 22, 2002, Mr. Clements called Pacific Press and stated that he was willing to be the exporter for BiB's order, Reference Number 213b102. (Exhibit 14). On April 23, 2002, Pacific Press notified Mr. Mangelsen of the same via e-mail, and on April 26, 2002, Mr. Mangelsen responded via e-mail and agreed that Mr. Clements would act as his domestic agent in obtaining the items destined for Libya. (Id.; Exhibit 9). All of the above actions of Mr. Mangelsen and Mr. Clements are overt acts in furtherance of the conspiracy; in his April 11, 2006 Answer, and throughout the case file, Mr. Mangelsen admitted his knowing participation in the same.

The udersigned, therefore, finds Charge 1 proved by preponderance of the evidence against both Mr. Mangelsen and BiB.

2. Actions to Evade the Regulations' Requirements for Export To Libya

Mr. Mangelsen and the company Respondent, BiB, have been charged under EAR § 764.2(h) with eight counts [7] of taking actions to evade the EAR § 746.4 (2003) license requirement for exporting to Libya. The undersigned finds the first six of the eight counts proved by a preponderance of the evidence against both Mr. Mangelsen and BiB and will analyze them in turn in this part. However, the undersigned does not find the last two counts proved by a preponderance of the evidence against either Mr. Mangelsen or BiB and will analyze them separately in the next part.

The Regulations provide: ''No person may engage in any transaction or take any other actions with intent to evade the provisions of the EAA, the EAR, or any order, license or authorization issued thereunder.'' 15 CFR 764.2(h). Evasion is an ''act of eluding, dodging, or avoiding, or avoiding by artifice.'' Blacks Law Dictionary 554 (6th ed.1990).

a. *Receiving the Spare Parts.* In connection with the above mentioned conspiracy, Mr. Mangelsen and BiB obtained spare parts from a U.S. manufacturer through an intermediary in the United States (Mr. Clements of Minequip) and subsequently in the United Kingdom (Mr. Woodbridge of Sigma) for eventual shipment to Libya. (Exhibit 9). It is patently obvious from the recorded telephone conversations between Mr. Mangelsen and Flanders, and between Mr. Clements and Flanders, that Mangelsen arranged and executed the above referenced routing maneuver in response to Flanders' advice that it would be against U.S. Regulations to export to Europe when the intended destination was Libya. Thus, Mr. Mangelsen's attainment of the spare parts in connection with said routing maneuver was clearly done with the intent to elude, dodge, and avoid the requirement that he obtain a license.

The action of receiving the spare parts after structuring the transaction through a separate U.S. broker and shipping the spare parts to an alleged final destination in Europe, with the intent to evade U.S. Government authorization requirements applicable to exports to Libya, amounted to a violation of Section 764.2(h) of the Regulations by both Mr. Mangelsen and BiB.

b. *Forwarding Requests for Pricing and Shipping Information.* In connection with, and as the above referenced conspiracy discussion

[7] Charges 2–9.

illustrates, on September 30, 2002, Mr. Mangelsen and BiB forwarded to Pacific Press two requests for price and shipping information for spare parts intended for Libya, with no intention of obtaining the required U.S. Government authorization. (Exhibit 18). These requests were Clearly done with the intent to elude, dodge, and avoid the requirement that he obtain a license.

Subsequent to the above mentioned referenced conspiracy, on February 13, 2003, Mr. Mangelsen, on behalf of BiB, asked Mr. Clements at Minequip for pricing and shipping information for additional spare parts by submitting an ''Enquiry'' with BiB reference number 018b302. (Exhibit 20). Thirteen days later on February 26, 2003, Mr. Mangelsen asked Mr. Clements for a further price quotation for parts for Goulds Pump 3171S Series under BiB reference number 077b2051. (Exhibit 21).

On March 11,2003, Mr. Clements placed a recorded telephone call to Mr. Mangelsen wherein Mr. Mangelsen conceded that the items referenced in BiB order numbers 018b302 and 077b2051 were destined for Libya, as was the case with the previous conspiracy. Mr. Mangelsen further detailed how the items would be shipped through Germany and subsequently transshipped to Libya to avoid U.S. Government restrictions on exports to Libya. (Exhibit 22). Consistent with the course of dealings discussed above, Mr. Mangelsen's forwarding of such requests to Pacific Press in connection with said routing maneuver was clearly done with the intent to elude, dodge, and avoid the requirement that he obtain a license.

