Accordingly, *it is therefore ordered,*

First, that a civil penalty of $6,000.00 is assessed against Kabba & Amir Investments, Inc., d/b/a International Freight Forwarders, which shall be paid to the U.S. Department of Commerce within (30) thirty days from the date of entry of this Order.

Second, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Kabba & Amir Investments, Inc., d/b/a International Freight Forwarders, will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and administrative charge.

Third, for a period of three (3) years from the date that this Order is published in the **Federal Register**, Kabba & Amir Investments, Inc., d/b/a International Freight Forwarders, 286 Attwell Drive #16, Toronto, ON M9W 5B2, Canada (''IFF''), its successors or assigns, and when acting for or on behalf of IFF, its representatives, agents, officers or employees (hereinafter collectively referred to as ''Denied Person'') may not participate, directly or indirectly, 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 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 which 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.

Fifth, that, after notice and opportunity for comment as provided in § 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 the 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, as authorized by § 766.17(c) of the Regulations, the denial period set forth above shall be suspended in its entirety, and shall thereafter be waived, provided that: (1) Within thirty days of the effective date of the Decision and Order, IFF pays the monetary penalty of $6,000.00 in full, and (2) during the period of the suspension IFF commits no further violations of the Act or Regulations.

Eighth, that the final Decision and Order shall be served on IFF 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 also 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: April 30, 2008.

Mario Mancuso,

Under Secretary of Commerce for Industry and Security.

1. 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 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 15, 2007 (72 FR 46137 (August 16, 2007)), has continued the Regulations in effect under IEEPA.

2. Due to a typographical error, BIS referred to section 764.2(d) in the last sentence of the original Charge One. This typographical error was later corrected by BIS, as noted by the ALJ in fn. 4 of the RDO.

3. The sanction recommended by the ALJ also is consistent with the sanction proposed by BIS, which based its request on the facts and circumstances of the case as a whole.

[FR Doc. E8–9980 Filed 5–6–08; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 05–BIS–08]

Recommended Decision and Order; In the Matter of: Kabba & Amir Investments, Inc., d.b.a. International Freight Forwarders, 286 Attwell Drive #16, Toronto, ON M9W 5B2, Canada; Respondent(s)

Issued: April 2, 2008

Issued By: Hon. Michael J. Devine Presiding.

Appearances: For the Bureau of Industry and Security: Charles G. Wall, Esq., Joseph V. Jest, Esq., John T. Masterson, Office of Chief Counsel for Industry & Security, U.S. Department of Commerce, Room H–3839,

14th Street & Constitution Ave., NW., Washington, DC 20230.

For Respondent Kabba & Amir Investments, Inc., d.b.a. International Freight Forwarders, A. Rahman Amir, Managing Director, pro se.

Preliminary Statement

The Bureau of Industry and Security [1] (''BIS'' or ''Agency'') commenced this administrative enforcement action against Kabba & Amir Investments, Inc. d.b.a. International Freight Forwarders (''IFF'' or ''Respondent''). In a Charging Letter dated June 27, 2005, BIS alleges that on or about June 29, 2000,[2] IFF committed two violations of the Export Administration Act of 1979 (''Act''), as amended and codified at 50 U.S.C. App. 2401–20 (2000), and the Export Administration Regulations (''EAR'' or ''Regulations''), as amended and codified at 15 CFR parts 730–74 (2000 & 2007).[3]

The allegations stem from IFF's involvement in the export of X-Ray Film Processors to Cuba via Canada without first obtaining the required United States government license for the transaction. Both charges read as follows:

Charge 1 15 CFR 764.2(b)—Aiding and Abetting an Attempted Violation of the Regulations

On or about June 29, 2000, IFF aided and abetted the doing of an act prohibited by Regulations when it took possession of a shipment of X-Ray Film Processors, items subject to the Regulations, in the United States for export to Cuba via Canada. Under section 746.2 of the Regulations, a BIS export license was required for this shipment, but no such license was obtained. In aiding and abetting the attempted export, IFF committed one violation of sections 764.2(b) (sic) of the Regulations.[4]

