

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

In the Matter of:)
)
MACOSIA INTERNATIONAL)
2004 Baltimore Street)
Laredo, Texas 78041,)
)
Respondent)
)

DECISION AND ORDER

On August 14, 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 Macosia International (hereinafter "Macosia"). The charging letter alleged that Macosia committed four violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999)) (the Act).²

¹ The alleged violations occurred in 1993 and 1994. The Regulations governing the violations at issue are found in the 1993 and 1994 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993 and 1994)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth herein.

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)), August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)) and August 10, 1999 (64 Fed. Reg. 44101, August 13, 1999), continued the Regulations in effect

Specifically, the charging letter alleged that, on four separate occasions between on or about August 17, 1993 and on or about August 18, 1994, Macosia exported handcuffs and leg irons from the United States to Mexico without obtaining the validated export license required by Section 772.1(b) of the former Regulations. BXA alleged that, by exporting handcuffs and leg irons to any person or destination or for any use in violation of or contrary to the terms of the Act, or any regulation, order, or license issued thereunder, Macosia violated Section 787.6 of the former Regulations in connection with each of the exports, for a total of four violations.

Macosia failed to answer or otherwise respond to the charging letter. Accordingly, pursuant to the default procedures set forth in Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the "ALJ") find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found that service of the charging letter was made on Macosia on September 10, 1998 and that, because it filed no answer to the charging letter, Macosia was in default. The ALJ also found the facts to be as alleged in the charging letter, and concluded that those facts establish that Macosia committed four violations of the former Regulations, as

under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for the violations is a denial, for a period of seven years, of all of Macosia'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 seven years from the date of this Order, Macosia International, 2004 Baltimore Street, Laredo, Texas 78041, and all of its successors or assignees, officers, representatives, agents, and employees when acting for or on behalf of Macosia International 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 Macosia International 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: 11/29/99



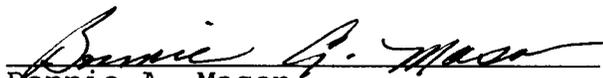
William A. Reinsch
Under Secretary for
Export Administration

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 1999, I caused a copy of the foregoing DECISION AND ORDER signed by William A. Reinsch, Under Secretary for Export Administration, In the Matter of MACOSIA INTERNATIONAL (Docket No. 98-BXA-11) to be sent by U.S. Mail to:

Mr. Alfredo Aguilar
President
Macosia International
2004 Baltimore Street
Laredo, Texas 78041

I hereby also certify that on November 29, 1999, a copy of the same foregoing DECISION AND ORDER was delivered to Laird M. Street, Esq., Senior Attorney, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3839, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.


Bonnie A. Mason
Executive Secretariat
Bureau of Export Administration



E642-8
UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

November 29, 1999

Billing Code: 3510-DT

Office of the Federal Register
National Archives and Records Administration
Washington, D.C.

RE: In the Matter of MACOSIA INTERNATIONAL
(Docket No. 98-BXA-11)

TO WHOM IT MAY CONCERN:

Enclosed you will find three "original signatures" of William A. Reinsch, Under Secretary for Export Administration, on a DECISION AND ORDER in the above captioned case for publication in the Federal Register.

Please call me at (202) 482-1460 and let me know the scheduled date for publication.

Sincerely,

Bonnie A. Mason
BXA Secretariat

Enclosures





E642-9
UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

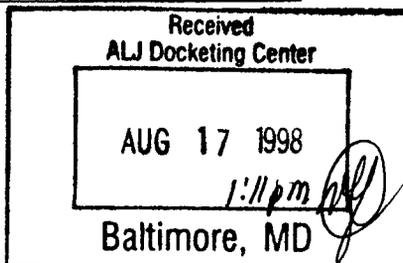
AUG 14 1998

COPY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Macosia International
2004 Baltimore Street
Laredo, Texas 78041

Attention: Mr. Alfredo Aguilar
President



Dear Mr. Aguilar:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described below, Macosia International (Macosia) has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)) (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)) (the Act).²

Facts constituting violations:

Charges 1-4

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on four separate occasions between on or about August 17, 1993 and on or about August 18, 1994, Macosia exported handcuffs and leg irons from the United States to Mexico without obtaining the validated export license required by Section 772.1(b) of the former Regulations. BXA alleges that, by exporting handcuffs and leg

¹ The alleged violations occurred in 1993 and 1994. The Regulations governing the violations at issue are found in the 1993 and 1994 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993 and 1994)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth in this charging letter.

