Signed at Washington, DC, this 16th day of October, 2008.

David M. Spooner,

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

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–25580 Filed 10–24–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[05–BIS–23]

In the Matter of: NEAZ Trading Corporation 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, Respondent

Final Decision and Order

This matter is before me upon a Recommended Decision and Order (''RDO'') of an Administrative Law Judge (''ALJ'')

In a charging letter issued on December 15, 2005, the Bureau of Industry and Security (''BIS'') alleged that Respondent, NEAZ Trading Corporation, committed two violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2008) (''Regulations'')),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. § 240 1–2420 (2000)) (''Act'').[2]

The charging letter included a charge that was based on actions taken by NEAZ to evade licensing requirements governing exports of items subject to the Regulations, specifically, the export of items subject to the Regulations to a Pakistani organization listed on BIS's Entity List. Specifically, Charge One alleged as follows:

Charge 1 (15 CFR 764.2(h)—Actions Taken with Intent to Evade the Regulations)

On or about April 27, 2002, NEAZ, through its operations specialist, took actions with the intent to evade the U.S. Government's licensing requirements for exports to Pakistan. Specifically, NEAZ took actions, including but not limited to, the submission of false information to a freight forwarder in connection with an export of components for an online chemical monitoring system, items subject to the Regulations (EAR99 and 4A994), from the United States to the Karachi Nuclear Power Plant (''KANUPP'') in Karachi, Pakistan via the United Arab Emirates (UAE). NEAZ provided shipping information representing that the consignee was in the UAE but omitting the final destination for the items. The purpose of NEAZ's actions was to conceal the end-user, KANUPP, a Pakistani organization on the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations and for which a Department of Commerce export license was required by section 744.1 of the Regulations. In so doing, NEAZ committed one violation of section 764.2(h) of the Regulations.[3]

In accordance with section 766.3(b)(l) of the Regulations, on December 15, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to NEAZ at its last known address, which is in Pakistan. Although BIS did not receive a signed return mail receipt for the letter, the charging letter was delivered no later than on or about February 16, 2006. On or about that date, Yasmin Ahmed, NEAZ's Chief Operating Officer and the person at NEAZ to whose attention the NEAZ charging letter was addressed, telephoned the BIS attorney named in the charging letter to discuss that letter, as well as the charging letter served in a related administrative proceeding also initiated by BIS on December 15, 2005, In the Matter of Yasmin Ahmed (Docket No. 05–BIS–24). Ms. Ahmed had possession of the NEAZ charging letter by the date of that telephone call; otherwise, she would not have known the name or had direct contact information for BIS's attorney or been able to discuss the charging letter with BIS. To date, NEAZ has not filed an answer to the charging letter with the AU, as required by the Regulations.

Under section 766.6(a) of the Regulations, the ''respondent must answer the charging letter within 30 days after being served with notice of issuance'' of the charging letter. Section 766.7(a) of the Regulations provides that the ''[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter,'' and that ''on BIS's motion and without further notice to the respondent, [the AU] shall find the facts to be as alleged in the charging letter[.]''

In accordance with section 766.7 of the Regulations, and because more than thirty days had passed since NEAZ had been served with the charging letter, BIS filed a Motion for Default Order that was received by the AU on July 15, 2008. This Motion for Default Order recommended that NEAZ be denied export privileges under the Regulations for a period of seven years.

On September 16, 2008, based on the record before him, the AU issued a RDO in which he found NEAZ in default, found the facts to be as alleged in Charge One of the charging letter, and held that NEAZ had committed the one violation of section 764.2(h) of the Regulations. The AU also recommended the penalty of denial of NEAZ's export privileges for seven years.

The ALJ's RDO, together with the entire record in this case, has been referred to me for final action under section 766.22 of the Regulations. I find that the record supports the AU's findings of fact and conclusions of law. I also find that the penalty recommended by the AU is appropriate, given the nature of the violation and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the ALJ's RDO.

Accordingly, it is therefore ordered,

First, that, for a period of seven (7) years from the date this Order is published in the **Federal Register**, NEAZ Trading Corporation, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, and when acting for or on behalf of NEAZ Trading Corporation, its representatives, agents, assigns and employees (hereinafter collectively referred to as the ''Denied Person''), 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;

[1] The charged violations occurred during the 2002 period. The Regulations governing the violations at issue are found in the 2000–2002 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2000–2002)). The 2008 Regulations establish the procedures that apply to this matter.