Charge 2 15 CFR 764.2(d)—Conspiracy To Do an Act That Is in Violation of the Regulations

On or about June 29, 2000, IFF conspired with one or more persons to do an act that constituted a violation of the Regulations. Specifically, IFF arranged with co-conspirators, known and unknown, to export X-Ray Film Processors, items subject to the Regulations, to Cuba via Canada without the BIS export license required by section 746.2 of the Regulations. IFF took one or more acts in furtherance of the conspiracy, including taking possession of the items in the United States. In so doing, IFF committed one violation of section 764.2(d) of the Regulations.

On November 6, 2007, BIS filed a Motion for Summary Decision on Charge 1. In support thereof, BIS argues that there are no genuine issues as to any material fact because of IFF's admissions regarding its participation in the attempted export from the United States to Cuba. Therefore, BIS states it is entitled to summary decision as a matter of law. Attached to its motion were eight (8) exhibits marked Government Exhibit (''Gov't Ex.'') A–H.

A pre-hearing conference was conducted on December 18, 2007, at which time a scheduling order was issued establishing, among other things, a deadline for Respondent to file an Answer to the BIS Motion for Summary Decision. Order Memorializing Pre-Hearing Conference, December 20, 2007. IFF timely filed a response to the Motion for Summary Decision on January 8, 2008. While IFF does not deny its participation in the transaction at issue, the company argues that Charge 1 should be dismissed. To support its argument, IFF asserts that Gov't Ex. C–E are irrelevant. IFF also states that the company lacked any knowledge that the shipment at issue was manufactured in the United States or that an export control permit was required. According to IFF, the shipper is responsible for securing the required export control permits, not the freight forwarder. Therefore, IFF asserts that the company cannot be found liable for violating 15 CFR 764.2(b).

BIS filed a reply on January 24, 2008. BIS attached to its reply brief two additional exhibits, marked Gov't Ex. I and J. Both exhibits attempt to attack the credibility of IFF's assertion of ignorance concerning the origin of the X-Ray Film Processors. Following a pre-hearing conference, the previous Scheduling Order dated December 20, 2007, was modified and IFF was provided an opportunity to introduce rebuttal evidence concerning Gov't Ex. I and J. See Scheduling Order, February 19, 2008. A deadline was also established for BIS to file a proposed sanction and for IFF to submit rebuttal evidence concerning the proposed sanction. *Id.* BIS timely filed a Motion for Proposed Sanction. IFF provided a response dated February 25, 2008, regarding the BIS submission that included Exhibits I and J [5] but did not submit a response to the Motion for Proposed Sanction.

On January 24, 2008, BIS also filed a Notice of Withdrawal of Charge 2. Pursuant to 15 CFR 766.3(a), BIS may ''unilaterally withdraw charging letters at any time, by notifying the respondent and the administrative law judge.'' While section 766.3(a) only refers to unilateral withdrawal of charging letters, implicit in the regulations is the fact that BIS may unilaterally withdraw a single charge. Accordingly, Charge 2 was dismissed by Order dated January 29, 2007. Order Granting Motion to Withdraw Charge 2.

For reasons stated below, BIS's Motion for Summary Decision on Charge 1 is GRANTED. Since Charge 2 was withdrawn by BIS, this Recommended Decision & Order resolves the entire case.

[1] On April 26, 2002, through an internal organizational order, the Department of Commerce changed the name of BXA to BIS. See Industry and Security Programs: Change of Name, 67 Fed. Reg. 20630 (Apr. 26, 2002). Pursuant to the Savings Provision of the order, ''Any actions undertaken in the name of or on behalf of the Bureau of Export Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Bureau of Industry and Security.'' *Id.* at 20631.

[2] The charged violation occurred in 2000. The regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 CFR 730–74 (2000)). The 2007 regulations codified at 15 CFR Part 766 establish the procedural rules that apply to this matter.