Over two months later on May 12, 2003, Mr. Mangelsen, on behalf of BiB, requested for Mr. Clements to contact a U.S. company for pricing and shipping information for Cone Crusher and Screen Plant Spare Parts. (Exhibit 25). During the request, Mr. Mangelsen noted that the company previously ''assumed the destination'' of Libya and refused to supply the parts directly to Mr. Mangelsen. (Exhibit 25). This was the exact same concern Flanders expressed to Mangelsen with respect to the above mentioned conspiracy. (Exhibit 10; Exhibit 25). Mangelsen was essentially asking Clements to again act as the domestic contact for the U.S. company as Mr. Clements had done previously for Pacific Press. Consistent with the course of dealings discussed above, Mangelsen made his requests to Clements to create a similar routing maneuver with the intent to elude, dodge, and avoid the requirement that he obtain a license.

By forwarding to Pacific Press all of the above mentioned requests in connection with the conspiracy and with the intent to evade U.S. Government authorization requirements applicable to exports to Libya, Mr. Mangelsen and BiB are each liable for six violations of § 764.2(h) of the Regulations.

3. Actions to Evade the Regulations' Requirements for Export to Libya/Iran

Mr. Mangelsen and the company Respondent, BiB, have been charged under EAR § 764.2(h) with taking two further actions to evade the EAR § 746.4 (2003) license requirement for exporting to Libya. The heading in the charge sheet for Counts 8 and 9 refers to actions to evade the EAR § 746.4 (2003) license requirement for exporting to *Libya*, whereas the supporting allegations, analysis, and exhibits involve actions to evade the EAR § 746.7 license requirement for exporting to *Iran.* The undersigned will analyze these counts under both § 746.4 (2003), for Libya and § 746.7 for Iran and finds that neither charge is proved.

With respect to a charge for actions to evade the EAR § 746.4 (2003) license requirement for exporting to Libya, there is no evidence whatsoever to support the charge. On June 6, 2003, and on an unidentified date, Mr. Mangelsen and BiB forwarded to Mr. Clements two requests for price and shipping information for spare parts. (Exhibit 27; Exhibit 28). The June 6, 2003 request regarded ''TI Kixon and other parts for Iran'' and included the comment ''please can you quote me the following items of Kixon without informing them about the destination.'' (Exhibit 27). The other request regarded ''Foxboro Parts for Iran'' and included the comment ''please can you quote me the following items of Foxboro without informing them of the destination.'' There is nothing in either request to indicate a connection to a shipment to Libya and therefore cannot be regarded as actions to evade the Regulations requiring a license to export to Libya.

With respect to a charge for actions to evade the EAR § 746.7 (the licensing requirement for exporting to Iran), the undersigned does not find to a preponderance of the evidence to conclude that Respondents took actions to evade this Regulation. The EAR provides that ''[n]o person may export or reexport items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization.'' 15 CFR 746.7. Mr. Mangelsen's requests to Mr. Clements relating to Iran indeed appear quite similar to his previous requests relating to Libya as they both regard prohibited countries. These requests therefore create a fair amount of suspicion Mr. Mangelsen was taking an action to evade the license requirements for exporting to Iran as Mr. Mangelsen previously took actions to evade the license requirements for exporting to Libya. However, BIS has not provided any supporting evidence and has stopped short of proving it is more probable than not said requests were made with the intent to evade the EAR license requirement for exporting to Iran. The undersigned does not find these charges proved.

C. Respondent's Entrapment Defense Is Rejected

On April 11, 2006, Mr. Mangelsen filed an Answer to BIS's March 14, 2006 Memorandum and asserted entrapment as an affirmative defense. He stated that the ''suggestion of Mr. Flanders was a trap to lock Mr. Mangelsen to prison for judging him guilty and issuing a penalty.'' Mr. Mangelsen's entrapment defense is rejected on the merits, and in the alternative, is deemed waived.

1. Rejected on the Merits

To prove entrapment, Mr. Mangelsen must ''establish two related elements: Agency inducement of the crime and a lack of predisposition on the part of the defendant to engage in criminal conduct.'' *In the Matter of Ceaser Electronics, Inc.*, 55 FR 53,016–02 (Dec. 26, 1990) (citing *United States* v. *Jenrette*, 744 F.2d 817 (D.C. Cir. 1984), *cert. denied*, 471 U.S. 1099 (1984)).

