



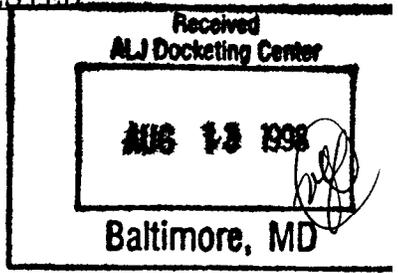
UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

E629-01

AUG 12 1998

REGISTERED MAIL - RETURN RECEIPT REQUESTED

TIC Ltd.
Suite C
Regent Centre
Explorers Way
Freeport, Bahamas



Gentlemen/Ladies:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), hereby charges that TIC, Ltd. (hereinafter "TIC") has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)) (hereinafter the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (hereinafter the "Act"), as set forth below.²

Facts constituting violations:

¹ The alleged violations occurred during 1994, 1995, and 1996. The Regulations governing the violations at issue are found in the 1994, 1995 and 1996 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1994 and 1995) and 15 C.F.R. Parts 768-799 (1996), as amended (61 Fed. Reg. 12714, March 25, 1996)) (hereinafter "the former Regulations"). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25, 1996 *Federal Register* publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations define the violations that BXA alleges occurred. The reorganized and restructured Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).



Charge 1

Beginning in June 1994 and continuing through about July 1996, TIC conspired with Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, and Export Materials, Inc. to bring about acts that constituted violations of the Act, or any regulation, order, or license issued thereunder. The purpose of the conspiracy was for TIC and the others to export U.S.-origin commodities to Libya, a country subject to a comprehensive economic sanctions program. To accomplish their purpose, the conspirators devised and employed a scheme to export U.S.-origin items from the United States through the United Kingdom to Libya, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required under U.S. law, including the Regulations. See, 15 C.F.R. § 746.4, previously codified at 15 C.F.R. § 785.7 of the former Regulations, and 15 C.F.R. § 772.1 of the former Regulations. BXA alleges that, by conspiring or acting 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 Act, or any regulation, order or license issued thereunder, TIC violated Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996) of the former Regulations.

Charges 2-75

In furtherance of the conspiracy described in Charge 1 above and as is described in greater detail in Schedule A, which is attached hereto and incorporated herein by reference, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC, as a co-conspirator, exported polyurethane (isocyanate/polyol) and polyether polyurethane (hereinafter "pipe coating materials") from the United States to Libya, without obtaining from the Department the validated export licenses that TIC knew or had reason to know were required under Section 772.1(b) (redesignated as Section 772A.1(b) on March 25, 1996) of the former Regulations. BXA alleges that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act, or any regulation, order, or license issued thereunder, TIC, as a co-conspirator, violated Section 787.6 or Section 787A.6 of the former Regulations in connection with each shipment. Specifically, BXA alleges that TIC, as a co-conspirator, committed 32 violations of Section 787.6 and five violations of Section 787A.6 of the former Regulations, for a total of 37 violations.

BXA also alleges that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was

about to occur, or was intended to occur with respect to the transactions, TIC, as a co-conspirator, violated Section 787.4(a) or Section 787A.4(a) of the former Regulations in connection with each shipment. Specifically, BXA alleges that TIC committed 32 violations of Section 787.4(a) and five violations of Section 787A.4(a) of the former Regulations, for a total of 37 violations.

Charges 76-112

In furtherance of the conspiracy described in Charge 1 above and to effect the exports described in Charges 2-75 above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC used Shipper's Export Declarations or Bills of Lading, export control documents as defined in Section 770.2 (redesignated as Section 770A.2 on March 25, 1996) of the former Regulations, on which it represented that the commodities described thereon, pipe coating materials, were destined for ultimate end-use in the United Kingdom. In fact, the pipe coating materials were ultimately destined for Libya. BXA alleges that, by making false or misleading statements of material fact directly or indirectly to a United States agency in connection with the use of export control documents to effect exports from the United States, TIC, as a co-conspirator, violated Section 787.5(a) or Section 787A.5(a) of the former Regulations in connection with each shipment. Specifically, BXA alleges that TIC committed 32 violations of Section 787.5(a) and five violations of Section 787A.5(a) of the former Regulations, for a total of 37 violations.