[3] The EAA and all regulations promulgated there under expired on August 20, 2001. *See* 50 U.S.C. App. 2419. Three days before its expiration, on August 17, 2001, the President declared the lapse of the BAA constitutes a national emergency. 5g Exec. Order. No. 13222, reprinted in 3 CFR at 783–784, 2001 Comp. (2002). Exercising authority under the International Emergency Economic Powers Act (''IEEPA''), 50 U.S.C. 1701–1706 (2002), the President maintained the effectiveness of the BAA 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 successive Notices issued by the President; the most recent being that of August 15, 2007. See Notice: Continuation of Emergency Regarding Export Control Regulations, 72 Fed. Reg. 46, 137 (August 15, 2007). Courts have held that the continuation of the operation and effectiveness of the BAA 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.* v. *U.S. Department of Commerce, 236 F.3d 1286, 1290 (11th Cir. 2001).*

[4] In the Charging Letter, BIS mistakenly cites to section 764.2(d) instead of section 764.2(b). This is a typographical error, which BIS corrects in the Motion for Summary Decision filed on November 6, 2007. Prior decisions have allowed BIS to amend an incorrect citation in the Charging Letter caused by a typographical error. *See* e.g. In re Export Materials, Inc., 64 Fed. Reg. 40,820, 40,820 n. 3 (Jul. 28, 1999). This is especially true where, as in this case, the amendment is not a substantive change and it in no way prejudices the respondent.

[5] It is noted that on February 13, 2008, Respondent filed a letter addressing Gov't Ex. J, as well as other matters concerning the BIS's discovery request. Nonetheless, to ensure that Respondent was offered a reasonable opportunity to file rebuttal evidence to the new exhibits filed by BIS in accordance with 15 CFR 766.15 (2007), the scheduling order was established.

Recommended Findings of Fact

The facts, when viewed in a light most favorable to IFF, establish:

1. IFF is a Canadian freight forwarding business (*Gov't Ex. B*).

2. Kontron Instruments S.A. (Kontron) is a French based company (*Gov't Ex. K*).

3. On May 29, 2000, Kontron issued Purchase Order # 17–3688–58–1124 to Medical Equipment Specialists, Inc., a United States based company (*Gov't Ex. C*).[6]

4. Purchase Order # 17–3688–58–1124 was for four (4) AFP brand X-Ray Film Developers Minimed 90 with initial supplies and parts. (*Id.*).[7]

5. The X-Ray Film Developers were to be shipped to IFF in Canada. (*Id.*).

6. On June 23, 2000, Invoice # 70467 was issued to Medical Equipment Specialists, Inc. for four (4) Minimed 90 PRCSR 110/60. (*Gov't Ex. D*).

7. On June 28, 2000, Medical Equipment Specialists, Inc. issued Invoice # 624865 for four (4) Mini-Med X-Ray Film Processors sold to Kontron. The items were to be shipped to IFF in Canada by ''Truck Air Freight'' and ''Via Ground to Canada.'' (*Gov't Ex. K*).

8. IFF admits that on or around June 29, 2000, the company was ''advised to pickup a shipment from United States for furtherance to Cuba.'' (*Gov't Ex. B*).

9. With respect to the Cuban shipment, Kontron instructed IFF to, among other things:

a. Remove all packing lists and shipping documents attached to the parcels;

b. Attach new packing lists to the parcels and affix new shipping labels on top of the original labels;

c. Reserve a space on the next available flight on Cubana de Aviacion to Habana-Cuba;

d. Prepare an Air way bill for the shipment;

e. Complete the Certificate of Origin by typing the Airline Company, Flight number, and date of flight; and

f. Secure insurance for the benefit of Technoimport-Habana-Cuba. (*Gov't Ex. F*).