[2] 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 15, 2007 (72 FR 46,137 (August 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[3] The charging letter included a second evasion charge, Charge Two, relating to BIS's export control documentation filing requirements. By Notice of Withdrawal filed with the Administrative Law Judge simultaneously with its Motion for Default Order, BIS provided notice that it was withdrawing Charge Two.

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. Benefitting 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.

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

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

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the AU'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 upon publication in the **Federal Register**.

Dated: October 16, 2008.

Mario Mancuso,

Under Secretary of Commerce for Industry and Security.

United States Department of Commerce Bureau of Industry and Security

In the Matter of: NEAZ Trading Corporation, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, Respondent.

Recommended Decision and Order

On December 15, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (BIS), issued a charging letter initiating this administrative enforcement proceeding against NEAZ Trading Corporation (NEAZ). The charging letter alleged NEAZ committed two violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2008)) (Regulations),[1] issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the Act).[2] In accordance with § 766.7 of the Regulations, BIS has moved for the issuance of an Order of Default against NEAZ in connection with Charge I in the charging letter, as NEAZ has failed to file an answer to the allegation in the charging letter issued by BIS within the time period required by the Regulations.[3]

A. Legal Authority for Issuing an Order of Default

Section 766.7 of the Regulations states that upon motion by BIS, the Court shall find a respondent in default if the respondent fails to properly file a timely answer to a charging letter. That section, entitled Default, provides in pertinent part:

Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.

15 CFR 766.7 (2006).

Pursuant to § 766.6 of the Regulations, a respondent must file an answer to the charging letter ''within 30 days after being served with notice of the issuance of the charging letter'' initiating the proceeding.

B. Service of the Notice of Issuance of Charging Letter

In this case, BIS served notice of issuance of the charging letter in accordance with § 766.3(b)(1) of the Regulations when it sent a copy of the charging letter by registered mail to NEAZ at its last known address on December 15, 2005. BIS did not receive a return mail receipt for the letter. To date, NEAZ has failed to file an answer to the charging letter as required by section 766.6 of the Regulations. On or about February 16, 2006, Yasmin Ahmed, NEAZ's Chief Operating Officer (the person to whose attention the NEAZ letter was directed) telephoned BIS attorney of record, Parvin Huda. Since Ms. Ahmed contacted BIS on February 16, 2006, Ms. Ahmed must have been in possession of the Charging Letter or she would not have known Ms. Huda's contact information. Clearly 30 days has passed since Ms. Ahmed received the charging letter. Accordingly, NEAZ is in default.

C. Summary of Violations Charged

The charging letter filed by BIS included two charges. BIS provided notice that it was withdrawing the second charge, in its Notice of Withdrawal filed with the Administrative Law Judge simultaneously with its Motion for Default Order. BIS's Motion for Default Order covered the one remaining charge, Charge 1, which alleged that on or about April 27, 2002, NEAZ, through its operations specialist, took actions with the intent to evade the U.S. Government's licensing requirements for exports to Pakistan. These actions included, but were not limited to, the submission of false information to a freight forwarder in connection with an export of components for an online chemical monitoring system, items subject to the

[1] The violations charged occurred during 2002 period. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 CFR Parts 730–774 (2002)). The 2008 Regulations establish the procedures that apply to this matter.

[2] 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 15, 2007 (72 FR 46137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[3] In a Notice of Withdrawal filed simultaneously with its Motion For Default Order, BIS provided notice to the Administrative Law Judge that it was withdrawing Charge 2.

Regulations (EAR99 [4] and ''ECCN 4A994'' [5]), from the United States to the Karachi Nuclear Power Plant (''KANUPP'') in Karachi, Pakistan, via the United Arab Emirates (UAE). NEAZ provided shipping information representing that the consignee was in the UAE but omitting the final destination for the items. BIS alleges the purpose of NEAZ's actions was to conceal the end-user, KANUPP, a Pakistani organization on the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations and for which a Department of Commerce export license was required by section 744.1 of the Regulations.

D. Penalty Recommendation

[REDACTED SECTION]

E. Conclusion

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. See 15 CFR 766.22(c).

Joseph N. Ingolia,
Chief Administrative Law Judge, United States Coast Guard.

Done and dated 16th of September, 2008, Baltimore, Maryland.

Certificate of Service

I hereby certify that I have served the foregoing RECOMMENDED DECISION AND ORDER upon the following party in this proceeding at the addresses indicated below by First Class Mail to:

Parvin R. Huda, Senior Counsel, Attorneys for Bureau of Industry and Security, Office of Chief Counsel, For Industry and Security, U.S. Department of Commerce, Room H–3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230, (202) 482–5301.