The Department alleges that TIC committed one violation of Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations.

Accordingly, TIC is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

- a. The maximum civil penalty of \$10,000 per violation (see Section 764.3(a)(1));
- b. Denial of export privileges (see Section 764.3(a)(2)); and/or
- c. Exclusion from practice (see Section 764.3(a)(3)).

Copies of relevant Parts of the Regulations are enclosed.

If TIC fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

TIC is further notified that it is entitled to an agency hearing on the record as provided by Section 766.6 of the Regulations if a written demand for one is filed with its answer, to be represented by counsel, and to seek a settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this charging letter. Accordingly, TIC's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5 of the Regulations. In addition, a copy of TIC's answer should be served on BXA at the address set forth in Section 766.5, adding "ATTENTION: Thomas C. Barbour, Esq." below the address. Mr. Barbour may be contacted by telephone at (202) 482-5311.

Sincerely,



Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosures

SCHEDULE A

CHARGE NUMBER	DATE/VESSEL DESTINATION UNITED KINGDOM	COMMODITY NUMBER OF DRUMS	DATE/VESSEL DESTINATION LIBYA	INVOICE NUMBER or BILL OF LADING
2. 39. 76.	02/12/95 Nurnburg Express	TC-35A (15) TC-35B (15) TC-300B (376)	03/07/95 Via Trailer	941-002--TIC-03 941-002-TIC-02
3. 40. 77.	02/22/95 Ever Gleamy	TC-300A (370)	03/07/95 Via Trailer	941-002-TIC-04
4. 41. 78.	04/01/95 Clorinda	TC-300A (128)	05/24/95 Via Trailer	9412-5061-TIC-10
5. 42. 79.	04/08/95 Rita	TC-300A (444)	06/01/95 Sloman Ranger	9412-5061-TIC-12
6. 43. 80.	04/13/95 Federica	TC-300B (270) TC-35A (25) TC-35B (25)	05/16/95 and/or 06/01/95 Sloman Runner and/or Sloman Ranger	9412-5061-TIC-12
7. 44. 81.	04/15/95 Pol America	TC-300A (128)	05/15/95 Sloman Ranger	9412-5061-TIC-17
8. 45. 82.	04/18/95 James Lykes	TC-300B (270) TC-35A (57) TC-35B (57)	06/01/95 Sloman Ranger	9412-5061-TIC-18
9. 46. 83.	05/13/95 Belle Lykes	TC-300A (320)	07/07/95 Sloman Ranger	9412-5061-TIC-20
10. 47. 84.	05/23/95 Sabrina	TC-300B (256)	06/01/95 Sloman Ranger	055407 (Bill of Lading)
11. 48. 85.	07/22/95 Clorinda	TC-300A (384)	08/19/95 Sloman Record	9412-5061-TIC-24
12. 49. 86.	08/02/95 Deppe Texas	TC-300B (256) TC-35B (64)	09/02/95 Sloman Runner	DHHF 4578 (Bill of Lading)
13. 50. 87.	09/16/95 Deppe Florida	TC300B (192) TC-35A (64) TC-35B (64)	10/22/95 Norlandia	9412-5061-TIC-27

CHARGE NUMBER	DATE/VESSEL DESTINATION UNITED KINGDOM	COMMODITY NUMBER OF DRUMS	DATE/VESSEL DESTINATION LIBYA	INVOICE NUMBER or BILL OF LADING
14. 51. 88.	09/18/95 Clorinda	TC-300A (448)	10/22/95 Norlandia	9412-5061-TIC-26
15. 52. 89.	09/23/95 James Lykes	TC-300B (256)	10/22/95 Norlandia	9412-5061-TIC-28
16. 53. 90.	09/25/95 Rita	TC-300A (320)	10/22/95 Norlandia	105172 (Bill of Lading)
17. 54. 91.	10/07/95 Lauren	TC300A (128)	11/07/95 Marina Star	9412-5061-TIC-30
18. 55. 92.	10/09/95 Tyson Lykes	TC-300B (448)	11/18/95 Maria J.	9412-5061-TIC-31
19. 56. 93.	10/17/95 Samia	TC-300A (448)	11/18/95 Maria J.	9412-5061-TIC-33
20. 57. 94.	11/14/95 Sabrina	TC-300B (448)	12/18/95 Marina Star	9412-5061-TIC-35
21. 58. 95.	11/24/95 Sabrina	TC-300B (64)	01/27/96 Sloman Regent	9412-5061-TIC-37
22. 59. 96.	11/27/95 Pol America	TC-300A (448)	01/27/96 Sloman Regent	1858060 (Bill of Lading)
23. 60. 97.	12/19/95 Sabrina	TC-300B (384)	01/27/96 Sloman Regent	9412-5061-TIC-41
24. 61. 98.	12/27/95 Dominique	TC-300B (384)	01/27/96 Sloman Regent or Sloman Neptune	9412-5061-TIC-42
25. 62. 99.	01/10/96 Samia	TC-300A (384)	02/18/96 Norlandia	9412-5061-TIC-43

