meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: July 5, 2006.

Carol Booker,

Legal Counsel.

[FR Doc. 06–6132 Filed 7–6–06; 2:12 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 05–BIS–14]

In the Matter of: Ihsan Medhat Elashi, a/k/a I. Ash; a/k/a Haydee Herrera; a/k/a Abdullah Al Nasser; a/k/a/ Samer Suwwan; a/k/a Sammy Elashi, Respondent; Decision and Order

In a charging letter filed on July 29, 2005, the Bureau of Industry and Security (''BIS'') alleged that respondent Ihsan Medhat Elashi (''Ihsan'') committed 32 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) (the Act).[2]

The charges against Ihsan are as follows:

Charge 1 alleges that beginning in or about May 1998 and continuing through in or about February 2002, Ihsan conspired and acted in concert with others, known and unknown, to do or bring about acts that violate the Regulations. The purpose of the conspiracy was to export computer equipment and software, items subject to the Regulations and classified under Export Control Classification Numbers (''ECCN'') 4A994 and 5D002 respectively, from the United States to Syria without the U.S. Department of Commerce licenses required by Section 742.9 of the Regulations, and to export computers and computer accessories to various destinations in violation of orders temporarily denying his export privileges.

Charge 2 alleges that on or about August 2, 2000, Ihsan engaged in conduct prohibited by the Regulations by exporting or causing to be exported a computer, an item classified under ECCN 4A994, to Syria without the Department of Commerce license required by Section 742.9 of the Regulations.

Charge 3 alleges that with respect to the export described above, Ihsan sold a computer with the knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the computer. At all relevant times, Ihsan knew or had reason to know that the computer in question required a Department of Commerce license for export to Syria, and that the required license had not been obtained.

Charges 4–15 allege that on 12 occasions from on or about September 17, 2001 through on or about February 5, 2002, Ihsan took action prohibited by a denial order by exporting computers, clothes, printers, strobes, network equipment, SCSI kit, and computer accessories, items subject to the Regulations, to Syria, Saudi Arabia, Jordan, and Egypt. Ihsan was denied his export privileges on September 6, 2001. See 66 FR. 47,630 (September 13, 2001). The temporary denial order prohibited Ihsan from ''participat[ing] in any way in any transaction involving any commodity, software or technology (hereafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the [Regulations].''

Charge 16 alleges that on or about October 12, 2001, Ihsan took action prohibited by a denial order by carrying on negotiations concerning a transaction involving computers, items subject to the Regulations, to Saudi Arabia. Ihsan was denied export privileges on September 6, 2001. See 66 FR 47,630 (September 13, 2001). The temporary denial order prohibited Ihsan from ''carrying on negotiations concerning * * * any transaction involving any item to be exported from the United States that is subject to the [Regulations].''

Charges 17–29 allege that with respect to the 13 occasions listed in charges 4–16, Ihsan sold computers and computer accessories with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the computers, clothes, printers, strobes, network equipment, SCSI kit, or computer accessories. At all relevant times, Ihsan knew or had reason to know that he was denied his export privileges, that authorization from the Department of Commerce was required for any export subject to the Regulations, and that such authorization had not been obtained.

Charges 30–32 allege that on three of the occasions described in charges 4–15 above Ihsan took actions with the intent of evading the order temporarily denying his export privileges. Specifically, Ihsan continued to export or cause the export of computer accessories and a SCSI kit under the names Mynet.net, Kayali Corporation, and Samer Suwwan to disguise the fact that he was the exporter of the items.

In a letter dated August 10, 2005, Ihsan answered the charging letter by denying any wrongdoing. Pursuant to a modified Scheduling Order issued by the Administrative Law Judge (ALJ), on March 16, 2006, BIS filed its Memorandum and Submission of Evidence to Supplement the Record. On March 27, 2006, Respondent filed his defense to the record. On April 28, 2006, BIS filed the Bureau of Industry and Security's Rebuttal to Respondent's Filing and Memorandum and Submission of Evidence to Supplement the Record.

Based on the record, on June 5, 2006, the ALJ issued a Recommended Decision and Order in which he found that Ihsan committed 30 violations of the Regulations. Specifically, the ALJ found that Ihsan committed charges 1–11, 13–24, and 26–32. The ALJ found that BIS did not prove by a preponderance of the evidence charges 11 and 25. The ALJ recommended that Ihsan be assessed a $330,000 civil penalty and a denial of Ihsan's export privileges for fifty (50) years.

The ALJ's Recommended Decision and Order, 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

[1] 15 CFR parts 730–774 (2006). The charged violations occurred from 1998 to 2002. The Regulations governing the violations at issue are found in the 1998 through 2002 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (1998–2002)). 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) (''IEEPA''). On November 13, 2000, the Act was reauthorized by Pub. L. 106–508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. 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 6, 2004 (69 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

supports the ALJ's findings of fact and conclusions of law regarding the liability of Ihsan for charges 1–11, 13–24, and 26–32. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations, the importance of preventing future unauthorized exports, the lack of mitigating circumstances, and Ihsan's total disregard for the denial order imposed upon him.

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

Accordingly, it is therefore ordered,

First, that a civil penalty of $330,000 is assessed against Ihsan, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701–3720E), the civil penalty owed under this Order accrues interest as provided and, if payment is not made by the due date specified, Ihsan will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge.

Third, that, for a period of fifty years from the date of this Order, Ihsan Medhat Elashi (a/k/a I. Ash, Haydee Herrera, Abdullah Al Nasser, Samer Suwwan, and Sammy Elashi), of Seagoville FCI, 2113 North Highway, Seagoville, Texas, 75159, and, when acting for or on behalf of Ihsan, his representatives, agents, assigns, and employees (''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;

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.

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 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.

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 Person 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 29, 2006.

David H. McCormick,

Under Secretary 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 States Coast Guard.

Appearances:

Peter R. Klason, ESQ, Craig S. Burkhardt, ESQ, & Melissa B. Mannino, ESQ.
For the Bureau of Industry and Security.

Ihsan Medhat Elashi
For Respondent.

