

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

In the Matters of:)
)
S.P. Equipamentos de Protecao ao) Docket Nos: 04-BIS-15
Trabalho Ltda.,)
Rua Visconde de Inhauma, 386-Saude)
04146-030 Sao Paulo, Brazil,)
)
Respondent.)
_____)

DECISION AND ORDER ON PETITION TO SET ASIDE DEFAULT ORDER

On February 26, 2007, the Acting Under Secretary of Commerce for Industry and Security issued a Final Decision and Order, pursuant to his authority under Section 766.22 of the Export Administration Regulations (hereinafter "Regulations"), in which he affirmed the findings of fact and conclusions of law as recommended by an Administrative Law Judge (ALJ) that Respondent was in default on an administrative proceedings initiated against it under the Regulations.

Respondent has petitioned me to set aside the default order using my authority under Section 366.7(b) of the Regulations. For the reasons stated below, I grant the Petition.

The relevant facts in this matter are as follows. In a charging letter filed on September 13, 2004, the Bureau of Industry and Security ("BIS") alleged that Respondent committed two violations of the Regulations,¹ issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)).²

¹ The violations charged occurred in 2002. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 C.F.R Parts 730-774 (2002)). The 2007 Regulations establish the procedures that apply to this matter.

On September 13, 2004, BIS mailed the notice of issuance of the charging letter by registered mail to the Respondent at its last known address. The file indicates that the notice of issuance of a charging letter was received by the Respondent on or about September 24, 2004, and counsel, who no longer represents the Respondent, filed a Notice of Appearance on February 7, 2005. Respondent, or its former counsel, did not file an answer to the charging letter with the ALJ, as required by Section 766.6 of the Regulations, but there is evidence in the file that the opposing counsel engaged in settlement negotiations regarding these charges for about one year before BIS filed a Motion for Default Order on or about November 9, 2006. The former counsel for the Respondent states in a declaration to accompany this Petition that counsel did not receive notice of the BIS decision to file a Motion for Default Order, nor was counsel served with the motion that was filed.

On January 31, 2007, based on the record before him, the ALJ issued a recommended decision in which he found that the Respondent was in default. On February 26, 2007, the Acting Under Secretary for Industry and Security issued a Final Decision and Order affirming the ALJ's recommended decision, and imposing a ten-year denial of Respondent's export privileges.

On September 7, 2007, Respondent filed its Petition asserting, among other things, that good cause exists to set aside the default. On October 24, 2007, BIS filed a response to the Petition in which it did not oppose the finding that good cause exists to set aside the default.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) ("IEEPA").


The Regulations provide me with the authority to set aside a default order. Section 766.7(b)(1) of the Regulations states: “[U]pon petition filed by a respondent against whom a default order has been issued, which petition is accompanied by an answer meeting the requirements of § 766.6(b) of this part, the Under Secretary may, after giving all parties an opportunity to comment, and for good cause shown, set aside the default and vacate the order entered thereon and remand the matter to the administrative law judge for further proceedings.”

The Petition and its supporting materials justify a finding that good cause exists to grant this Petition, and there is no opposition to this finding.

Accordingly, I find good cause has been shown to set aside the Final Decision and Order, dated February 26, 2007, and the Order is hereby vacated and this matter is remanded to the ALJ for further proceedings.

This Order, which constitutes the final agency action on this Petition, is effective immediately.

Dated: 11/5/07


MARIO MANCUSO
Under Secretary for Industry and Security

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

In the Matter of:)
)
S.P. Equipamentos de Proteção ao Trabalho Ltda.)
Rua Visconde de Inhaúma, 386- Saúde)
04146-030 São Paulo) Docket No: 04-BIS-15
Brazil)
)
..... Respondent.....)

FINAL DECISION AND ORDER

This matter is before me upon a Recommended Decision and Order ("RDO") of an Administrative Law Judge ("ALJ"), as further described below.

In a charging letter filed on September 13, 2004, the Bureau of Industry and Security ("BIS") alleged that Respondent, S.P. Equipamentos de Proteção ao Trabalho Ltda. ("S.P. Equipamentos"), committed two violations of the Export Administration Regulations ("Regulations")¹, issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the "Act").² Specifically, the charging letter alleged that S.P. Equipamentos engaged in conduct prohibited by the Regulations by transferring one thermal

¹ The violations charged occurred in 2002. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 C.F.R Parts 730-774 (2002)). The 2006 Regulations establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701 - 1706 (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 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 FR 44,551 (August 7, 2006)), has continued the Regulations in effect under IEEPA.

imaging camera classified under Export Control Classification Number (“ECCN”) 6A003.b.4 to the State Secretariat of Civil Defense (Military Police of the State of Rio de Janeiro) in violation of condition 4 of license D274828, which forbade the resale, reexport, or transfer of the thermal imaging camera to any party other than that listed on the license without the prior approval of the United States Government. In transferring the thermal imaging camera to a non-approved end-user without prior U.S. Government authorization, S.P. Equipamentos committed one violation of Section 764.2(a) of the Regulations.