CHARGE NUMBER	DATE/VESSEL DESTINATION UNITED KINGDOM	COMMODITY NUMBER OF DRUMS	DATE/VESSEL DESTINATION LIBYA	INVOICE NUMBER or BILL OF LADING
26. 63. 100.	02/07/96 Chiara	TC-35A (96) TC-35B (96)	03/17/96 Sloman Regent	9412-5061-TIC-46
27. 64. 101.	02/13/96 Claudia	TC-300A (192)	03/17/96 Sloman Regent	9412-5061-TIC-48
28. 65. 102.	02/17/96 Stefania	TC-300B (192)	03/17/96 Sloman Regent	9412-5061-TIC-47
29. 66. 103.	02/20/96 Marie Laura	TC-300B (384)	03/17/96 Sloman Regent	9412-5061-TIC-49
30. 67. 104.	02/22/96 Pol America	TC-300A (192)	03/17/96 Sloman Regent	9412-5061-TIC-51
31. 68. 105.	02/26/96 Rita	TC-300A (192)	04/02/96 Sloman Runner	9412-5061-TIC-50
32. 69. 106.	02/29/96 Daniela	TC-300B (192) TC-35A (96) TC-35B (96)	04/02/96 Sloman Runner	9412-5061-TIC-52
33. 70. 107.	03/04/96 Samia	TC-300A (192)	04/02/96 Sloman Runner	9412-5061-TIC-53
34. 71. 108.	04/08/96 Claudia	TC-300A (384)	05/07/96 Sloman Regent	9412-5061-TIC-59
35. 72. 109.	04/14/96 Dominique	TC-300B (192)	05/07/96 Sloman Regent	9412-5061-TIC-66
36. 73. 110.	04/17/96 Sabrina	TC-300B (384)	05/28/96 Marina Star	9412-5061-TIC-61
37. 74. 111.	04/22/96 Rita	TC-300A (384)	05/28/96 Marina Star	103759 (Bill of Lading)

CHARGE NUMBER	DATE/VESSEL DESTINATION UNITED KINGDOM	COMMODITY NUMBER OF DRUMS	DATE/VESSEL DESTINATION LIBYA	INVOICE NUMBER or BILL OF LADING
38. 75. 112.	04/25/96 Tillie Lykes	TC-300B (64)	05/28/96 Marina Star	T-64

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)	DOCKET NUMBER
)	
TIC LTD.)	98-BXA-10
Suite C)	
Regent Centre)	
Explorers Way)	
Freeport, Bahamas,)	
)	
Respondent)	
)	

RECOMMENDED DECISION AND ORDER

On August 12, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating an administrative proceeding against TIC Ltd. (hereinafter "TIC"). The charging letter alleged that TIC committed 112 violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)) (hereinafter the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998))

¹ The alleged violations occurred during 1994, 1995, and 1996. The Regulations governing the violations at issue are found in the 1994, 1995 and 1996 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1994 and 1995) and 15 C.F.R. Parts 768-799 (1996), as amended (61 Fed. Reg. 12714, March 25, 1996)) (hereinafter the "former Regulations"). The March 25, 1996 Federal Register publication redesignated, but did not republish, the existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25, 1996 Federal Register publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations define the violations that BXA alleges occurred. The reorganized and restructured Regulations establish the procedures that apply to this matter.