II. Summary of Decision

This case involves operations by Respondent, Ihsan Medhat Elashi,[1] in his personal capacity, in his capacity as systems consultant for Infocom Corporation, and in his capacity as president of Tetrabal Corporation of Seagoville, Texas, to unlawfully export goods in violation of the Export Administration Act of 1979 (''EAA'' or ''Act'')[2] and the Export Administration Regulations (''EAR'' or ''Regulations'').[3] The EAA and the underlying EAR establish a ''system of controlling exports by balancing national security, foreign policy and

[1] Two different spellings have been used for ''Elashi.'' Some documents, such as the Respondent's criminal indictment (Gov't Ex. 1), use the spelling ''Elashyi.'' While other documents, such as the Respondent's Temporary Denial Order (Gov't Ex. 7), use the spelling ''Elashi.'' To stay consistent, this Recommended Decision and Order will use the spelling ''Elashi'' throughout.

[2] 50 U.S.C. app. §§ 2401–2420 (2000). 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, reprinted in 3 CFR at 783–784, 2001 Comp. (2002). The President maintained the effectiveness of the EAA and its underlying regulations through successive Presidential Notices, the most recent being that of August 2, 2005 (70 FR 45,273 (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.

[3] The EAR is currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2006). The charged violations occurred from 1998 to 2002. The EAR governing the violations at issue are found in the 1998 to 2002 versions of the Code of Federal Regulations (15 CFR parts 730–774 (1998–2002)).

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. §§ 2401–02.

Here, thirty-two violations of the EAR are alleged and the Bureau of Industry and Security, United States Department of Commerce (''BIS'' or ''Agency'') seeks denial of the Respondent's export privileges from the United States for a period of 50 years and a civil penalty in the amount of $352,000. This case was brought while Respondent was serving a 72-month sentence in Federal prison based, in part, on a finding of guilt to one count of conspiracy to violate the EAR. *See United States* v. *Ihsan Elashyi*, 3:02–CR–052–L(05) (N.D. TX).

Charge 1–3 in this administrative proceeding are identical to or are in connection with the conspiracy charge before the District Court to which Respondent was found Guilty and for which the court entered a judgment and sentence. These charges are found proved.

Charges 4–16 in this administrative proceeding allege that Respondent acted on 13 occasions in violation of an export denial order. With respect to those 13 occasions, in Charges 17–29, BIS also alleges Respondent knowingly violated the EAR. Charges 4–29 are found proved, with the exception of Charges 12 and 25 which are found not proved. Charge 12 is found to be part of the same transaction as Charge 11 and Charge 25 is found to be part of the same transaction as Charge 24.

Charges 30–32 in this administrative proceeding allege Respondent with taking action to evade a denial order. These charges correspond to the facts set forth in Charges 9, 10, and 15. These charges are found proved.

No hearing was requested and there was consent to the making of the decision on the record. BIS submitted substantial and probative evidence in support of the charges. Respondent did not address the validity of the evidence and instead relied upon affirmative defenses. These defensives were found to be without merit. In lieu of the numerous violations, a Denial Order of 50 years and civil penalty of $330,000 is recommended.

III. Preliminary Statement

On July 29, 2005, BIS [4] filed a Charging Letter against Respondent Ihsan Medhat Elashi (''Elashi'' or ''Respondent'') (Docket No. 05–BIS–14) alleging thirty-two violations of the EAR. The charges alleged the following:

Charge 1 alleged that on or about May 1998, to on or about February 2002, Respondent violated Section 764.2(d) of the EAR by conspiring to (1) export computer equipment and software to Syria without the required U.S. Department of Commerce license and (2) to export computer and computer accessories to various destinations in violation of an order temporarily denying his export privileges.

Charge 2 alleged that on or about August 2, 2000, Respondent violated Section 764.2(a) of the EAR by exporting or causing to be exported a computer to Syria without the required U.S. Department of Commerce license.

Charge 3 alleged that in respect to the export made in Charge 2, Respondent violated Section 764.2(e) of the EAR by selling a computer with the knowledge that a violation of the EAR would occur.

Charges 4–15 alleged that on twelve occasions on or about September 17, 2001, to on or about February 5, 2002, Respondent violated Section 764.2(k) of the EAR by taking action prohibited by a denial order by exporting items subject to the EAR, to include computers, clothes, printers, strobes, network equipment, SCSI kit, and computer accessories. The schedule of the alleged violations, setting out the dates, destinations, commodity exported, Export Control Classification Number (ECCN), and invoice values was attached to the Charging Letter.

Charge 16 alleged that on or about October 12, 2001, Respondent violated Section 764.2(k) of the EAR by taking action prohibited by a denial order by carrying on negotiations concerning a transaction subject to the EAR, to include the export of computers.

Charges 17–29 alleged that in respect to thirteen occasions described in Charges 4–16, Respondent also violated Section 764.2(e) of the EAR by selling computers and computer accessories with knowledge that a violation of the EAR was about to occur or was intended to occur.

Charges 30–32 alleged that in respect to Charges 9, 10, and 15, Respondent violated Section 764.2(h) of the EAR by taking actions with the intent of evading the order temporarily denying his export privileges.

On August 5, 2005, this case was placed on the docket by the U.S. Coast Guard Administrative Law Judge Docketing Center pursuant to the Interagency Agreement between BIS and the U.S. Coast Guard.

On August 10, 2005, Respondent submitted a ''response'' to the Charges. This response was written by Respondent without aid of counsel. Respondent did not refer to this response as an ''Answer,'' however, since the response addresses the Charges, it will be considered Respondent's Answer. In the Answer, Respondent claims he is not subject to the EAR because he only exported ''publicly available'' technology and software. Respondent also believes the criminal penalties he has received, which resulted from the same facts set forth in the Charges, should serve as sufficient ''justice'' and any further action would constitute double jeopardy. Respondent notes that he is appealing these criminal convictions since the jury verdict was based on ''confusions.'' Respondent claims to have inadequate financial resources to hire a lawyer and requested a court appointed lawyer.

On September 15, 2005, the undersigned was assigned to preside over this case by order of the Coast Guard Chief Administrative Law Judge.

On September 30, 2005, a ''Briefing Schedule Order'' was issued setting forth a proceeding without a hearing. Neither BIS nor Respondent made a written demand for a hearing, as such, there was consent to the making of the decision on the record. *See* 15 CFR § 766.6(c) and 766.15. This Order also denied Respondent's request for a court appointed lawyer in view of the fact that this proceeding is not a criminal matter, but is a civil matter involving the imposition of administrative sanctions.

On October 6, 2005, BIS submitted a Request for Amendment to Scheduling Order. BIS requested a delay in order to allow the sentencing in Respondent's related criminal case to occur before BIS was required to submit their supplement to the record. On October 13, 2005, this Request was granted.