The charging letter further alleged that S.P. Equipamentos sold one thermal imaging camera classified under ECCN 6A003.b.4 to the State Secretariat of Civil Defense (Military Police of the State of Rio de Janeiro) with the knowledge that doing so was a violation of condition 4 of license D274828, which forbade the resale, reexport, or transfer of the thermal imaging camera to any party other than that listed on the license without the prior approval of the United States Government. In transferring the thermal imaging camera with such knowledge, S.P. Equipamentos committed one violation of Section 764.2(e) of the Regulations.

In accordance with Section 766.3(b)(1) of the Regulations, on September 13, 2004, BIS mailed the notice of issuance of the charging letter by registered mail to S.P. Equipamentos at its last known address. The record establishes that the notice of issuance of a charging letter was received by S.P. Equipamentos on September 24, 2004. Counsel for S.P. Equipamentos filed a Notice of Appearance in this matter of February 7, 2005. To date, however, S.P. Equipamentos has not filed an answer to the charging letter with the ALJ, as required by the Regulations.

In accordance with Section 766.7 of the Regulations, BIS filed a Motion for Default Order on or about November 11, 2006. This Motion for Default Order recommended that S.P. Equipamentos be denied export privileges for a period of ten years. Under 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.” The ALJ has found S.P. Equipamentos in default.

On January 31, 2007, based on the record before him, the ALJ issued an RDO in which he found that S.P. Equipamentos committed one violation of Section 764.2(a) and one violation of Section 764.2(e). The ALJ also recommended the penalty of denial of S.P. Equipamentos’ export privileges under the Regulations for ten years.

The ALJ’s RDO, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. I find that the record supports the ALJ’s findings of fact and conclusions of law. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations and the facts of this case, and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law as recommended by the ALJ.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that for a period of ten years from the date of this Order, S.P. Equipamentos de Proteção ao Trabalho Ltda., Rua Visconde de Inhaúma, 386- Saúde, 04146-030 São Paulo, Brazil, its successors and assigns, and when acting for or on behalf of S.P. Equipamentos, its representatives, agents and employees (hereinafter collectively referred to as the “Denied

Person”), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

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

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.

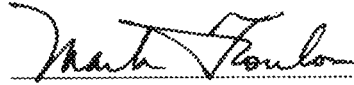
FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

FIFTH, that this Order shall be served on the Denied Person and on BIS, and shall be published in the *Federal Register*. In addition, the ALJ's Recommended Decision and Order,

except for the section related to the Recommended Order, shall be published in the *Federal Register*.

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

Dated: 2/26/07


Mark Foulon
Acting Under Secretary of Commerce
for Industry and Security

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

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Rua Visconde de Inhaúma, 386- Saúde)	04-BIS-15
04146-030 São Paulo)	
Brazil)	
)	
Respondent.)	

RECOMMENDED DECISION AND ORDER

On September 13, 2004, the Bureau of Industry and Security (“BIS”), U.S. Department of Commerce, issued a Charging Letter initiating this administrative enforcement proceeding against S.P. Equipamentos de Proteção ao Trabalho Ltda. (“S.P. Equipamentos”). The Charging Letter alleged that S.P. Equipamentos committed one violation of § 764.2(a) and one violation of § 764.2(e) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2006)) (“Regulations”),¹ issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”).² In accordance with § 766.7 of Regulations, BIS moved for the issuance of an Order of Default against S.P. Equipamentos as S.P. Equipamentos failed to file an answer to the allegations in the Charging Letter issued by BIS within the time period required by law.

¹ The charged violations occurred during 2002. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002)). The 2006 Regulations establish the procedures that apply to this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001, 3 C.F.R., 2001 Comp. 783 (2002), as extended by the Notice of August 3, 2006 (71 Fed. Reg. 44,551 (August 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 – 1706 (2000)).

A. Legal Authority for Issuing an Order of Default

Section 766.7 of the Regulations states that BIS may file a motion for an order of default if 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 BIS'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 (2005).

Pursuant to § 766.6 of the Regulations, a respondent must file an answer to the charging letter "within 30 days after being served with notice of the issuance of the charging letter . . ." initiating the proceeding.