10. IFF never inquired whether a license was obtained for the export of the X-Ray Film Processors from the United States to Cuba, via Canada. *See generally Kabba & Amir Investments, Inc. letter dated Jan. 8, 2008* (regarding response to the BIS motion for summary decision).

11. Upon arrival from the United States, the shipment was seized by Canada Customs and Revenue Agency from a Canadian custom bonded warehouse to which IFF could not access. (*Gov't Ex. B*).

12. The APP Mini-medical/90 X-Ray Processors are classified as EAR99. (*Gov't Ex. G, see also* 15 CFR 734.3 (2000)).

13. In 2000, the United States had a virtual embargo on the export and re-export of certain goods from the United States to Cuba. However, there was a limited exception for medical items and agricultural goods. Such items required an export license. (*Gov't Ex. G; see also* 15 CFR 746.2 (2000)).

14. Even though the Medical X-Ray Film Processors are U.S. origin goods, Medical Equipment Specialists, Inc. failed to secure the required license. (*Gov't Ex. H–J*).

Discussion

A. Standard of Review

The standard for review of a motion for summary decision is set forth in 15 CFR 766.8 (2007). That standard of review is the same legal standard adopted in Rule 56(c) of the Federal Rules of Civil Procedure. Under section 766.8, summary decision is appropriate where the entire record shows that: (a) There is no genuine issue as to any material fact; and (b) the moving party is entitled to summary decision as a matter of law. 15 CFR 766.8 (2007). A dispute over a material fact is ''genuine'' if the evidence is such that a reasonable fact finder could render a ruling in favor of the non-moving party. *Anderson* v. *Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).* Substantive law dictates which facts are material, and only disputes that might affect the outcome of the litigation will properly preclude the entry of summary decision. *Id.* at 247.

When reviewing a summary judgment motion, all competing inferences and evidence are viewed in a light most favorable to the non-moving party. Anderson, 477 U.S. at 255. The burden of proof is on the moving party to identify those portions of the record that demonstrate absence of a genuine issue of material fact. *Id.* at 25 1–255; *Celotex Corp.* v. *Catrett, 477 U.S. 317, 322–24 (1986).* Once the moving party proves that there exists no genuine issue of material fact, the burden shifts to the non-moving party to identify specific facts evidencing triable issues of fact. *Id.* A simple denial or conclusory allegations are insufficient to defeat a summary decision motion. See In re: MK Technology Assoc., Ltd., 64 Fed. Reg. 69,478 (Dec. 13, 1999).

B. Substantive Law/Regulations

The EAA and EAR govern exports from the United States. *See* 50 U.S.C. App. 2402(2)(A), 2404(A)(1), 2405(A)(1), and 15 CFR 730.2 (2000). In 2000, there was a virtual embargo on the export and re-export of certain goods from the United States to Cuba. (*Gov't Ex. G*). Section 746.2(a) established, ''you will need a license to export or reexport all items subject to the EAR * * * to Cuba.'' *See* 15 CFR 746.2(a) (2000). The phrase '' '[s]ubject to the EAR' * * * describes those items and activities over which the [Agency] exercises regulatory jurisdiction.'' *See* 15 CFR 734.2(a)(1). It broadly includes:

(a) All items in the United States, including in a U.S. Foreign Trade Zone or moving in transit through the United States from one foreign country to another;

(b) All U.S. origin items wherever located;

(c) U.S. origin parts, components, materials, or other commodities incorporated abroad into foreign-made products, U.S. origin software commingled with foreign software, and U.S. origin technology commingled with foreign technology, in quantities exceeding *de minimis* levels;

(d) Certain foreign-made direct products of U.S. origin technology or software; and

(e) Certain commodities produced by any plant or major component of a plant located outside the United States that is a direct product of U.S. origin technology or software. *See* 15 CFR 734.3(a).[8]

Section 736.2(b)(6) contains a general prohibition against the ''export or reexport of any items subject to the EAR [without a license or License Exception] to a country that is embargoed by the United States or otherwise made subject to controls * * * as described in part 746 of the EAR.'' *See* 15 CFR 736.2(b)(6) (2000). The ''export or reexport of items subject to the EAR that will transit through * * * or be transshipped in a country or countries to a new country or are intended for reexport to the new country, are deemed to be exports to the new country.'' *See* 15 CFR 734.2(b)(6).