On January 20, 2006, BIS submitted a second Request for Amendment to Scheduling Order. BIS requested this amendment as Respondent's sentencing date in the related criminal conviction had been delayed. On January 23, 2006, this Request was granted. It was ordered that no later than March 17, 2006, BIS shall file all evidence in support of the charges; no later than April 17, 2006, the Respondent shall file all evidence in defense of the charges; and no later than May 1, 2006, BIS shall file its rebuttal to the Respondent's evidence.

On March 16, 2006, BIS submitted its Memorandum and Submission of Evidence to Supplement the Record. On March 27, 2006, Respondent filed his defense to the evidence. On April 28, 2006, BIS filed the Bureau of Industry and Security's Rebuttal to Respondent's Filing and Memorandum and Submission of Evidence to Supplement the Record.

IV. Applicable Statutes and Regulations

The export violations in this administrative proceeding were alleged to have occurred between 1998 and 2002. Thus, the export control laws and regulations in effect between 1998 and 2002 govern resolution of this matter. Those laws and regulations are substantially similar to the current export control laws and regulations. *See* Attachment A for applicable statutes and regulations.

V. Recommended Findings of Fact & Recommended Ultimate Findings of Fact and Conclusions of Law

[Redacted Section]

VI. Discussion

BIS has sought to prove Respondent committed numerous violations of the EAR through the submission of extensive documentary evidence. Respondent has not challenged the validity of this evidence; instead, Respondent's defense rests upon several broad themes. First, Respondent claims that the items he exported were

[4] Through an internal organizational order, the Department of Commerce changed the Bureau of Export Administration (BXA) to Bureau of Industry and Security (BIS). *See* Industry and Security Programs: Change of Name, 67 FR 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. BXA issued the Temporary Denial Order which will be referenced later in this decision.

''publicly available'' and therefore not ''subject to the EAR.'' Second, Respondent believes the order temporarily denying his export privileges had no ''force of law'' as applied to him. Third, Respondent makes a plea asking for leniency, as he believes any further penalties in light of the related criminal convictions would not constitute ''true justice'' and would equate to double jeopardy. These arguments by Respondent have been rejected and the evidence submitted by BIS has been found to adequately support most of the charges.

A. Exports Not Subject to the Regulations

Respondent's first defense states that no violation of the EAR occurred because he ''was not subject to [the] E.A.R. as long as the technology to be exported [was] publicly available.'' (Defense,[5] at 1). If the items exported were not subject to the EAR, then no violations of the EAR could have occurred. BIS objects to the use of this defense as untimely since Respondent did not raise this affirmative defense in the Answer. (Rebuttal,[6] at 3–4). I find the timeliness objection to be unpersuasive. This defense was addressed in Respondent's Answer. Respondent states, ''I would like to point out the fact that the Export Administration [R]egulations clearly states that if the [t]echnology or software I am exporting or re-exporting are publicly available, then I am not subject to the 'E.A.R.' All my export[s] were publicly available and none required a license.'' (Answer,[7] at 2). Accordingly, BIS's argument that Respondent's defense is untimely is rejected.

While Respondent raised this defense in a timely manner, it is nevertheless unpersuasive. Publicly available technology and software are generally not subject to the EAR. *See* 15 CFR 734.3(b)(3). However, BIS did not charge Respondent with exporting technology or software,[8] instead Respondent was charged with exporting commodities—''[a]ny article, material, or supply except technology or software.'' 15 CFR 772.1. A commodity is a physical item, while technology is ''information'' and software is ''programs.'' *Id.* Unlike technology and software, commodities have no public availability exception. Since Respondent is charged with exporting commodities, Respondent's exports are not excluded from the EAR under the public availability exception.

B. Validity of the Temporary Denial Order

Respondent asserts that the Temporary Denial Order[9] (IDO) issued against Respondent ''had no force of law on Ihsan Elashyi and Tetrabal.'' (Defense, at 2). If the TDO was not in effect, Respondent would not be in violation of Charges 4–32, since each charge contains the common factual element of acting in violation of a TDO. BIS objects to the use of this defense as untimely since Respondent did not raise this affirmative defense in the Answer. (Rebuttal, at 3–4). I find the timeliness objection to be unjustified. Respondent is a pro se petitioner and his defenses will be less sophisticated than an experienced attorney. As such, if a pleading might possibly have merit, ''the long-standing practice is to construe pro se pleadings liberally.'' *Hill* v. *Braxton*, 277 F.3d 701, 707 (4th Cir. 2002); *see Haines* v. *Kerner*, 404 U.S. 512,520 (1972). Respondent asserts[10] that his Answer addresses the issue of an invalid TDO. In the Answer, Respondent writes he is appealing the criminal convictions because his conviction was based on ''confusions.'' (Answer, at 2). Respondent clarifies these ''confusions'' as being the false testimony Respondent believes was given in his trial to justify the TDO. (See Defense, at 2). Respondent believes these ''confusions'' will invalidate the TDO. *Id.* Taking into consideration that this is a pro se pleadings, I find that Respondent addressed the affirmative defense of an invalid TDO in a timely manner.

While Respondent raised this defense in a timely manner, it is nevertheless unpersuasive. Respondent claims the TDO ''had no force of law on Ihsan Elashyi or Tebrabal.'' *Id.* However, Respondent previously pled guilty to one count of exporting an item in violation of this TDO. *See United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–033–L(01) (N.D. TX). Such a pleading forecloses his ability, via the doctrine of collateral estoppel, to challenge the validity of the TDO in this administrative proceeding.

The doctrine of collateral estoppel precludes a party from disputing the facts in an administrative proceeding that were adversely decided against that party in a preceding criminal proceeding.[11] *Amos* v. *Commissioner*, 360 F.2d 358 (4th Cir. 1965); *cf. Emich Motors Corp.* v. *General Motors Corp.*, 340 U.S. 558, 568 (1951) (criminal conviction has been given collateral estoppel effect in a subsequent civil proceeding); *United States* v. *Podell*, 572 F.2d 31, 35 (2d Cir. 1978); see also *United States* v. *Utah Construction & Mining Co.*, 384 U.S. 394 (1966) (collateral estoppel applies in administrative proceedings). To prevail, a party seeking to invoke the doctrine of collateral estoppel must establish: (1) The issue sought to be precluded is the same as that involved in the previous action; (2) the issue was actually litigated; (3) the issue was determined by a final, binding judgment; and (4) the determination of the issue was essential to the judgment. *Grella* v. *Salem Five Central Sav. Bank*, 42 F.3d 26, 30 (1st Cir. 1994); *Central Hudson Gas & Elec. Corp.* v. *Empresa Naviera Santa*, 56 F.3d 359, 368 (2d Cir. 1995).

