

MAY 15 2003



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Bureau of Industry and Security**  
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Mr. Mehdi Moghimi  
Managing Director  
Arian Transportvermittlungs GmbH  
Bremerhavener Str. 23,  
50835 Cologne  
Germany

Dear Mr. Moghimi:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that Arian Transportvermittlungs GmbH ("Arian") of Cologne, Germany, has committed two violations of the Export Administration Regulations (the "Regulations")<sup>1</sup> issued under the authority of the Export Administration Act of 1979 (the "Act").<sup>2</sup> Specifically, BIS charges that Arian committed the following violations:

**Charges 1 15 C.F.R. § 764.2(a) - Conduct Prohibited by or Contrary to the Regulations  
- Unlicensed Exports of Items**

On or about July 17, 1999, Arian reexported computers and software subject to the Regulations (ECCN 4A994 and ECCN 5D002)<sup>3</sup> from Germany to Iran without obtaining a license from BIS

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred from in 1999. The Regulations governing the violation at issue are found in the 1999 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The Regulations define the violations that BIS alleges occurred and establish the procedures that apply to this matter.

<sup>2</sup> 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 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1707 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 *Fed. Reg.* 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.

<sup>3</sup> "ECCN" is "Export Control Classification Number." See Supp. 1 to 15 C.F.R. § 774.



as required by Section 746.7 of the Regulations. In doing so, Arian committed one violation of Section 764.2(a) of the Regulations.

**Charge 2 15 C.F.R. § 764.2(e) - Conduct Prohibited by or Contrary to the Regulations - Acting with Knowledge of a Violation**

On July 17, 1999, Arian caused the transport of computers and software to Iran with knowledge that a violation of the EAR would occur in connection with those items. The items were reexported to Iran without the license from BIS required by 15 C.F.R. §746.7. In so doing, Arian committed one violation of Section 764.2(e) of the Regulations.

Accordingly, Arian 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:

The maximum civil penalty allowed by law of \$11,000 per violation;<sup>4</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Arian fails to answer the charge contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Arian defaults, the Administrative Law Judge may find the charge alleged in this letter are true without a hearing or further notice to Arian. The Under Secretary for Industry and Security may then impose up to the maximum penalty on the charges in this letter.

Arian is further notified that it is entitled to an agency hearing on the record if Arian files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Arian is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should you have a proposal to settle this case, your or your representative should transmit it to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Arian's answer must be filed in accordance with the instructions set forth in Section 766.5(a) of the Regulations with:

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<sup>4</sup> *See* 15 C.F.R. § 6.4(a)(2).

Arian  
Charging Letter  
Page 3 of 3

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of Arian's answer must be served on BIS at the following address:

Office of the Chief Counsel for Industry and Security  
Attention: Philip Ankel, Esq.  
Room H-3839  
United States Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Philip Ankel is the attorney representing BIS in this case. Any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,



Mark D. Menefee  
Director  
Office of Export Enforcement

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of: )  
ARIAN TRANSPORTVERMITTLUNGS GmbH ) Docket No. 03-BIS-06  
Morsestrasse 1 )  
D-50769 Koln )  
Germany, )  
Respondent. )

RECOMMENDED DECISION AND ORDER

On May 15, 2003, the Bureau of Industry and Security, United States Department of Commerce (BIS or Agency), issued a charging letter initiating this administrative enforcement proceeding against Arian Transportvermittlungs GmbH (Arian). The charging letter alleged that Arian committed two violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2003)) (the Regulations),<sup>1</sup> issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the Act).<sup>2</sup>

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<sup>1</sup> The violations charged occurred in 1999. The Regulations governing the violations at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2003 Regulations establish the procedures that apply to this matter.

<sup>2</sup> 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 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Regulations in effect under IEEPA.

Specifically, the charging letter alleged that on or about July 17, 1999, Arian re-exported computers and software, items subject to the Regulations and classified under Export Control Classification Numbers 4A994 and 5D002, from Germany to Iran without obtaining a license from BIS as required by Section 746.7 of the Regulations. BIS alleged that, by re-exporting the computers and software, Arian committed one violation of Section 764.2(a) of the Regulations.

The charging letter also alleged that in connection with the reexport, Arian caused the transport of computers and software to Iran with knowledge that a violation of the Regulations would occur in connection with those items. BIS alleged that, by causing the re-export of items with knowledge that a violation of the Regulations would occur, Arian committed one violation of Section 764.2(e) of the Regulations.