The term '' 'Export' means an actual shipment or transmission of items

[6] Gov't Ex. C contains a typographical error, which is now being corrected. Gov't Ex. C indicates that Medical Equipment Specialists, Inc. is located in ''Shrewsbuty, MA 01545.'' The true name of the city is ''Shrewsbury'', not ''Shrewsbuty.'' *See* (*Gov't Ex. E* (Medical Equipment Specialists, Inc.'s Invoice)).

[7] Throughout this case, ''AFP brand X-Ray Film Developers Minimed 90'', ''Minimed 90 PRCSR 110/60'', ''Mini-Med X-Ray Film Processors,'' ''AFP Mini-medical/90 X-Ray Processors'' are names used to refer to the same item, X-Ray Film Processors.

[8] Items subject to the EAR are listed in the Commerce Control List (CCL) located in part 774 of the EAR. 15 CFR 734.3(c). Those items subject to the EAR which are not listed on the CCL are designated as EAR99. *Id.*

subject to the EAR out of the United States.'' *See* 15 CFR 734.2(b)(1). Conversely, the term '' 'Reexport' means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country * * * outside the United States.'' *Id.* at (b)(4). The export or reexport need not be completed to constitute a violation of the EAR. The mere attempt to export or reexport an item subject to the EAR without a license constitutes a violation. *See* 15 CFR 764.2(c). Further, a person is not relieved of ones obligation to comply with the EAR simply because that person complied with the license or other requirements of foreign law or regulation. *See* 15 CFR 734.12.

IFF is charged with aiding and abetting the attempted unlicensed export of X-Ray Film Processors to Cuba via Canada in violation of section 764.2(b), which states:

(c) Causing, aiding, or abetting a violation. No person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited or the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder. *See* 15 CFR 764.2(b).

C. IFF's Answer constitutes an admission thereby eliminating any genuine issue of material fact.

In these proceedings, a respondent's Answer to the Charging Letter is critical in framing the factual issues in the case. In re Jabal Damavand General Trading Co., 67 Fed. Reg. 32,009 (May 13, 2002). There are no factual issues in dispute where a respondent admits the allegations contained in the Charging Letter. An ''admission'' is defined as ''a voluntary acknowledgement made by a party of the existence of the truth of certain facts.'' Black's Law Dictionary 47 (6th Ed. 1990).

The issue in this case is whether IFF's answer to the Charging Letter and subsequent responses operate as an admission thereby eliminating any genuine issues of material fact in this case. The Agency points to IFF's letter dated January 17, 2006 wherein Mr. A. Rahman Amir, Managing Director of IFF, acknowledges the company was ''advised to pickup a shipment from United States for furtherance to Cuba.'' In the same breadth, however, IFF claims that: (1) The company was ''not aware of the * * * origin of the goods'' or that the goods required an ''export control permit'' and (2) under Canadian law, the shipper—not the freight forwarder—is responsible for obtaining the ''export control permit.'' Both arguments are rejected.

Based on a reading of IFF's Answer, the aforementioned response effectively operates as an admission. Respondent's contention that they ''were not aware of the nature of the good [or] the origin of the goods'' does not absolve the company of liability. Under the EAR, jurisdiction is established on all items in the United States regardless of origin. *See* generally 15 CFR 734.3(a).

Further, Respondent's lack of awareness that the X-Ray Film Processors required an ''export control permit'' does not insulate the company from liability. IFF is in a highly regulated industry. Those engaged in the industry are ''presumed to be aware of, and practitioners in the industry are charged with knowledge of, as well as the responsibility to comply with, the duly promulgated regulations.'' In re Aluminum Company of America, 64 Fed. Reg. 42,641, 42,648 (Aug. 5, 1999) (citing *United States* v. *Int'l Minerals and Chemical Corp., 402 U.S. 558, 563 & 565 (1971).* One's compliance with foreign law or regulation does not relieve one of the obligations to comply with the EAR. 15 CFR 734.12.