The four elements of collateral estoppel are satisfied in this proceeding. On April 10, 2000, Respondent was indicted on thirteen charges of exporting items from the United States in violation of an order temporarily denying his export privileges. Respondent plead guilty to Charge 3 of this indictment on October 23, 2002 in *United States of America* v. *Ihsan Elashyi*, supra. The export for which Respondent plead guilty is the same export that BIS has referenced in this proceeding as Charges 6 and 19. The order temporarily denying Respondent's export privileges described in the indictment is the same TDO that BIS has charged Respondent with violating in Charges 4–32. (Gov't Ex. 7). As such, the issue sought to be precluded, the validity of a specific TDO, is the same in both the criminal proceeding and this proceeding. Respondent's guilty plea satisfies the requirement that the issue was actually litigated.[12] The issue was also determined by a final and binding judgment. When the TDO was issued, the EAA provided a means by which Respondent could have appealed the issuance. *See* 50 U.S.C. app. § 2412(d)(2). Respondent did not appeal[13] the Under Secretary of Commerce for Export Administration's Decision and Order granting the TDO, nor has he appealed his guilty plea in *United States of America* v. *Ihsan Elashyi*, supra. Finally, the validity of the TDO was essential to the judgment in the criminal case. Respondent plead guilty to Charge 3 of the criminal indictment. This indictment set forth that he willfully violated

[5] ''Defense''—indicates Respondent's March 27, 2006 letter responding to BIS's submission of evidence.

[6] ''Rebuttal''—indicates BIS's April 28, 2006 filing titled the Bureau of Industry and Security's Rebuttal to Respondent's Filling and Memorandum and Submission of Evidence to Supplement the Record.

[7] ''Answer''—indicates Respondent's August 10, 2005 letter responding to Charges BIS filed against Respondent.

[8] Charge 1 charged Respondent, in part, with conspiracy to export software, but this charge was connected to the export of an entire computer system to Syria (the software was loaded onto the computer). The computer system had no publicly availability exception and Respondent was criminally convicted of conspiracy and found to have acted in violation of the EAR in connection with this export. *United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–052–L(05) (N.D. TX).

[9] On September 6, 2001, the Assistant Secretary of Commerce for Export Enforcement issued an order that denied the export privileges of Respondent for a period of 180 days. *See* 66 Fed. Reg. 47630 (September 13, 2001).

[10] ''My letter [Answer] on August 10, 2005 did not in no way say that Ihsan Elahyi generally denied all of the charges, but rather it said that Ihsan EIashyi received a sever punishment for exporting while under a 'TDO' that had no force of law on him.'' (Defense, at 2).

[11] This discussion of collateral estoppel is the same legal conclusion as set forth in *In re. Abdullamir Mahid*, Order Granting in Part and Denying in Part Bureau of Industry and Security's Motion for Summary Decision, Docket No. 02–BXA–01, at 11.

[12] Application of collateral estoppel from a criminal proceeding to a subsequent civil proceeding is not in doubt. It is well settled that a guilty plea has preclusive effect in a subsequent administrative proceeding as to those matters determined in the criminal case. *New York* v. *Julius Nasso Concrete Corp.*, 202 F.3d 82, 86 (2d Cir. 2000); *United States* v. *Killough*, 848 F.2d 1523, 1528 (11th Cir. 1998); *United States* v. *Podell*, 572 F.2d 31, 35 (2d Cir. 1978).

[13] Respondent appealed the TDO to the U.S. Coast Guard Administrative Law Judge Docketing Center. On November 2, 2001, the Chief Administrative Law Judge issued a recommended decision that denied the appeal. On November 10, 2001, the Under Secretary of Commerce for Export Administration affirmed the recommended decision and order of the Chief Administrative Law Judge. There is no evidence that Respondent appealed the decision of the Under Secretary. As such, Respondent failed to exhaust his statutory remedies of appeal as set forth in 50 U.S.C. app. § 2412(d).

the EAR by exporting goods to Saudi Arabia in violation of a TDO. If the TDO had not been valid, Respondent would not have been in violation of the EAR. The four elements of collateral estoppel are satisfied in this proceeding. Accordingly, the doctrine of collateral estoppel precludes Respondent from challenging the validity of the TDO in this proceeding.

C. Double Jeopardy

Respondent moves to dismiss the charges in this proceeding as a violation of the Double Jeopardy Clause of the Fifth Amendment. Respondent argues the charges brought forth in this proceeding are based on essentially the same facts of which Respondent has already been found criminally guilty.[14] Respondent's argument is unpersuasive as the current proceeding is civil in nature and not criminal.

The Double Jeopardy ''Clause protects only against the imposition of multiple criminal punishments for the same offense.'' *Hudson* v. *United States*, 522 U.S. 93, 93 (1997). Courts have traditionally looked at Congressional intent when determining if a penalty is civil or criminal in nature. *Id.* at 94. A penalty statute labeled ''civil'' will generally be considered civil in nature unless the sanction is so punitive as to render it criminal. *Id.* ''[N]either money penalties nor debarment has historically been viewed as'' criminal in nature. *Id.* at 104.

Congress authorized a range of penalties available for export violations. *See* 50 U.S.C. app. 2410(c); 15 CFR 764.3. These penalties include a monetary penalty of up to $11,000 [15] per violation and a revocation of export privileges. *Id.* Congress labeled these money penalties and debarment action as ''[c]ivil penalties.'' 50 U.S.C. app. 2410(c). From the wording of the statute, it is evident that Congress clearly intended the penalties available in this proceeding to be civil in nature. Since this proceeding is civil in nature, the Double Jeopardy Clause will not be a bar to the issuance of any additional administrative sanctions.

D. Violations of the Export Administration Act and Regulations

While Respondent has not refuted the evidence submitted against him by BIS, the burden of proof remains on BIS to prove 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, 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 Servo Corp.*, 465 U.S. 752, 764–765 (1984).

The Agency has produced sufficient evidence to establish that Respondent violated all charges, except Charges 12 and 25.

1. Charge 1: Conspiracy To Export Without Required License

Charge 1 alleges that Respondent conspired to export computers and software to Syria in violation of 15 CFR 742.9. The conspiracy regulations provides: ''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). This charge is found proved.