The record provides that BIS mailed its May 15, 2003 Charging Letter to Mr. Mehdi Moghimi, Managing Director for Arian Transportvermittlungs GMBH located at Bremerhavener Str. 23, 50835 Cologne, Germany. On May 28, 2003, the ALJ Docketing Center notified the parties of the assignment of a case docket number for this matter. This letter was subsequently returned to the ALJ Docketing Center as being undeliverable. On July 18, 2003, BIS provided a new address for Mr. Moghimi and Arian Transportvermittlungs GmbH at Morsestrasse 1, D-507669 Koln, Germany.

On March 11, 2004, BIS filed a Motion for Default Order (Motion) in this matter stating that Arian had failed to file an Answer to its Charging Letter as required by 15 C.F.R. 766.3 (b)(1). On March 15, 2004, this matter was assigned to the Undersigned. In its Motion, BIS states that it sent notice the of issuance of the Charging Letter to Arian by registered mail and

submits Government Exhibit 1, showing a registered mail receipt dated July 15, 2003 addressed to Arian in Koln, Germany. BIS also submits Government Exhibit 2 showing that Arian received this notice on July 22, 2003. The record is devoid of any response or Answer filed by Arian. Under section 766.3(b)(1), the notice of issuance of a charging letter is required to be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address. The Agency's actions as stated above constitute proper service on Arian.

Section 766.6(a) of the Regulations provides, in pertinent part, that "[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter[.]" Since service was effected on July 22, 2003, Arian's answer to the Charging Letter was due no later than August 21, 2003. As of this date, Arian has not filed an Answer to the Charging Letter.

The default procedures set forth in Section 766.7 state "[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear ..." and "... on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter ...." Based on the above, the facts as alleged in the Charging Letter are hereby held to constitute the findings of fact in this matter and thereby establish that Arian committed one violation of Section 764.2(a) of the Regulations and one violation of Section 764.2(e) of the Regulations.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions as set forth in the Regulations are a civil monetary

penalty, suspension from practice before the Department of Commerce, and denial of export privileges. See 15 C.F.R. § 764.3 (2003).

Because Arian violated the Regulations by causing the re-export of items that were subject to the Regulations with knowledge that a violation of the Regulations would occur, BIS requests that Arian's export privileges be denied for ten years.

BIS has proposed this sanction because Arian's actions in committing a knowing violation of the Regulations evidences a disregard for U.S. export control laws. Further, BIS indicates that Iran is a country against which the United States maintains an economic embargo because of Iran's support for international terrorism.

Finally, BIS states that imposition of a civil penalty in this case may be ineffective, given the difficulty of collecting payment against a party outside of the United States. In light of these circumstances, BIS proposes that the appropriate sanction to be assessed is the denial of Arian's export privileges for ten years.

Given the foregoing, I recommend that the Under Secretary enter an Order denying Arian's export privileges for a period of ten years. Such a denial order is consistent with penalties imposed in recent cases under the Regulations involving shipments to Iran. See, In the Matter of Jabal Damavand General Trading Company, 67 FR 32009 (May 13, 2002) (affirming the recommendations of the Administrative Law Judge that a ten year denial was appropriate where violations involved shipments of EAR99 items to Iran) and In the Matter of Abdulmir Mahdi, 68 FR 57406 (October 3, 2003) (affirming the recommendations of the Administrative Law Judge that a twenty year denial was appropriate where violations involved shipments of EAR99 items to Iran as a part of a conspiracy to ship such items through Canada to Iran).

The recommended terms of the denial of export privileges against Arian is as follows:

FIRST, that, for a period of 10 years from the date of this Order, Arian Transportvermittlungs GmbH (“Arian”), Moresenstrasse 1, D-50769 Koln, Germany, (original address provided at Bremerhavener Str. 23, 50835 Cologne, Germany) and all of its successors or assigns, and, when acting for or on behalf of Arian, its officers, representatives, agents, 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. 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.

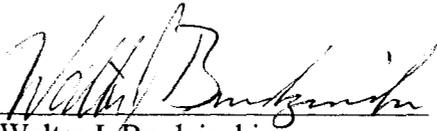
FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

FIFTH, that this Order shall be served on the Denied Persons and on BIS, and shall be published in the Federal Register.