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 (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).



irons to any person or destination or for any use in violation of or contrary to the terms of the Act, or any regulation, order, or license issued thereunder, Macosia violated Section 787.6 of the former Regulations in connection with each of the exports, for a total of four violations.

Accordingly, Macosia is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice (see Section 764.3(a)(3) of the Regulations).

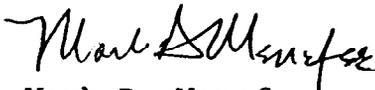
Copies of relevant Parts of the Regulations are enclosed.

If Macosia 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. Macosia is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and 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 letter. Accordingly, Macosia'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(a) of the Regulations.

In addition, a copy of Macosia's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Laird M. Street, Esq." below the address. Mr. Street may be contacted by telephone at (202) 482-5311.

Sincerely,



Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosures

MACOSIA INTERNATIONAL
SCHEDULE OF VIOLATIONS

CHARGE NUMBER	DATE OF EXPORT FROM UNITED STATES	COMMODITY	INVOICE	DESTINATION
1	8/17/93	Handcuffs	#9555	Mexico
2	12/27/93	Handcuffs	#1151	Mexico
3	1/28/94	Handcuffs & Leg Irons	#1150	Mexico
4	8/18/94	Handcuffs & Leg Irons	#3301	Mexico

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

In the Matter of:)
)
Macosia International)
2004 Baltimore Street)
Laredo, Texas 78041)
)
Respondent)

NOTICE OF APPEARANCE

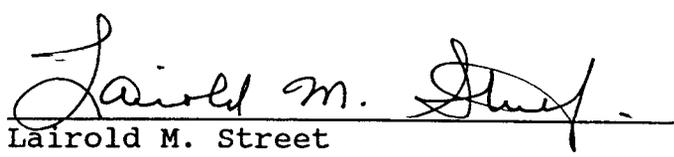
To: Office of the Administrative Law Judge and

Macosia International
2004 Baltimore Street
Laredo, Texas 78041

In accordance with Section 766.4 of the Export Administration Regulations the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)) (the Regulations), the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby files this Notice of Appearance. BXA is represented in this proceeding by the Office of Chief Counsel for Export Administration. Hoyt Zia is Chief Counsel for Export Administration; Pamela P. Dougherty is Chief, Enforcement and Litigation Division. The attorney in the Office of Chief Counsel for Export Administration who is primarily responsible for the above-captioned proceeding is Lairold M. Street. In Mr. Street's absence, Mr. Zia or Mrs. Dougherty may sign pleadings.

Dated this 14th day of August, 1998.

Respectfully submitted,

A handwritten signature in cursive script that reads "Laird M. Street". The signature is written in dark ink and is positioned above a horizontal line.

Laird M. Street
Senior Attorney
Office of Chief Counsel for
Export Administration
U.S. Department of Commerce
Room H-3839
14th and Constitution Avenue, N.W.
Washington, D.C. 20230
(202) 482-5311

CERTIFICATE OF SERVICE

I hereby certify that, on August 14th, 1998, I caused the foregoing Charging Letter to be mailed first class, postage pre-paid to:

Macosia International
2004 Baltimore Street
Laredo; Texas 78041

Sandra Lambright
Sandra Lambright
Paralegal Specialist

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

In the Matter of:)
)
MACOSIA INTERNATIONAL)
2004 Baltimore Street)
Laredo, Texas 78041,)
)
Respondent)
)

UNITED STATES DEPARTMENT OF COMMERCE
MOTION FOR DEFAULT ORDER

On August 14, 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 Macosia International (hereinafter "Macosia"). The charging letter alleged that Macosia committed four violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999)) (the Act).²

¹ The alleged violations occurred in 1993 and 1994. The Regulations governing the violations at issue are found in the 1993 and 1994 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993 and 1994)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth herein.