Here, as a freight forwarder, IFF had an obligation, at very least, to inquire whether all applicable export licenses had been secured for the X-Ray Film Processors before entering into the transaction. Upon learning that no license had been secured for the export from the United States to Cuba via Canada IFF should have acted accordingly. Its failure to do either of the above unnecessarily exposed IFF to liability in this case.

BIS correctly argues that IFF's knowledge of the violation is irrelevant in determining whether a violation occurred because 15 CFR 764.2(b) is strict liability. Knowledge or intent is simply not a requisite element of proof for an aiding or abetting violation. Doron Totler individually and d/b/a Ram Robotics, Ltd. a/k/a Ram Robotic Automation Mfg. Systems. Ltd., 58 Fed. Reg. 62,095 (Nov. 24, 1993). Thus, liability may be imposed regardless of knowledge or intent. *Iran Air* v. *Kugelman, 996 F.2d 1253, 1258–59 (D.C. Cir. 1992*); *see* also In re Aluminum Company of America, 64 Fed. Reg. 42,641 (Aug. 5, 1999).

In addition, the fact that the X-Ray Film Processors were not exported to Cuba as planned, and that IFF never took actual possession of the items does not serve as a defense in this case. The mere attempt to export or reexport the X-Ray Film Processors, classified as EAR99, from the United States to Cuba, via Canada without a license is sufficient to establish a violation of the EAA and EAR. *See* 15 CFR 764.2(c).

Based on the above and viewing the evidence in a light most favorable to Respondent, BIS is entitled to summary decision as a matter of law based on IFF's admission and the documentary evidence supporting the motion for summary decision.

Recommended Ultimate Findings of Fact and Conclusions of Law

1. Kabba & Amir Investments, Inc. d.b.a. International Freight Forwarders and the subject matter of this case 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 (2000)), and the Export Administration Regulations (15 CFR Parts 730–74 (2000 & 2007)).

2. Under 15 CFR 764.2(c), the attempted export of the Medical X-Ray Film Processors (classified as EAR99) from the United States to Cuba, via Canada constitutes a violation of the EAR.

3. Title 15 CFR 764.2(b) is a strict liability offense. Thus, the Agency need not prove ''knowledge'' or ''intent'' to establish that Respondent aided or abetted the attempted export of X-Ray Film Processors (classified as EAR99) from the United States to Cuba, via Canada on or about June 29, 2000.

4. Respondent is not relieved of the obligation to comply with the EAR simply by establishing compliance with Canadian laws and/or regulations. See generally 15 CFR 734.12.

5. IFF's answer to the Charging Letter and subsequent responses constitute admissions thereby eliminating any genuine issues of material fact in this case.

6. BIS has established by documentary evidence and IFF's admissions that there exists no genuine issues of material fact that Respondent violated 15 CFR 764.2(b) by aiding or abetting in the attempted export of X-Ray Film Processors (classified as EAR99) from the United States to Cuba, via Canada on or about June 29, 2000. Accordingly, BIS is entitled to summary decision.

Recommended Sanction

Section 764.3 of the EAR sets forth the sanctions BIS may seek for violations. The sanctions include: (i) A monetary penalty; (ii) suspension from practice before BJS, and (iii) denial of export privileges. 15 CFR 766.3. A denial order may be considered an appropriate sanction even in matters involving simple negligence or carelessness, if the violation involves ''harm to the national security or other essential interests protected by the export control system,''

if the violations are of such a nature and extent that a monetary fine alone represents an insufficient penalty. 15 CFR Part 766, Supp. No. 1, III, A.