On January 27, 2006, Respondent was found guilty of conspiracy to knowingly violate the EAR and was sentenced to 60 months imprisonment for the conspiracy and for other counts for which Respondent was convicted.[16] (Gov't Ex. 3, at 3). The central facts of this charge are identical to those set forth in the criminal conspiracy. (Gov't Ex. 1, at 8–12). Respondent received orders for computers from customers in Syria, contracted to ship computers to Syria, failed to file required Shipper's Export Declaration for exports to Syria, and failed to receive the necessary export licenses. (Gov't Ex. 1, at 10–11). The criminal conspiracy indictment and subsequent conviction provide sufficient evidence that Respondent conspired to export computers and software to Syria.

2. Charge 2: Export of Computer Without Required License

Charge 2 alleges that Respondent violated 15 CFR 764.2(a) by exporting a computer to Syria without the required license on August 2, 2002. The relevant regulation prohibits any person from engaging in ''any conduct prohibited by or contrary to * * * the EAA [or] the EAR * * *.'' 15 CFR 764.2(a). This charge is found proved.

In connection with the conspiracy referenced above, Respondent engaged in conduct prohibited by the EAR by exporting a computer to Syria without the proper export license. See 15 CFR 742.9. The central facts of this charge are identical to the facts alleged in Count 11 of the criminal indictment against Respondent. (Gov't Ex. 1, at 16). The indictment alleged that on July 31, 2000, Respondent knowingly and willfully exported an item to Syria without the license required by 15 CFR 742.9. *Id.* Respondent was found guilty of exporting this computer to Syria without the proper license and was sentenced to 72 months imprisonment for this export and for other counts for which he was convicted. (Gov't Ex. 2, at 10; Gov't Ex. 3, at 3). The facts alleged in the indictment and subsequent conviction provide sufficient evidence that Respondent exported the item to Syria in violation of the EAR.

3. Charge 3: Selling Computer With Knowledge of Violation

Charge 3 alleges that Respondent violated 15 CFR 764.2(e) by selling a computer to Syria with knowledge that a violation was about to occur. The relevant regulation provides that ''no person may * * * sell * * * any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order * * * is about to occur, or is intended to occur in connection with the item.'' 15 CFR 764.2(e). This charge is found proved.

Respondent engaged in conduct prohibited by the EAR by selling a computer to Syria with knowledge a violation of the EAR would occur. As described in Charge 1, Respondent was found guilty of conspiring to export items without the proper license. As described in Charge 2, Respondent was found guilty of knowingly exporting a computer to Syria without the required license. In connection with these charges, BIS has provided an invoice showing the sale of this exported computer from Infocom Corporation, to A1, Ghein Bookshop in Damascus, Syria. (Gov't Ex. 6). Respondent was a systems consultant and sales representative for Infocom at this time. (Gov't Ex. 1, at 2). The facts alleged in the indictment and subsequent conviction for the export of this computer, combined with the invoices, provide sufficient evidence that Respondent sold a computer with knowledge that a violation would occur.

4. Charge 4–15: Exporting While Denied Export Privileges

Charges 4–15 allege that Respondent violated 15 CFR 764.2(k) by exporting, on twelve occasions, in violation of an export denial order. The relevant regulation provides that ''[n]o person may take any action that is prohibited by a denial order.'' 15 CFR 764.2(k). Charges 4–11 and 13–15 are found proved. Charge 12 is found not proved.

On September 6, 2001, the Assistant Secretary of Commerce for Export Enforcement entered an order that denied the export privileges of Respondent for a period of 180 Days. (Gov't Ex. 7). This order stated that Respondent ''may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology * * * exported or to be exported from the United States that is subject to the [EAR] * * *.'' (Gov't Ex. 7, at 2). Respondent was served a copy of this order on September 7, 2001.[17] With

[14] *United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–052–L(05) (N.D. TX) and *United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–033–L(01) (N.D. TX).

[15] The maximum penalty per violation is stated in § 764.3(a)(1), subject to adjustments under the Federal Civil Penalties Adjustment Act of 1990 (28 U.S.C. 2461, note (2000)), which are codified at 15 CFR 6.4.

[16] *United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–052–L(05) (N.D. TX).

[17] The certificate of service lists that a ''Request for Stay of Proceeding to Conduct Settlement Negotiations'' was served. (Gov't Ex. 8). However, the order that accompanied this certificate of service was titled ''Order Temporarily Denying Export Privileges.'' It appears the drafter of the

Continued

knowledge of this denial order, the evidence shows Respondent continued to export the following items via Tetrabal Corporation [18] or in his own capacity:

Charge 4: On August 19, 2001, Tetrabal issued an invoice for sale and export of 10 ''horn strobe signal telecom telephone ringer devise,'' items subject to the EAR. (Gov't Ex. 12). The purchaser was listed as Al Bassam International in Alkhobar, Saudi Arabia. *Id.* Tetrabal shipped these items to Saudi Arabia, via Airborne Express, on September 22, 2001. (Gov't Ex. 13).

Charge 5: On September 19, 2001, Tetrabal issued an invoice for the sale and export of one box of used clothing, an item subject to the EAR. (Gov't Ex. 14). The purchaser was listed as Teyseer Alkayal in Amman, Jordan. *Id.* Tetrabal shipped these items to Jordan, via Federal Express, on September 19, 2001. (Gov't Ex. 15).

Charge 6: [19] On August 22, 2001, Tetrabal issued an invoice for the sale and export of 82 Dell Dimension 128 computers, items subject to the EAR. (Gov't Ex. 16). The purchaser was listed as E.T.E. in Riyadh, Saudi Arabia. *Id.* Tetrabal shipped these items to Saudi Arabia, via Lufthansa Cargo AG, on September 19, 2001. (Gov't Ex. 17).

Charge 7: On October 15, 2001, ''Albassam Corporation'' [20] issued an invoice for the sale of networking equipment, items subject to the EAR. (Gov't Ex. 19). The purchaser was listed as Al Bassam International in Alkhobar, Saudi Arabia. *Id.* On October 22, 2001, Tetrabal arranged for pickup and delivery of this equipment, via DHL, to Saudi Arabia. (Gov't Ex. 17). This equipment was subsequently detained, prior to delivery, by the Department of Commerce, and seized and forfeited by the U.S. Customs Service. (Gov't Ex. 21).