NEAZ Trading Corporation, 612 Business Centre, Mumtaz Hasan Road, Off 1.1 Chundrigar Road, Karachi, Pakistan.

Dated on September 18, 2008, Baltimore, Maryland.

Debra M. Gundy,
Paralegal Specialist, Administrative Law Judges Office, U.S. Coast Guard.

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BILLING CODE 3510–DT–M

[4] EAR 99 is a designation for items subject to the Regulations that are not listed on the Commerce Control List.

[5] ''ECCN'' refers to ''Export Control Classification Number.'' See Supp. ito 15 CFR 774.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[05–BIS–24]

In the Matter of: Yasmin Ahmed, 612 Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi, Pakistan, Respondent

Final Decision and Order

This matter is before me upon a Recommended Decision and Order (''RDO'') of an Administrative Law Judge (''ALJ'').

In a charging letter issued on December 15, 2005, the Bureau of Industry and Security (''BIS'') alleged that Respondent, Yasmin Ahmed,[1] committed four violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2008) (''Regulations'')),[2] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (''Act'').[3]

The charging letter included a total of four charges based on Yasmin Ahmed's actions as a sales representative of Advance Technical System (''ATS'') of Dubai, United Arab Emirates (''UAE'') in connection with unlawful shipments of U.S.-origin radar parts made to Pakistan through the UAE. Specifically, the charging letter alleged as follows:

Charge 1 (15 CFR 764.2(b)—Causing the Filing of a False Statement on Shipper's Export Declaration as to the Ultimate Destination)

On or about December 18, 2000, Ahmed caused the filing of a false statement with the U.S. Government in violation of the Regulations. Specifically, in connection with the export of radar parts (''parts''), items subject to the Regulations (''EAR99'') [4], from the United States to Pakistan via the UAE, Ahmed submitted an end-user certificate, DSP Form 83,[5] to the exporter that falsely stated that the Bangladeshi Air Force was the end-user of the parts. The exporter relied on the end-user information submitted by Ahmed in completing a Shipper's Export Declaration (SED) for the export of the parts which falsely stated that the country of ultimate destination was Bangladesh. The actual country of ultimate destination was Pakistan. By providing false end-user information to the exporter, Ahmed committed one violation of section 764.29([b]) [6] of the Regulations.

Charge 2 (15 CFR 764.2(c)—Attempting to Cause a Violation of the Regulations by Submitting False End-User Information to Exporter)

On or about April 16, 2002, Ahmed attempted to cause a violation of the Regulations by submitting a false end-user certificate to the exporter in connection with the export of parts, items subject to the Regulations, from the United States to Pakistan via the UAE. The certificate stated that the Bangladeshi Air Force was the end-user of the parts. The actual country of ultimate destination was Pakistan. The exported relied on the end-user information submitted by Ahmed in completing an airway bill listing Bangladesh as the ultimate destination of the parts.

In completing the SED for the export based on a consultation of the airway bill, however, the freight forwarder incorrectly listed UAE as the country of ultimate destination. By providing false end-user information to the exporter, Ahmed attempted to cause a violation of the Regulations. In so doing, Ahmed committed one violation of section 764.2(c) of the Regulations.

Charge 3 (15 CFR 764.2(h)—Actions Taken with Intent to Evade the Provisions of the Regulations)

In connection with the export described in Charge 1 above, Ahmed took actions with the intent to evade the provisions of the Regulations. Specifically, Ahmed took actions, including but not limited to, obtaining false signatures from a purported end-user and representative of ATS for

[1] Yasmin Ahmed was also known as Fatimah Mohammad and Yasmin Ahmed Tariq during the period in which the charged violations occurred.

[2] The charged violations occurred during the 2000–2002 period. The Regulations governing the violations at issue are found in the 2000–2002 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2000–2002)). The 2008 Regulations establish the procedures that apply to this matter.

[3] 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 15, 2007 (72 FR 46,137 (August 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[4] EAR 99 is a designation for items subject to the Regulations that are not listed on the Commerce Control list.

[5] The DSP Form 83, ''Nontransfer and Use Certificate,'' is used by the State Department in connection with the export of munitions items subject to the State Department's export controls. The Respondent used it here in connection with items subject to the Regulations.

[6] Due to a typographical error, the charging letter incorrectly referred to section 764.2(g) in the last sentence of Charge One, rather than section 764.2(b). As indicated by Charge One's heading and by its content, the last sentence should have referred to 764.2(b), the violation provision that corresponds to the causing language that comprises the substance of the charge. This typographical error does not prejudice the Respondent, as it is clear that the intended reference was to section 764.2(b).