(hereinafter the "Act").² Specifically, the charging letter alleged that, beginning in June 1994 and continuing through about July 1996, TIC conspired with Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, and TIC Ltd. to bring about acts that constituted violations of the Act, or any regulation, order, or license issued thereunder. The purpose of the conspiracy was for TIC and the others to export U.S.-origin commodities to Libya, a country subject to a comprehensive economic sanctions program. To accomplish their purpose, the conspirators devised and employed a scheme to export U.S.-origin items from the United States through the United Kingdom to Libya, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required under U.S. law, including the Regulations. See 15 C.F.R. § 746.4, previously codified at 15 C.F.R. § 785.7 of the former Regulations, and 15 C.F.R. § 772.1 of the former Regulations. BXA alleged that, by conspiring or acting 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 Act, or any regulation, order or license issued thereunder, TIC violated Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996) of the

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (63 Fed. Reg. 44121 (August 17, 1998)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

former Regulations.

BXA alleged that, in furtherance of the conspiracy described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC, as a co-conspirator, exported polyurethane (isocyanate/polyol) and polyether polyurethane (hereinafter collectively referred to as "pipe coating materials") from the United States to Libya, without obtaining from the Department the validated export licenses that TIC knew or had reason to know were required under Section 772.1(b) (redesignated as Section 772A.1(b) on March 25, 1996) of the former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act, or any regulation, order, or license issued thereunder, TIC, as a co-conspirator, violated Section 787.6 or Section 787A.6 of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC, as a co-conspirator, committed 32 violations of Section 787.6 and five violations of Section 787A.6 of the former Regulations, for a total of 37 violations.

BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transactions, TIC, as a co-conspirator, violated

for a total of 37 violations.

Thus, BXA alleged that TIC committed one violation of Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at his last known address. In accordance with that section, on August 12, 1998, BXA sent to TIC, at its last known address, notice that it had issued a charging letter against it. Although not required by the Regulations, BXA also sent a copy of the letter to TIC's last-known agent in the Bahamas.

By letter dated September 24, 1998, counsel for TIC submitted a letter to Mark D. Menefee, Director of the Office of Export Enforcement (OEE), responding to the charging letter. On September 29, 1998, BXA filed a copy of that letter, together with a response to several assertions made by TIC in the letter, with the U.S. Coast Guard ALJ Docketing Center.⁴

787A.5(a). I hereby grant BXA's request and amend the charging letter to correct the citation to Section 787A.5(a).

⁴ Although the charging letter advised TIC that a formal proceeding had been initiated against it and included the address

On October 8, 1998, I issued an Order in which I found that TIC's September 24, 1998 letter was, in essence, a motion to dismiss the charging letter. For the reasons set forth in my October 8, 1998 Order, I denied TIC's motion to dismiss and gave TIC additional time, until November 9, 1998, to respond to the allegations set forth in the charging letter. On October 20, 1998, I amended the October 8, 1998 Order to give TIC still more time, until November 20, 1998, to file its answer. To date, TIC has not filed an answer to the charging letter. Accordingly, because TIC has not answered the charging letter within the time established by my Order, as required by and in the manner set forth in Section 766.6 of the Regulations, TIC is in default.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I therefore find the facts to be as alleged in the charging letter, and hereby determine that TIC committed one violation of Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations.

Section 764.3 of the Regulations establishes the sanctions available for the violation charged in this proceeding. The

for the U.S. Coast Guard ALJ Docketing Center so that TIC could file an answer to the charging letter with that Office, TIC addressed its response to the Director of OEE without providing a copy of that response to the U.S. Coast Guard ALJ Docketing Center.

applicable sanctions as set forth in the Regulations are a civil monetary penalty, suspension from practice before the Department of Commerce, and/or a denial of export privileges. See 15 C.F.R. § 764.3 (1998).

Because TIC violated the former Regulations by conspiring to violate the Act and the Regulations and by, on 37 separate occasions, as part of that conspiracy, exporting U.S.-origin commodities to Libya without the validated export license that TIC knew or had reason to know was required by the Regulations and by making false and misleading statements of material fact directly or indirectly to a United States agency in connection with the use of export control documents to effect exports from the United States, BXA urges that I recommend to the Under Secretary for Export Administration⁵ that all of TIC's export privileges be denied for 20 years, for the following reasons: TIC was part of a conspiracy to evade controls imposed for foreign policy reasons on exports to Libya, a country against which the United States has a virtually total ban on exports. The activities that TIC engaged in were not innocent; the conspirators established an elaborate scheme in an effort to evade U.S. export control laws.