Charge 8: On October 26, 2001, ''Albassam Corporation'' issued an invoice for the sale of five printers, items subject to the EAR. (Gov't Ex. 22). The purchaser was listed as Al Bassam International in Alkhobar, Saudi Arabia. *Id.* On October 26, 2001, the printers were exported to Saudi Arabia, via DHL Express. (Gov't Ex. 23). In addition to the facts outlined in footnote 20, several other factors show that ''Albassam Corporation'' is an alias of Respondent and that it was in fact Respondent who exported the items. First, Tetrabal's name and DHL account number were on this air waybill, but were scratched out and replaced by ''Bassam Intl'' and a new account number. *Id.* Second, a purchase order for the five printers was issued from a company called Scansource in Greenville, SC to Tetrabal. (Gov't Ex. 24). Tetrabal would have purchased the computers from this company in order to then sell and export the computers to Al Bassam. Third, a receipt was issued showing Tetrabal as the shipper. *Id.* This equipment was subsequently detained, prior to delivery, by the Department of Commerce, and seized and forfeited by the U.S. Customs Service. (Gov't Ex. 25).

Charge 9: On October 31, 2001, Tetrabal issued an invoice for the sale and export of computer accessories, items subject to the EAR. (Gov't Ex. 26). The purchaser was listed as United Computer System in Cairo, Egypt. *Id.* The company Mynet, found to be the same as Tetrabal,[21] shipped these items to Egypt, via Federal Express, on November 2, 2001. (Gov't Ex. 27).

Charge 10: On October 31, 2001, Tetrabal issued an invoice for sale and export of computer accessories, items subject to the EAR. (Gov't Ex. 29). The purchaser was listed as MAC Club in Riyadh, Saudi Arabia. *Id.* The company Mynet shipped these items to Saudi Arabia, via Federal Express, on November 2, 2001, to the same person, Anwar Galam, as the invoice from Tetrabal was made out to. (Gov't Ex. 30). As set forth in Charge 9, Mynet is found to be an alias of Respondent.

Charge 11: On November 5, 2001, Tetrabal provided a quotation to MAC Club in Riyadh, Saudi Arabia for the sale of Apple Imac security cables. (Gov't Ex. 31). On November 7, 2001, Tetrabal issued an invoice for sale of Apple Imac security cables, items subject to the EAR. (Gov't Ex. 32). The purchaser was listed as MAC Club in Riyadh, Saudi Arabia. *Id.* A. Nasser, an officer of Tetrabal,[22] shipped these items to Saudi Arabia, via Airborne Express, on September 22, 2001. (Gov't Ex. 33).

Charge 12: In support of Charge 12, BIS introduced Exhibit 34. Exhibit 34 is an invoice for the sale of Apple Imac and Apple Powermac security cables to MAC Club in Riyadh, Saudi Arabia. This invoice is the same invoice introduced in support of Charge 11 (Exhibit 32). BIS recognizes this and states in its Submission of Evidence that ''[a]lthough the invoice in Exhibit 34 appears identical to that in Exhibit 32, it appears that two separate transactions took place as the Federal Express airway bill numbers listed in Exhibits 33 and 35 are not the same.'' BIS is correct in that two separate airway bill numbers exist. However, this not does prove the existence of two separate transactions/violations. A more likely explanation would be that two shipments were made involving the same transaction. A quotation from Tetrabal was given for the sale of 400 Apple Imac security cables (NG–AIM and NG–AMT variants) to MAC Club. (Gov't Ex. 31). MAC Club responded to this quotation by requesting the purchase of a sample NG–AIM and a sample AG–AMT. (Gov't Ex. 32). An invoice was drawn up for this sale. *Id.* It appears these samples were sent via the air waybills introduced in Exhibits 33 and 35. Charge 12 is found to be part of the same transaction as Charge 11 and is not found to be a separate offense.

Charge 13: On November 21, 2001, Tetrabal provided quotations for the export of various items to United Computer System, attention Moustafa Maarouf, in Cairo, Egypt. (Gov't Ex. 36). On November 30, 2001, a ''Haydee Herrera'' issued an invoice to Moustafa Maarouf for the sale of several of the items for which Tetrabal had provided quotations. (Gov't Ex. 37). ''Haydee Herrera'' has been found to be an alias of Respondent.[23] The items were exported by ''Haydee Herrera,'' via Federal Express, on November 30, 2001. (Gov't Ex. 38).

Charge 14: On December 10, 2001, Tetrabal provided quotations for the export of computers to United Computer System in Cairo, Egypt, attention Moustafa Maarouf. (Gov't Ex. 39). On November 30, 2001, Tetrabal issued a proforma invoice to United Computer Systems, attention Moustafa Maarouf, for sale of computers and computer accessories to Egypt. (Gov't Ex. 40). On December 21, 2001, ''Haydee Herrera'' issued an invoice for the sale of a computer and computer accessories, items subject to the EAR, to Moustafa Maarouf in Cairo, Egypt. (Gov't Ex. 41). As set forth in Charge 14, ''Haydee Herrera'' is found to be an alias of Respondent. The December 21, 2001 invoice and the December 20, 2001 proforma invoice concern the sale of the same items. The items were exported by ''Haydee Herrera,'' via Federal Express, on December 21, 2001. (Gov't Ex. 42).

Charge 15: On January 28, 2002, Tetrabal issued an invoice for the export of SCSI kits to CompuNet in Saida, Lebanon, attention Osama Qaddoura. (Gov't Ex. 43). Prior to the invoice, Respondent had sent and received several e-mails from Osama Qaddoura regarding the export. (Gov't Ex. 44). The e-mail address used by Osama Qaddoura, listed as ''*compunet@net.sy*,'' indicates the company is Syrian, not Lebanese. *Id.* In

---

certificate was in error and the certificate should have also been titled ''Order Temporarily Denying Export Privileges.'' On December 4, 2001, Respondent sent a letter to a U.S. Customs office in Dallas, TX. (Gov't Ex. 9). This letter states that Respondent was aware of the export denial order issued against him on September 6, 2001. It is evident that Respondent had knowledge of the denial order.

[18] Respondent was the CEO of Tetrabal Corporation. *Gov't Ex. 9.* As CEO of Tetrabal, Respondent was ultimately responsible for its actions. *See U.S.* v. *Park*, 421 U.S. 658, 670–71 (1975), *see also U.S.* v. *Dotterweich*, 320 U.S. 277 (1943).

[19] The facts alleged by BIS in Charges 6 and 19 are identical to Count 3 of the indictment to which Respondent plead guilty to in *United States of America* v. *Ihsan Elashyi*, Case No. 3:02–CR–033–L(01) (N.D. TX). (Gov't Ex. 10, 11).