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

Accordingly, I am referring this 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 15 C.F.R. § 766.22(c).

  
Walter J. Brudzinski  
Administrative Law Judge

Done and dated this 8<sup>th</sup> day of April, at  
New York, NY

UNITED STATES DEPARTMENT OF COMMERCE  
UNDER SECRETARY FOR INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of: )

ARIAN TRANSPORTVERMITTLUNGS GmbH )

Morsestrasse 1 )

D-50769 Cologne )

Germany )

Respondent )

Docket No. 03-BIS-06

DECISION AND ORDER

On May 15, 2003 the Bureau of Industry and Security (“BIS”) issued a charging letter against the respondent, Arian Transportvermittlungs GmbH (Arian), that alleged two violations of the Export Administration Regulations (Regulations).<sup>1</sup> The charging letter alleged that Arian committed one violation of Section 764.2(a) and one violation of Section 764.2(e) of the Regulations, issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”).<sup>2</sup>

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<sup>1</sup> The violations charged occurred in 1999. The Regulations governing the violations at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2003 Regulations establish the procedures that apply to this matter.

<sup>2</sup> 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 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Regulations in effect under IEEPA.

Specifically, the charging letter alleged that, on or about July 17, 1999, Arian reexported certain computers and encryption software, items subject to the Regulations and classified under Export Control Classification Numbers 4A994 and 5D002, from Germany to Iran without obtaining a license from BIS as required by Section 746.7 of the Regulations. BIS alleged that, by reexporting the computers and encryption software, Arian committed one violation of Section 764.2(a) of the Regulations.

The charging letter further alleged that, in connection with the reexport, Arian caused the transport of certain computers and encryption software to Iran with knowledge that a violation of the Regulations would occur. BIS alleged that, by causing the reexport of items with knowledge that a violation of the Regulations would occur, Arian committed one violation of Section 764.2(e) of the Regulations.

On the basis of the factual record before the Administrative Law Judge (ALJ), he found that the respondent failed to file an answer to BIS's charging letter within the time required by the Regulations. Indeed, service of the notice of issuance of a charging letter on the respondent was properly effected on July 22, 2003, a response to the charging letter was due no later than August 21, 2003, and the record does not include any such response from Arian. The ALJ therefore held Arian in default.

Under the default procedures set forth in Section 766.7(a) of the Regulations, "[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear," and "on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter." Accordingly, on April 8, 2004, the ALJ issued a Recommended Decision and Order, in which he found that the facts alleged in the

charging letter constitute the findings of fact in this matter and, thereby, establish that Arian committed one violation of Section 764.2(a) and one violation of Section 764.2(e) of the Regulations. The ALJ also recommended a penalty of a ten-year denial of Arian's export privileges.

Pursuant to Section 766.22 of the Regulations, the ALJ's Recommended Decision and Order has been referred to me for final action. Based on my review of the entire record, I find that the record supports the ALJ's findings of fact and conclusions of law regarding each of the above-referenced charges. I also find that the penalty recommended by the ALJ is appropriate, given the knowing nature of the violations and the importance of preventing future unauthorized exports to Iran, an embargoed country. I therefore affirm the findings of fact and conclusions of law in the ALJ's Recommended Decision and Order.

**IT IS HEREBY ORDERED,**

FIRST, that, for a period of 10 years from the date on which this Order takes effect, Arian Transportvermittlungs GmbH ("Arian"), Morsestrasse 1, D-50769 Cologne, Germany, and all of its successors or assigns, and, when acting for or on behalf of Arian, its officers, representatives, agents, and employees (individually referred to as "a 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. 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 connection with any other activity subject to the Regulations.

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

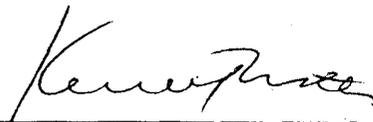
- A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a 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 a Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from a 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 a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a 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 a 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 shall be served on the Denied Persons and on BIS, and shall be published in the Federal Register. In addition, the ALJ's Recommended Decision and Order, except for the section with the heading "Recommended Order," shall be published in the Federal Register.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the *Federal Register*.



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Kenneth I. Juster

Under Secretary of Commerce  
for Industry and Security

Dated: May 12, 2004