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)), August 13, 1998

Specifically, the charging letter alleged that, on four separate occasions between on or about August 17, 1993 and on or about August 18, 1994, Macosia exported handcuffs and leg irons from the United States to Mexico without obtaining the validated export license required by Section 772.1(b) of the former Regulations. BXA alleged that, by exporting handcuffs and leg irons to any person or destination or for any use in violation of or contrary to the terms of the Act, or any regulation, order, or license issued thereunder, Macosia violated Section 787.6 of the former Regulations in connection with each of the exports, for a total of four violations.

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's last known address. BXA has presented evidence that it mailed a copy by certified mail addressed to Macosia at its address in Laredo, Texas on August 14, 1998. Government Exhibit (hereinafter "Gov. Ex.") 1. BXA has also established that it received the signed returned receipt on September 10, 1998. Gov. Ex. 2. Because the receipt was returned undated, however, BXA does not know the exact date that respondent was served with the notice of issuance of the charging letter. Under these circumstances, and for the purpose of this default

(3 C.F.R., 1998 Comp. 294 (1999)) and August 10, 1999 (64 Fed. Reg. 44101, August 13, 1999), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

proceeding, BXA submits that the Administrative Law Judge should determine that September 10, 1998, the date BXA received the return receipt, as the date of service. To date, Macosia has failed to file an answer to the charging letter.

Accordingly, because Macosia has not answered the charging letter within 30 days from the time Macosia received notice of issuance of the charging letter, as required by and in the manner set forth in Section 766.6 of the Regulations, Macosia is in default.

Section 766.7 of the Regulations sets forth the procedures that apply when a respondent fails to file a timely answer to a charging letter. That section, entitled "Default," provides in pertinent part:

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

15 C.F.R. § 766.7 (1999).

Accordingly, BXA, pursuant to Section 766.7 of the Regulations, moves that the Administrative Law Judge find the facts to be as alleged in the charging letter and conclude that those facts establish that Macosia committed four violations of Section 787.6 of the former Regulations, as charged.

Section 764.3 of the Regulations establishes the sanctions available to BXA for the violations charged in this default proceeding. The 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 (1999).

Because Macosia violated the former Regulations by failing to obtain the validated export licenses that were required for the export of handcuffs and leg irons to Mexico, BXA submits that the Administrative Law Judge should recommend to the Under Secretary for Export Administration³ that all of Macosia's export privileges be denied for seven years.

BXA believes that a seven-year denial period is the appropriate sanction for several reasons. First, at the time Macosia exported the handcuffs and leg irons, that crime control equipment was classified on the Commerce Control List under ECCN 0A82C as being controlled for foreign policy reasons, and each of the four shipments required a validated license for export to Mexico. Gov. Ex. 3; see also 15 C.F.R. § 776.14(a) (1996). Macosia failed to obtain the required licenses.

Second, although Macosia is located in the United States, the company has not responded to the allegations set forth in the charging letter. Since Macosia has not responded to the charging letter, BXA has no reason to believe Macosia will pay a civil penalty if one were imposed. Therefore, imposition of a civil penalty would be futile and meaningless. In light of these circumstances, the denial of all Macosia's export privileges is the appropriate sanction.

Because of the multiple exports of crime control equipment

³ 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.

to Mexico, the violations of the Regulations committed by Macosia are a serious matter. Accordingly, BXA submits that a seven-year export denial, rather than any shorter denial period, is warranted.

Accordingly, BXA urges the Administrative Law Judge to recommend to the Under Secretary for Export Administration that Macosia be denied all U.S. export privileges for a period of seven years.⁴

A proposed Recommended Decision and Order is attached.