[20] ''Albassam Corporation'' is found to be an alias for Respondent and Tetrabal Corporation. The invoices for Albassam are identical in all ways to the invoices used by Respondent for Tetrabal. (See Gov't Ex. 16, 19, 22). Also, all shipping documents for Albassam are issued in the name of Tetrabal. BIS has submitted sufficient evidence to show that ''Albassam Corporation'' served as an alias for Respondent and Tetrabal Corporation.

[21] On a U.S. Postal Service form, Application for Mail Delivery Through Agent, three names are listed as Tetrabal Corporation officers, Ihsan Elashyi, Abdulla Alnasser, and Maysoon Alkayali. (Gov't Ex. 28). Maysoon Alkayali is found to be the same as ''M. Kayali,'' the person who signed the air waybill for Mynet. Furthermore, the address Mynet listed on the air waybill is the same address Tetrabal listed on the U.S. Postal Service form. (Gov't Ex. 27, 28).

[22] Abdulla Alnasser, believed to be the same person as ''A. Nasser,'' is listed as an officer of Tetrabal on the U.S. Postal Service form, an Application for Mail Delivery Through Agent. (Gov't Ex. 28). The address A. Nasser listed on the air waybill is identical to the address listed for Tetrabal on the U.S. Postal Service form. *Id.*

[23] Two pieces of evidence provided by BIS show that ''Haydee Herrera'' was used as an alias for Respondent. First, the address listed for ''Haydee Herrera'' is the same address used by Tetrabal. (Gov't Ex. 36 & 38). Second, the handwritten invoice issued by ''Haydee Herrera'' is identical to the handwritten invoices issued by Tetrabal. (Gov't Ex. 14, 37).

addition, the country code listed for CompuNet telephone number is ''963,'' which is the country code for Syria, not Lebanon. *Id.* The items were shipped by ''Samer Suwwan'' to Saida, Lebanon, via DHL, on February 5, 2002. (Gov't Ex. 45). ''Samer Suwwan'' is believed to be an alias of Respondent.

5. Charge 16: Negotiating an Export While Denied Export Privileges

Charge 16 alleges that Respondent violated 15 CFR 764.2(k) by negotiating a transaction involving the export of an item while he was denied export privileges. The relevant regulation provides that ''[n]o person may take any action that is prohibited by a denial order.'' 15 CFR 764.2(k). Negotiating the sale of an export is an action prohibited by a denial order.[24] Charge 16 is found proved.

On October 12, 2001, Tetrabal issued a quotation to Al-Masdar[25] in Riyadh, Saudi Arabia, for the sale of Dell Dimension computers to Al-Masdar. (Gov't Ex. 46). On October 30, 2001, Respondent and Tetrabal sent a facsimile to Mr. William Martin, a Special Agent in BIS's Dallas Field Office, to request permission to export the computers to Saudi Arabia. (Gov't Ex. 47). On October 30, 2001, Mr. Martin responded to Respondent and Tetrabal informing them that he could not authorize their export and advised them of the pertinent sections of the EAR regarding these types of transactions. (Gov't Ex. 48). Despite this letter, Respondent continued to negotiate the sale of exports to Al-Masdar. (Gov't Ex. 50). On November 19, 2001, Respondent informed Al-Masdar that his accounts were ''shut down'' because of the export denial order. (Gov't Ex. 49). Al-Masdar, fearing that Respondent would not make good on the sale of exports already paid for, sent a letter and copies of correspondence that Al-Masdar had with Respondent and Tetrabal to the U.S. Embassy in Riyadh, Saudi Arabia. (Gov't Ex. 50). The letters and correspondence show that Respondent and Tetrabal negotiated the sale of computers to Al-Masdar, sold the computers to Al-Masdar, and collected money from Al-Masdar for the sale of the computers, while he was denied his export privileges. *Id.* Respondent failed to ship the computers to Al-Masdar when Respondent and Tetrabal began having difficulties as a result of the temporary denial of export privileges. *Id.* This evidence clearly shows that Respondent was engaged in export negotiations while he was denied export privileges.

6. Charges 17–29: Selling Computers and Computer Accessories With Knowledge of Violation

In Charges 4–16, BIS alleges that Respondent knowingly violated his denial order. A separate regulation, 15 CFR 764.2(e),[26] make it a violation to act with knowledge that a violation of the EAR would occur. A violation of a denial order would constitute a violation of the EAR. Therefore, if an individual has a denied export license, violating the denial order is one violation[27] and the act of knowingly violating the EAR is a separate violation.[28] As a result, in respect to the facts set forth in Charges 4–16, BIS also charged Respondent with the act of knowingly violating the EAR in Charges 17–24.[29] Charges 17–24 and 26–29 are found proved. Charge 25[30] is found not proved.

The facts set forth in Charges 4–16 show that Respondent had knowledge that the actions he took would be in violation of the EAR. First, the facts show that the Respondent was aware of the denial order. A certificate of service shows Respondent received the denial order and Respondent drafted a letter stating he was aware of the denial order. (Gov't Ex. 8, 9). The denial order clearly states the order was issued pursuant to the EAR. (Gov't Ex. 8). Any violation of the denial order would therefore be in violation of the EAR. Second, the evidence in Charges 9, 10, and 15 shows Respondent took action to evade the denial order by exporting under aliases. Respondent continued to export under such aliases as Mynet, Kayali Corporation, and Samer Suwwan. Such evasion to export under his own name strongly indicates that Respondent had knowledge that the actions he was undertaking were in violation of the EAR. Charges 17–24 and 26–29 are therefore found proved.

Charge 25 is found not proved.[31] In support of Charge 25, BIS introduced Exhibit 34. Exhibit 34 is an invoice for the sale of Apple Imac and Apple Powermac security cables to MAC Club in Riyadh, Saudi Arabia. This invoice is the same invoice introduced in support of Charge 24 (Exhibit 32). BIS recognizes this and states in its Submission of Evidence that ''[a]lthough the invoice in Exhibit 34 appears identical to that in Exhibit 32, it appears that two separate transactions took place as the Federal Express airway bill numbers listed in Exhibits 33 and 35 are not the same.'' BIS is correct in that two separate airway bill numbers exist. However, this not does show the existence of two separate transactions. A more likely explanation would be that two shipments were made involving the same transaction. A quotation from Tetrabal was given for the sale of 400 Apple Imac security cables (NG–AIM and NG–AMT variants) to MAC Club. (Gov't Ex. 31). MAC Club responded to this quotation by requesting the purchase of a sample NG–AIM and AG–AMT. (Gov't Ex. 32). An invoice was drawn up for this sale. *Id.* It appears these samples were sent via the air waybills introduced in Exhibits 33 and 35. Charge 25 is found to be part of the same transaction as Charge 24 and is not found to be a separate offense.