With respect to the conspiracy, the undersigned rejects this defense on the basis of Mr. Mangelsen and BiB being predisposed to conspiring to export to Libya without a license. The record shows that, before ever having contact with a Bureau agent, Mr. Mangelsen and BiB reached out to Pacific Press and requested pricing information for a shipment clearly intended for Libya without informing Pacific Press of the intended destination. (Exhibit 7; Exhibit 10 at 1–2). During a telephone call between Mr. Mangelsen and Flanders,[8] Flanders informed Mr. Mangelsen that he discovered the intended destination and that this was a problem. (Exhibit 10 at 1–2). When Flanders asked whether Mr. Mangelsen knew that Libya was the intended destination, Mr. Mangelsen simply giggled and then became elusive. (Exhibit 10 at 2). Once Flanders indicated a willingness to work out a plan to disguise the shipment, Mr. Mangelsen immediately became candid

[8] Flanders was a BIS agent posing as an international compliance director for Pacific Press.

about the intended destination and showed eagerness to take an active role in arranging a routing maneuver to disguise the shipment and avoid obtaining the required license. (Exhibit 10 at 2–4). Someone who was not predisposed to said conspiracy would be more hesitant and less willing to be an active participant. Based on these facts, the undersigned finds that it is more likely than not that Mr. Mangelsen and BiB were predisposed to conspiring to ship to Libya without a license.

With respect to the charges for actions to evade the EAR, the undersigned finds that Mr. Mangelsen and BiB have been unable to establish either prong of the defense. The record shows that Mr. Mangelsen and BiB received parts and sent numerous requests for pricing and shipping information on their own accord with the clear intent to evade the regulations. Thus, no inducement is present. Further, Mr. Mangelsen and BiB were clearly predisposed to taking actions to evade the regulations as they made their initial request to Minequip without disclosing the intended destination of Libya before ever speaking with a Bureau agent and continued to take actions independently of any contact with the Bureau agent. (Exhibit 7; Exhibit 10).

2. Waived

The Regulations are clear that ''[t]he respondent must answer the charging letter within 30 days after being served with notice of the issuance of a charging letter, or within 30 days of the notice of any supplemental or amendment to a charging letter.'' 15 CFR 766.6(a). The Regulations further state that ''[a]ny defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.'' 15 CFR 766.6(b). Mr. Mangelsen did not assert entrapment in his July 12, 2005 Answer to the Charging Letter and for the first time asserted this defense in his April 11, 2006 Answer. Mr. Mangelsen did not provide any ''cause'' for submitting this late additional defense and it is therefore deemed waived.

VI. Ultimate Findings of Fact and Conclusions of Law

1. Mr. Mangelsen, BiB, and the subject matter of this proceeding are properly within the jurisdiction of the Bureau of Industry and Security in accordance with the Export Administration Act of 1979 (50 U.S.C.. app. 2401–20) and the Export Administration Regulations (15 CFR 730–74).

2. Mr. Malte Mangelsen is a ''person'' under both 15 CFR 160.1(a) and 15 CFR 772.1 and meets the definition of ''you'' under 15 CFR 772.1.

3. Mr. Mangelsen is therefore a correct party to this proceeding and separately responsible for his actions whether or not acting on behalf of BiB and regardless of his citizenship.

4. BiB is a ''person'' under both 15 CFR 160.1(a) and 15 CFR 772.1 and meets the definition of ''you'' under 15 CFR 772.1.

5. BiB is therefore a correct party to this proceeding and separately responsible for the actions of its managing director Mr. Mangelsen by operation of the doctrine of *Respondeat Superior.*

6. The Bureau has established by a preponderance of the evidence that the Respondents violated § 764.2(d) by forming an agreement with Mr. Clements and subsequently transmitting correspondence related thereto whereby spare parts for a shear press would be reexported to Libya without a license in violation of § 746.4 (2003).

7. The Bureau has established by a preponderance of the evidence that the Respondents violated § 764.2(h) by obtaining spare parts for a shear press in connection with the above mentioned conspiracy whereby said spare parts would be routed through Europe to their eventual destination of Libya to evade the § 746.4 (2003) requirement of obtaining a license to reexport to Libya.