Respectfully submitted,

Lairold M. Street

Lairold M. Street
Senior Attorney
Office of Chief Counsel
for Export Administration
U.S. Department of Commerce
Room H-3839
14th & Constitution Avenue, N.W.
Washington, D.C. 20230
(202) 482-5311

⁴ 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
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
MACOSIA INTERNATIONAL)
2004 Baltimore Street)
Laredo, Texas 78041,)
)
Respondent)
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RECOMMENDED DECISION AND ORDER

On August 14, 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 Macosia International (hereinafter "Macosia"). The charging letter alleged that Macosia committed four violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999)) (the Act).²

¹ The alleged violations occurred in 1993 and 1994. The Regulations governing the violations at issue are found in the 1993 and 1994 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993 and 1994)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth herein.

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)), August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)) and August 10, 1999 (64 Fed. Reg. 44101, August 13, 1999), continued the Regulations in effect

Specifically, the charging letter alleged that, on four separate occasions between on or about August 17, 1993 and on or about August 18, 1994, Macosia exported handcuffs and leg irons from the United States to Mexico without obtaining the validated export license required by Section 772.1(b) of the former Regulations. BXA alleged that, by exporting handcuffs and leg irons to any person or destination or for any use in violation of or contrary to the terms of the Act, or any regulation, order, or license issued thereunder, Macosia violated Section 787.6 of the former Regulations in connection with each of the exports, for a total of four violations.

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 respondent's last known address. BXA has established that notice of the issuance of the charging letter was served on Macosia and has urged that I find the date of service to be September 10, 1999. Based on BXA's submission, I hereby determine that the date of service is September 10, 1998. To date, Macosia has failed to file an answer to the charging letter, as required by Section 766.7 of the Regulations, and is therefore in default.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I therefore find the facts to be as

under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

alleged in the charging letter, and hereby determine that Macosia committed four violations of Section 787.6 of the former Regulations.

Section 764.3 of the Regulations establishes the sanctions available to BXA for the violations charged in this default proceeding. The 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 (1999).

Because Macosia violated the former Regulations by failing to obtain the validated export licenses that were required for the export of handcuffs and leg irons to Mexico, BXA urges that I recommend to the Under Secretary for Export Administration³ that all of Macosia's export privileges be denied for seven years, for the following reasons.

First, BXA explains that, at the time Macosia exported the handcuffs and leg irons, that crime control equipment was classified on the Commerce Control List under ECCN 0A82C as being controlled for foreign policy reasons, and each of the four shipments required a validated license for export to Mexico. Macosia failed to obtain the required licenses.

Second, BXA asserts that, although Macosia is located in the United States, the company has not responded to the allegations set forth in the charging letter. Since Macosia has not responded to the charging letter, BXA believes that it has no

³ 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.

reason to believe that Macosia will pay a civil penalty if one were imposed. Therefore, BXA believes that the imposition of a civil penalty would be futile and meaningless. In light of these circumstances, BXA asserts that the denial of all Macosia's export privileges is the appropriate sanction.

BXA argues that, because of the multiple exports of crime control equipment to Mexico, the violations of the Regulations committed by Macosia are a serious matter. Accordingly, BXA submits that a seven-year export denial, rather than any shorter denial period, is warranted.

Given the foregoing, I concur with BXA, and recommend that the Under Secretary for Export Administration enter an Order against Macosia, denying all of its export privileges for a period of seven years.⁴

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: _____

Administrative Law Judge

⁴ 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 interim rule.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION

IN THE MATTER OF:

MACOSIA INTERNATIONAL
2004 Baltimore Street
Laredo, Texas 78041 -

Respondent

DOCKET NUMBER

98-BXA-11

RECOMMENDED DECISION AND ORDER

On August 14, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA or Agency) issued a charging letter initiating an administrative proceeding against Macosia International (Macosia or Respondent) under the legal authority contained in the Export Administration Act of 1979, as amended and codified in 50 U.S.C. app. §§ 2401-2420 (1991 & Supp. 1998) and the regulations promulgated thereunder currently codified at 15 C.F.R. Parts 730-774 (1998).¹ This case was filed with the United States Coast Guard ALJ Docketing Center for adjudication pursuant to 5 U.S.C. §§ 551-557, authorization from the United States Office of Personnel