7. Charges 30–32: Taking Action To Evade Denial Order

Charges 30–32 allege that Respondent violated 15 CFR 764.2(h) by taking action to evade a denial order. The relevant regulation provides that ''[n]o person may engage in any transaction or take any other action with intent to evade the provisions of the EAA, [or] the EAR * * *.'' 15 CFR § 764.2(h). Charges 30–32 are found proved.

Charges 30–32 corresponded respectively to Charges 9, 10, and 15 as discussed above. On each of these occasions, Respondent took action to evade his denial order. In Charge 9, it was shown that Respondent used the aliases ''Mynet'' and ''M. Kayali'' to export computer accessories to Egypt. In Charge 10, it was shown that Respondent again used the aliases ''Mynet'' and ''M. Kayali'' to export computer accessories to Saudi Arabia. In Charge 15, it was shown that Respondent used the alias ''Samer Suwwan'' to export computers to Lebanon. Respondent used these aliases to disguise his continued export of goods. These facts have shown that Respondent took action to evade his denial orders in Charges 30–32.

VII. Reason for the Sanction

Section 764.3 of the EAR establishes the sanctions that BIS may seek for the violations charged in this proceeding. The sanctions are: (1) A civil penalty of up to $11,000 per violation, (2) suspension of practice before the Department of Commerce, and (3) a denial of export privileges under the Regulations. *See* 15 CFR 764.3. BIS moves the Administrative Law Judge to recommend to the Under Secretary for Industry and Security (''Under Secretary'') that the export privileges of Respondent under the Regulations be denied for a period of fifty (50) years and that Respondent be ordered to pay a civil penalty in the amount of $352,000, the maximum civil penalty ($11,000 for each of the 32 violations) allowable based upon the charges in the charging letter.

A fifty year denial of export privileges and a $330,000[32] civil penalty are deemed appropriate sanctions in this case. Respondent has shown severe disregard and contempt for export control laws, including conspiracies to do acts that violate the Regulations, taking actions with knowledge that the actions violated the Regulations, and

[24] The denial order states that Respondent ''may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology * * * exported or to be exported from the United States that is subject to the [EAR].'' See *Id.* (Gov't Ex. 7, at 2). Negotiating the sale of an export would be considered ''participat[ing] in any way'' of an export.

[25] Tetrabal spells Al-Maser with an ''e,'' while Saudi Systems Corporation (the company encompassing Al-Masdar) spells Al-Masdar with an ''a.'' This Order will spell Al-Masdar with an ''a.''

[26] The relevant part of the regulation provides that ''[n]o person may * * * sell * * * any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order * * * is about to occur, or is intended to occur in connection with the item.''

[27] 15 CFR § 764.2(k).

[28] 15 CFR § 764.2(e).

[29] Therefore, the following Charges have the same facts: Charges 4 & 17, 5 & 18, 6 & 19, 7 & 20, 8 & 21, 9 & 22, 10 & 23, 11 & 24, 12 & 25, 13 & 26, 14 & 27, 15 & 28, and 16 & 29.

[30] **Note:** Since Charge 12 was found to be included in the same transaction as Charge 11, Charge 12 was determined not to be found proved. Likewise, Charge 25 (setting forth the same facts as set forth in Charge 12) is also not found proved, since Charge 25 is found to be included in the same transaction as Charge 24 (which has the same facts set forth in Charge 11).

[31] This finding follows the same rationale laid out in Charge 12.

[32] Since Charges 12 and 25 were found not proved, the requested civil penalty was reduced by $22,000 ($11,000 per violation, as set forth in 15 CFR § 764.3).

exporting items in violation of an order prohibiting Respondent from exporting items subject to the Regulations. Respondent engaged in a conspiracy to export items to Syria without the required Department of Commerce authorization. The United States maintains controls over exports to Syria because Syria is a state sponsor of terrorism. In addition, Respondent has shown contempt for the administrative orders issued by BIS by exporting items in violation of an order denying his export privileges and by changing names on shipping documents to evade the order denying his export privileges.

Such a penalty is consistent with penalties imposed in a recent case under the Regulations involving shipments to comprehensively sanctioned countries. *See In the Matter of Petrom GmbH International Trade*, 70 FR 32,743 (June 6, 2005) (affirming the recommendations of the Administrative Law Judge that a twenty year denial and $143,000 administrative penalty was appropriate where violations involved multiple shipments of EAR99 items to Iran as a part of a conspiracy to ship such items through Germany to Iran).

The recommended penalties are also consistent with settlements reached in significant BIS cases under the Regulations concerning illegal exports of pipe coating materials to Libya. *See In the Matter of Jerry Vernon Ford*, 67 FR 7352 (February 19, 2002) (settlement agreement for a 25 year denial); *In the Matter of Preston John Engebretson*, 67 FR 7354 (February 19, 2002) (settlement agreement for a 25 year denial); and *In the Matter of Thane-Coat, Inc.*, 67 FR 7351 (February 19, 2002) (settlement agreement for a civil penalty of $1,120,000 ($520,000 suspended for two years and a 25 year denial)).

The nature and quantity of violations in this case warrant a more significant penalty. In particular, Respondent's contempt for the temporary denial order by continuing to export after the order was imposed and constantly shifting both his name and Tetrabal's name to evade the order warrants the extraordinary penalty proposed in order to prevent others from showing the same contempt for BIS's administrative orders. In addition, there are no factors that have been put forth by Respondent that warrant any mitigation of the penalty.

VIII. Recommended Order

[Redacted Section]

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).

Done and dated June 5, 2006 at Norfolk, Virginia.

Peter A. Fitzpatrick,
Administrative Law Judge, U.S. Coast Guard, Norfolk, Virginia.

[FR Doc. 06–6022 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 26 and 27, 2006, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

July 26

Public Session

1. Opening Remarks and Introductions.
2. Current Issues of Interest to ISTAC, Including Licensing Trends.
3. Export Enforcement.
4. FPGA Computer Architecture.
5. Fab Perspective on Cluster Tools.
6. Synthetic Instruments.
7. Introduction of New WA Proposals.
8. Practitioner's Guide to APP.

July 27

Closed Session

9. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statement to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov*.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on June 27, 2006, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 section (10)(d)), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–4814.

Dated: July 5, 2006.

Yvette Springer,
Committee Liaison Officer.

[FR Doc. 06–6100 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on July 25, 2006, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov*.