Second, TIC has not demonstrated that it has any intention of ever resolving this matter, either through the hearing process

⁵ Pursuant to Section 13(c)(1) of the Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge issues a recommended decision which is reviewed by the Under Secretary for Export Administration who issues the final decision for the agency.

or through settlement, or that it would pay a civil penalty if one were to be imposed. Indeed, although TIC's counsel made an initial, unsuccessful, challenge to the allegations set forth in the charging letter, TIC has made no other effort, despite the ample opportunity that I provided for it to do so, to respond to the allegations set forth in the charging letter. Because TIC is a foreign corporation, incorporated in the Bahamas, BXA asserts that it could not obtain the personal jurisdiction over TIC that would be necessary if BXA were to try to collect a civil penalty through the courts, rendering any monetary judgment against TIC meaningless. Under these circumstances, BXA believes that the denial of all TIC's export privileges is the appropriate sanction.

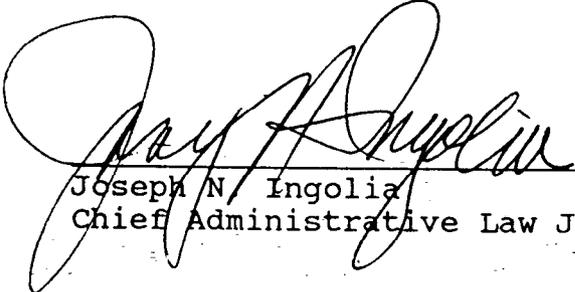
Finally, given the fact that TIC is charged with multiple violations in connection with a conspiracy to evade U.S. export control laws in exporting U.S.-origin items to Libya, a country that is the subject of an almost total embargo, a 20-year denial is warranted. Such a denial period would clearly make the point to TIC and others that they cannot export with impunity U.S.-origin items to destinations against which the United States has, for foreign policy reasons, declared a virtually total embargo. Given the foregoing, I concur with BXA, and recommend that the Under Secretary for Export Administration enter an Order against TIC, denying all of its export privileges for a period of

20 years.⁶

Accordingly, I am referring my recommended decision and order to the Under Secretary for review and final action for the agency, without further notice to the respondent, as provided in Section 766.7 of the Regulations.

Within 30 days after receipt of this recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order. See Section 766.22(c) of the Regulations.

Dated: 6/11/99



Joseph N. Ingolia
Chief Administrative Law Judge

⁶ Denial orders can be either "standard" or "non-standard." A standard order denying export privileges is appropriate in this case. The terms of a standard denial order are set forth in Supplement No. 1 to Part 764 of the Regulations.

UNITED STATES DEPARTMENT OF COMMERCE
UNDER SECRETARY FOR EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)	Docket Number
TIC LTD.)	98-BXA-10
Suite C)	
Regent Centre)	
Explorers Way)	
Freeport, Bahamas,)	
)	
Respondent)	
)	

DECISION AND ORDER

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(hereinafter the "Act").²

Specifically, the charging letter alleged that, beginning in June 1994 and continuing through about July 1996, TIC conspired with Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, and TIC Ltd. to bring about acts that constituted violations of the Act, or any regulation, order, or license issued thereunder. The purpose of the conspiracy was for TIC and the others to export U.S.-origin commodities to Libya, a country subject to a comprehensive economic sanctions program. To accomplish their purpose, the conspirators devised and employed a scheme to export U.S.-origin items from the United States through the United Kingdom to Libya, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required under U.S. law, including the Regulations. See 15 C.F.R. § 746.4, previously codified at 15 C.F.R. § 785.7 of the former Regulations, and 15 C.F.R. § 772.1 of the former Regulations. BXA alleged that, by conspiring or acting 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 Act, or any regulation, order or license issued

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

thereunder, TIC violated Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996) of the former Regulations.