Here, BIS seeks a monetary penalty amount of $6,000 and a denial of export privileges for a period of three (3) years. BIS also proposes that this denial of export privileges be suspended as long as Respondent pays the monetary penalty within thirty (30) days from the date of the final Decision and Order, and Respondent does not commit any further violations of the Act or Regulations within three (3) years from the date of the final Decision and Order. Furthermore, BIS counsel explains that this sanction is reasonable because it falls below the maximum penalty allowed.

The governing regulations in this case provide for the available sanction of civil monetary penalties, suspension from practice before BIS and denial of export privileges. See 15 CFR 764.3. Specifically, 15 CFR 764.3(a)(1) states that maximum monetary penalty allowed is set forth in the Export Administration Act of 1979 (EAA).[9] 50 U.S.C. App. 2401–20 (2000). ''In the event that any provision of the EAR is continued by IEEPA or any other authority, the maximum monetary penalty for each violation shall be proved by such other authority. Id. Since the EAA had lapsed at the time of the violation, the regulations violated by Respondent were in effect under the IEEPA and thus, the maximum monetary penalty is provided for under the IEEPA. The maximum penalty amount according the IEEPA is $250,000.00.

At the time the charging letter was filed the IEEPA provided for a maximum penalty amount of $11,000.00 per violation. 15 CFR 6.4, 764.3(a) (2000). On October 15, 2007, Congress increased the maximum civil penalty under the IEEPA to $250,000 or twice the amount of the transaction that is the basis of the violation. Public Law No. 110–96, 121 Stat. 1011 (2007). Congress applied this penalty increase with respect to which enforcement action was pending or commenced on or after the date of the enactment of the EAA. Id. Therefore, since this action was pending on October 16, 2007, the maximum penalty available is $250,000.00 per violation.

Although Respondent did not reply to the Agency's Motion for Proposed Sanction, Respondent did assert lack of knowledge in prior filings. I have taken that into consideration and after review of the entire record, including all filings and responses by the parties, I find that the sanction proposed by BIS is appropriate. Accordingly, Respondent shall be sanctioned with a monetary penalty of $6,000.00, and a denial of export privileges for three (3) years. This three (3) year suspension shall be suspended for a period of three years as long as Respondent pays the monetary penalty of $6,000.00 within thirty (30) days of the issuance of the Final Decision and Order and Respondent does not commit any further violations of the Act or Regulations within three (3) years of the issuance of the Final Decision and Order.

Recommended Order [10]

[REDACTED SECTION] pgs. 16–18.

[REDACTED SECTION] pg. 19 partially redacted.

PLEASE BE ADVISED that this Recommended Decision and Order is being referred to the Under Secretary for Industry & Security for review and final action for the agency. Pursuant to section 766.22(b), the parties have twelve (12) days from the date of issuance of this recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight (8) days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

PLEASE BE FURTHER ADVISED that within thirty (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 in accordance with 15 CFR 766.22 (2007), a copy of which is supplied in Attachment A.

Done and dated April 2, 2008, Norfolk, Virginia.

Michael J. Devine,

Administrative Law Judge, U.S. Coast Guard.[11]

Attachment A—Notice of Review by Under Secretary

15 CFR 766.22 Review by Under Secretary.

(a) *Recommended decision.* For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) *Submissions by parties.* Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) *Final decision.* Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 766.20 of this part.

(e) *Appeals.* The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. 2412(c)(3).

[FR Doc. E8–9982 Filed 5–6–08; 8:45 am]

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[9] From August 21, 1994 through November 12, 2000, the EAA was in lapse. The regulations were continued in effect under the International Emergency Economic Powers Act (IEEPA) pursuant to Executive Order 12924 and several successive Presidential Notices. The EAA was reauthorized on November 13, 2000, by Public Law No. 106–508 (114 Stat. 2360 (2000)). The EAA lapsed again on August 20, 2001 but was continued in effect under the IEEPA pursuant to Executive Order 13222 and several successive Presidential Notices.

[10]

[11] 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.