¹ Although the Export Administration Act of 1979 expired on August 20, 1994, the statute and the applicable regulations remain in effect pursuant to the legal authority contained in:

- a) Executive Order 12924 located at 3 C.F.R., 1994 Comp. 917 (1995);
- b) Presidential Notices of August 15, 1995 located at 3 C.F.R., 1995 Comp. 501 (1996), August 14, 1996 located at 3 C.F.R., 1996 Comp. 298 (1997), August 13, 1997 located at 3 C.F.R., 1997 Comp. 306 (1998), and August 13, 1998 located at 3 C.F.R., 1998 Comp. 294 (1999), and August 10, 1999 (Continuation Regarding Export Control Regulations, 64 Fed. Reg. 44101 (August 13, 1999) (to be codified in 3 C.F.R.); and
- c) The International Emergency Economic Powers Act, amended and codified at 50 U.S.C. §§ 1701-1706 (1991 & Supp. 1998).

Management, and an Interagency Agreement entered into between the United States Coast Guard and the United States Department of Commerce.

In the charging letter, BXA seeks imposition of administrative sanctions, including assessment of civil penalties, denial of export privileges and exclusion from practice before BXA against Macosia for allegedly committing four violations of 15 C.F.R. § 787.6 (1993 & 1994) of the former Export Administration Regulations.² The Respondent allegedly exported handcuffs and leg irons between August 17, 1993 and August 18, 1994 from the United States to Mexico without obtaining a valid export license as required by section 772.1(b) of the former regulations.

BXA sent the notice of issuance of a charging letter to the Respondent by certified mail, return receipt requested on August 14, 1998. The certified mail was addressed to Macosia at its Laredo, Texas address, which is its last known address. The domestic return receipt was signed by Jose P. Garza on behalf of Macosia and was received by BXA on September 10, 1998. The domestic return receipt, however, did not contain a delivery date. To date, Macosia has not filed an answer nor otherwise responded to the charging letter.

On October 27, 1999, over one year after initiating these administrative proceedings against Macosia, BXA filed a Motion for Default Order pursuant to

² The violations alleged in this case occurred in 1993 and 1994. Since that time, the 1993 and 1994 versions of the Export Administration Regulations that were codified in 15 C.F.R. Parts 768-799 have been reorganized and restructured. The current regulations are codified at 15 C.F.R. Parts 730-774 (1998) and establish the procedures that apply in this matter.

15 C.F.R. § 766.7.³ The Motion for Default was filed with a proposed Recommended Decision and Order drafted by BXA counsel for the undersigned's signature.

BXA argues that it is entitled to a default order because Macosia has failed to file an answer to the charging letter within the time provided under the regulations. In support of its motion, BXA attached a copy of the certified mail receipt and a signed domestic return receipt evidencing service on the Respondent. BXA urges the undersigned to find that the effective date of service of the charging letter on Macosia is September 10, 1998, i.e. the date in which BXA received the signed domestic return receipt.

Section 766.3(b)(1) of the current regulations provides that a respondent shall be notified by BXA of the issuance of a charging letter "by mailing a copy by registered or certified mail to the respondent's last known address." Under the regulations, service is effected on the date of delivery. 15 C.F.R. § 766.3(c) (1998). The respondent then has 30 days after being served with the notice of issuance of a charging letter in which to file an answer and demand a hearing. 15 C.F.R. § 766.6. (1998). The section of current regulations entitled "Default" states in pertinent part:

Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegation in the charging letter. In such event, the administrative law judge, on BXA's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an

³ The original Motion for Default was filed with the United States Coast Guard Administrative Law Judge on October 26, 1999. Since BXA counsel's signature was inadvertently omitted from the original Motion for Default, a subsequent motion containing BXA counsel's signature was filed on October 27, 1999.

initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.