BXA alleged that, in furtherance of the conspiracy described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC, as a co-conspirator, exported polyurethane (isocyanate/polyol) and polyether polyurethane (hereinafter collectively referred to as "pipe coating materials") from the United States to Libya, without obtaining from the Department the validated export licenses that TIC knew or had reason to know were required under Section 772.1(b) (redesignated as Section 772A.1(b) on March 25, 1996) of the former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act, or any regulation, order, or license issued thereunder, TIC, as a co-conspirator, violated Section 787.6 or Section 787A.6 of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC, as a co-conspirator, committed 32 violations of Section 787.6 and five violations of Section 787A.6 of the former Regulations, for a total of 37 violations.

BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with

Section 787.4(a) or Section 787A.4(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC committed 32 violations of Section 787.4(a) and five violations of Section 787A.4(a) of the former Regulations, for a total of 37 violations.

Finally, BXA also alleged that, in furtherance of the conspiracy described above and to effect the 37 exports described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC used Shipper's Export Declarations or Bills of Lading, export control documents as defined in Section 770.2 (redesignated as Section 770A.2 on March 25, 1996) of the former Regulations, on which it represented that the commodities described thereon, pipe coating materials, were destined for ultimate end-use in the United Kingdom. In fact, the pipe coating materials were ultimately destined for Libya. BXA alleged that, by making false or misleading statements of material fact directly or indirectly to a United States agency in connection with the use of export control documents to effect exports from the United States, TIC, as a co-conspirator, violated Section 787.5(a) or Section 787A.5(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC committed 32 violations of Section 787.5(a) and five violations of Section 787A.5(a)³ of the former Regulations,

³ BXA noted in its motion that, because of a typographical error, the charging letter incorrectly cites to Section 785A.4(a) and requested that the ALJ authorize an amendment to the charging letter to provide the correct citation to the regulatory provision that spells out the false statement violation, Section

for a total of 37 violations.

Thus, BXA alleged that TIC committed one violation of Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at his last known address. In accordance with that section, on August 12, 1998, BXA sent to TIC, at its last known address, notice that it had issued a charging letter against it. Although not required by the Regulations, BXA also sent a copy of the letter to TIC's last-known agent in the Bahamas.

By letter dated September 24, 1998, counsel for TIC submitted a letter to Mark D. Menefee, Director of the Office of Export Enforcement (OEE), responding to the charging letter. On September 29, 1998, BXA filed a copy of that letter, together with a response to several assertions made by TIC in the letter, with the U.S. Coast Guard ALJ Docketing Center.⁴

787A.5(a). The ALJ granted BXA's request and amended the charging letter to correct the citation to Section 787A.5(a).

⁴ Although the charging letter advised TIC that a formal proceeding had been initiated against it and included the address

On October 8, 1998, the ALJ issued an Order in which he found that TIC's September 24, 1998 letter was, in essence, a motion to dismiss the charging letter. For the reasons set forth in the ALJ's October 8, 1998 Order, the ALJ denied TIC's motion to dismiss and gave TIC additional time, until November 9, 1998, to respond to the allegations set forth in the charging letter. On October 20, 1998, the ALJ amended the October 8, 1998 Order to give TIC still more time, until November 20, 1998, to file its answer. TIC did not file an answer to the charging letter. Accordingly, because TIC did not answer the charging letter within the time established by the ALJ's Order, as required by and in the manner set forth in Section 766.6 of the Regulations, BXA moved for issuance of a default order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constitute one violation of Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations by TIC, as BXA alleged. The ALJ also agreed with BXA's recommendation that the

for the U.S. Coast Guard ALJ Docketing Center so that TIC could file an answer to the charging letter with that Office, TIC addressed its response to the Director of OEE without providing a copy of that response to the U.S. Coast Guard ALJ Docketing Center.

appropriate penalty to be imposed for that violation is a denial, for a period of 20 years, of all of TIC's export privileges. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

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

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that, for a period of 20 years from the date of this Order, TIC Ltd., Suite C, Regent Centre, Explorers Way, P.O. Box F-40775, Freeport, the Bahamas, and all of its successors or assigns, officers, representatives, agents, and employees when acting for or on behalf of TIC may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the

United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

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

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

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

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

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

FIFTH, that this Order shall be served on TIC and on BXA, and shall be published in the *Federal Register*.

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

Dated:

July 12, 1999



William A. Reinsch
Under Secretary for
Export Administration