8. The Bureau has established by a preponderance of the evidence that the Respondents violated § 764.2(h) by forwarding to Mr. Clements a request for pricing and shipping information for spare parts intended for Libya on September 30, 2002 to evade the § 746.4 (2003) requirement of obtaining a license to reexport to Libya.

9. The Bureau has established by a preponderance of the evidence that the Respondents violated § 764.2(h) by forwarding to Mr. Clements a second request for pricing and shipping information for spare parts intended for Libya on September 30, 2002 to evade the § 746.4 (2003) requirement of obtaining a license to reexport to Libya.

10. The Bureau has established by a preponderance of the evidence that the Respondents violated § 764.2(h) by forwarding to Mr. Clements a request for pricing and shipping information for spare parts intended for Libya on February 13, 2003 to evade the § 746.4 (2003) requirement of obtaining a license to reexport to Libya.

11. The Bureau has established by a preponderance of the evidence that the Respondents violated § 764.2(h) by forwarding to Mr. Clements a request for pricing and shipping information for spare parts intended for Libya on February 26, 2003 to evade the § 746.4 (2003) requirement of obtaining a license to reexport to Libya.

12. The Bureau has established by a preponderance of the evidence that the Respondents violated § 764.2(h) by asking Mr. Clements to obtain pricing and shipping information from another U.S. Company on behalf of BiB for spare parts intended for Libya on May 12, 2003 to evade the § 746.4 (2003) requirement of obtaining a license to reexport to Libya.

13. The Bureau has not established by a preponderance of the evidence that the Respondents violated § 764.2(h) by forwarding a request to Mr. Clements for pricing and shipping information for spare parts regarding ''TI Kixon and other parts for Iran'' and including the comment ''please can you quote me the following items of Kixon without telling them about the destination'' on June 6, 2003. The Bureau has not established by a preponderance of the evidence that it was done to evade the § 746.4 (2003) requirement of obtaining a license to reexport to Libya or to evade the § 746.7 requirement of obtaining a license to reexport to Iran.

14. The Bureau has not established by a preponderance of the evidence that the Respondents violated § 764.2(h) by forwarding a request to Mr. Clements for pricing and shipping information for spare parts regarding ''Foxboro parts for Iran'' and including the comment ''please can you quote me the following items of Foxboro without telling them about the destination.'' The Bureau has not established by a preponderance of the evidence that it was done to evade the § 746.4 (2003) requirement of obtaining a license to reexport to Libya or to evade the § 746.7 requirement of obtaining a license to reexport to Iran.

VII. Sanction

Based on the gravity of the offenses, the Agency's proposed sanction of a 20 year denial of U.S. export privileges for both Mr. Mangelsen and BiB is appropriate under Part 764.3(a)(2). However, the Agency's proposed sanction of a $99,000 civil penalty for each Mr. Mangelsen and BiB will be reduced. The undersigned found only 7 out of 9 charges proved, and the maximum civil penalty allowed is $11,000 per violation.[9] Therefore, the

[9] *See* 50 U.S.C. app. 2410(c)(1); 15 CFR 6.4(a)(6) (2006); 15 CFR 764.3(a)(1) (2006). It should be noted that the maximum civil penalty has fluctuated during the last decade and that the actual civil penalty for each violation in question could be as high as $12,000. Pursuant to Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C.

maximum civil penalty that can be imposed against each Mr. Mangelsen and BiB is $77,000. Despite the fact that the U.S. has since lifted the embargo against Libya, the maximum civil penalty against Mr. Mangelsen and BiB is deemed appropriate.

During the course of Mr. Mangelsen and BiB's violation of the regulations and as is apparent from Mr. Mangelsen'scorrespondence, Mr. Mangelsen has a blatant disregard for U.S. export laws and regulations. He appears to believe he is entitled to avail himself to privileges of exporting from the U.S., but acts as though he need not comply with its laws or regulations. To aggravate this, Mr. Mangelsen and BiB have demonstrated a propensity to disguise their efforts to evade U.S. export laws and regulations. The clear disregard for U.S. export laws and regulations combined with the propensity to disguise efforts to evade the same more than justifies issuing the maximum civil penalty against both Mr. Mangelsen and BiB.

VIII. Recommended Order

[Redacted Section]

Please be advised that under 15 CFR 766.17(b)(2) the administrative law judge shall immediately certify the record, including the original copy of the recommended decision and order, to the Under Secretary for review in accordance with 15 CFR 766.22. Please be further advised that 15 CFR 766.22 is included in Attachment A of this decision.