15 C.F.R. § 766.7(a).

In this case, BXA has established that notice of the issuance of the charging letter was effectively served on Macosia by and through its employee or agent Mr. Garza, who signed the domestic return receipt acknowledging service of the charging letter. Based on BXA's submission and the fact that there has been no activity in this case for over one year, I will find that the date of delivery is the date in which BXA received the signed return receipt or September 10, 1998.⁴ Since Macosia has failed to file an answer to the charging letter within the time provided, the Respondent is in default.

Pursuant to the default procedures set forth in section 766.7 of the current regulations, I find the facts to be as alleged in the charging letter, and hereby determine that Macosia committed four violations of section 787.6 of the former regulations.

Sanction

Section 764.3 of the current regulations establishes that when a violation of the Export Administration Act, the Export Administration Regulation, or any order, license, or authorization is established, the sanctions available to BXA include:

⁴ Since BXA counsel has a copy of the certified mail receipt, the United States Post Office (Post Office) may have been able to track the certified mail and determine the true date of delivery. The Post Office keeps such information for a period of two years and one can request that the Post Office conduct a search by completing a form 3811A and providing the article number which is located at the top of the certified mail return receipt.

- 1) Assessment of a maximum civil penalty of \$10,000 for each violation;
- 2) Denial of export privileges; and/or
- 3) Exclusion from practice before BXA.

BXA urges the undersigned to recommend to the Under Secretary for Export Administration⁵ that all of Macosia's export privileges be denied for a period of seven years for three reasons:

BXA first argues that at the time Macosia exported the four shipments of handcuffs and leg irons from the United States to Mexico, Macosia did not have the required validated license and that crime control equipment was classified on the Commerce Control List under ECCN 0A82C as being controlled for foreign policy reasons.

BXA's second argument is that since Macosia, which is located in the United States, has not responded to the charging letter, the Agency does not believe that Macosia will pay a civil penalty if one is imposed. Thus, according to BXA, imposition of a civil penalty would be futile and meaningless, and denial of all export privileges is the appropriate sanction.

BXA's final argument is that Macosia's multiple export of crime control equipment to Mexico without the required license is a serious matter that warrants a seven-year denial of export privileges rather than a shorter denial period.

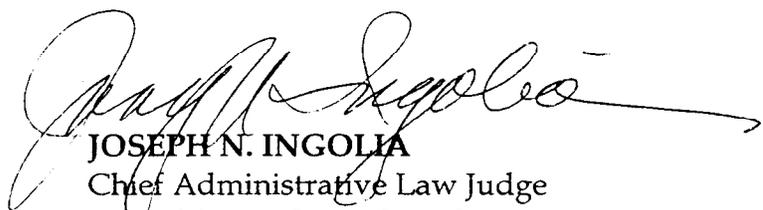
⁵ Pursuant to Section 13(c)(1) of the Export Administration Act and 15 C.F.R. § 766.17(b)(2) of the current regulations, in export control enforcement cases, the Administrative Law Judge issues a recommended decision which is reviewed by the Under Secretary for Export Administration who issues the final decision for the agency.

For the foregoing reasons, I concur with BXA and recommend that the Under Secretary enter an Order against Macosia denying all of its export privileges for a period of seven years.⁶

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

Within 30 days after receipt of this recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order. See 15 C.F.R. § 766.22(c)(1998).

Done and dated in Baltimore, Maryland this 4th day of November 1999.


JOSEPH N. INGOLIA
Chief Administrative Law Judge
United States Coast Guard

⁶ Denial orders may either be "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 current regulations.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon the following parties and limited participants or designated representatives in this proceeding at the address indicated below by Federal Express:

Lairold M. Street
Office of Chief Counsel for Export Administration
United States Department of Commerce
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Washington, DC 20230

Under Secretary for Export Administration
Bureau of Export Administration
United States Department of Commerce
Room H-3898
14th & Constitution Avenue, N.W.
Washington, DC 20230

Done and dated in Baltimore, Maryland this 4th day of November 1999.


GLADYS P. KAITELL-PAUL
Attorney-Advisor
United States Coast Guard