Done and dated May 23, 2006 at Norfolk, VA.

Peter A. Fitzpatrick,

Administrative Law Judge, U.S. Coast Guard.[10]

[FR Doc. 06–5778 Filed 6–28–06; 8:45 am]

BILLING CODE 3510–33–M

3701, the Agency adjusted the maximum civil penalty for inflation in 1997 from $10,000 to $11,000. 15 CFR 6.4(a)(1) (1997). In 2000, the Agency again adjusted it for inflation from $11,000 to $12,000. *Id.* at § 6.4(a)(6) (2000). It was not until 2003 that the Agency reduced maximum civil penalty from $12,000 to $11,000, where it has since remained. *Id.* at § 6.4(a)(6) (2003–06). While the conduct in question occurred from 2001 to 2003, BIS has indicated that it wishes to seek an $11,000 ''maximum civil penalty.'' The undersigned will therefore treat $11,000 as the maximum civil penalty for the purpose of this action only.

[10] United States Coast Guard Administrative Law Judges perform adjudicatory functions for the Bureau of Industry and Security with approval from the Office of Personnel Management pursuant to a memorandum of understanding between the Coast Guard and the Bureau of Industry and Security.

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–881

Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 23, 2005, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on malleable iron pipe fittings from the People's Republic of China. The period of review is December 2, 2003, through November 30, 2004. The administrative review covers four exporters.

We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we made certain changes to our calculations. The final dumping margins for this review are listed in the ''Final Results of the Review'' section, below.

EFFECTIVE DATE: June 29, 2006.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen for Chengde Malleable Iron General Factory and Langfang PanNext Pipe Fitting Co., Ltd., Ryan A. Douglas for SCE Development (Canada) Co., Ltd., or Jennifer Moats for LDR Industries, Inc. and Beijing Sai Lin Ke Hardware Co., Ltd., AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–1904, 202–482–1277 and 202–482–5047, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2005, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on malleable iron pipe fittings (''malleable pipe'') from the People's Republic of China (''PRC''). *See Certain Malleable Iron Pipe Fittings From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 76234 (December 23, 2005) (''*Preliminary Results*''). In our *Preliminary Results*, the Department noted we would provide the respondents with additional opportunity to explain the methodology used and to correct certain deficiencies noted in respondents' questionnaire responses and reported data. Accordingly, the Department received supplemental questionnaire responses after the *Preliminary Results* from Langfang PanNext Pipe Fittings Co., Ltd. and its U.S. affiliate, PanNext Fittings Corporation (collectively ''Pannext''), on January 20, and March 27, 2006, from SCE Development (Canada) Co. Ltd. (''SCE'') on March 7, 2006, from Chengde Malleable Iron General Factory (''Chengde'') on March 14, 2006, and from LDR Industries Inc. and Beijing Sai Lin Ke Hardware Co., Ltd. (collectively ''SLK'') on March 15, May 23, and May 30, 2006.

On April 6, 2006, the Department published a notice extending the time limit for the completion of the final results of this review until June 21, 2006. *See Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 71 FR 17439 (April 6, 2006); *see, also, Notice of Correction to Notice of Extension of Time Limit for Final Results of Antidumpnig Duty Administrative Review: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 71 FR 25148 (April 28, 2006).

On April 12, 2006, Anvil International, Inc. and Ward Manufacturing (collectively ''the petitioners'') submitted notice that they did not intend to request a hearing in this segment. As there were no requests for a hearing, the Department did not conduct a hearing in this review.

We invited interested parties to comment on our *Preliminary Results*. On May 1, 2006, the Department received case briefs from the petitioners, SLK, and Pannext. On May 8, 2006, we received rebuttal briefs from the petitioners, SLK, and Pannext. Chengde and SCE did not submit case or rebuttal briefs. On May 24, 2006, the petitioners submitted comments on SLK's May 23, 2006, submission; on May 25, 2006, SLK submitted rebuttal comments. The Department learned from the petitioners' case brief that Chengde failed to serve them the proprietary version of its revised March 16, 2006, supplemental questionnaire response or the electronic U.S. sales and factors–of-production (''FOP'') databases. Upon learning of Chengde's lack of proper service, the Department instructed Chengde to serve the petitioners a complete copy of the proprietary version of its response, and provided all interested parties an additional briefing period to comment on this response. We did not receive any comments from