B. Service of the Notice of Issuance of Charging Letter

In this case, BIS served notice of issuance of the Charging Letter in accordance with § 766.3(b)(1) of the Regulations when it sent a copy of the Charging Letter by registered mail to S.P. Equipamentos at its last known address on September 13, 2004. BIS submitted evidence that established the Charging letter was received by S.P. Equipamentos on or about September 24, 2004. Counsel for S.P. Equipamentos filed a Notice of Appearance in this matter on February 7, 2005. To date, however, S.P. Equipamentos has failed to file an answer or otherwise file a response to the Charging Letter. Accordingly, because S.P. Equipamentos failed to file an answer to the Charging Letter within thirty (30) days from the time it received notice of issuance

of the Charging Letter, as required by § 766.6 of the Regulations, the undersigned finds S.P. Equipamentos to be in default.

C. Summary of Violations Charged

The Charging Letter issued by BIS included a total of two (2) charges. Specifically, the Charging Letter alleged that on one occasion, on or about February 25, 2002, S.P. Equipamentos engaged in conduct prohibited by the Regulations by transferring one thermal imaging camera classified under Export Control Classification Number ("ECCN") 6A003.b.4 to State Secretariat of Civil Defense (Military Police of the State of Rio de Janeiro) in violation of condition 4 of license D274828, which forbade the resale, reexport, or transfer of the thermal imaging camera to any party other than that listed on the license without the prior approval of the United States Government. In transferring the thermal imaging camera to a non-approved end-user without prior U.S. Government authorization, S.P. Equipamentos committed one violation of § 764.2(a) of the Regulations. (Charge 1).

The Charging Letter further alleged that S.P. Equipamentos sold one thermal imaging camera classified under ECCN 6A003.b.4 to the State Secretariat of Civil Defense (Military Police of the State of Rio de Janeiro) with the knowledge that doing so was a violation of condition 4 of license D274828, which forbade the resale, reexport, or transfer of the thermal imaging camera to any party other than that listed on the license without the prior approval of the United States Government. In transferring the thermal imaging camera with such knowledge, S.P. Equipamentos committed one violation of § 764.2(e) of the Regulations.

D. Penalty Recommendation

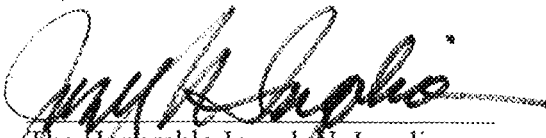
[REDACTED SECTION]

[REDACTED SECTION]

E. Conclusion

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations. Within thirty (30) days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. See 15 C.F.R. § 766.22(c).

Dated: January 31, 2007


The Honorable Joseph N. Ingolia
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing RECOMMENDED DECISION AND ORDER by First Class Mail, Postage Prepaid to the following person:

Peter R. Klason, Esq.
Office of Chief Counsel for Industry and Security
U.S. Department of Commerce, Room H-3839
14th Street and Constitution Avenue, NW
Washington, D.C. 20230
Telephone: (202) 482-5301
Facsimile: (202) 482-0085



Jenny L. Collins
Hearing Docket Clerk

Done and dated this 2nd day of February, 2007
Baltimore, Maryland

COPY

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

September 10, 2004

CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

S.P. Equipamentos de Proteção ao Trabalho Ltda.
Rua Visconde de Inhaúma, 386 - Saúde
04146-030 São Paulo
Brazil

Attention: *Paulo Keiner*
Marketing Director

Dear Mr. Keiner:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that S.P. Equipamentos de Proteção ao Trabalho Ltda. ("S.P. Equipamentos"), of São Paulo, Brazil, has committed two violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that S.P. Equipamentos committed the following violations:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The violations charged occurred in 2002. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002)). The 2004 Regulations govern the procedural aspects of this case.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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 by Pub. L. No. 106-508 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 6, 2004 (69 Fed. Reg. 48763 (Aug. 10, 2004)), continues the Regulations in effect under IEEPA.

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Charge 1 (15 C.F.R. § 764.2(a) - Transferring Thermal Imaging Cameras in Violation of License Conditions)

On one occasion, on or about February 25, 2002, S.P. Equipamentos engaged in conduct prohibited by the Regulations by transferring one thermal imaging camera classified under Export Control Classification Number ("ECCN") 6A003.b.4 to State Secretariat of Civil Defense (Military Police of the State of Rio de Janeiro) in violation of condition 4 of license D274828, which forbade the resale, reexport, or transfer of the thermal imaging camera to any party other than that listed on the license without the prior approval of the United States Government. In so doing, S.P. Equipamentos committed one violation of Section 764.2(a) of the Regulations.

Charge 2 (15 C.F.R. § 764.2(e) - Acting with Knowledge of a Violation of the Regulations)

On the same one occasion described in charge 1 above, S.P. Equipamentos sold one thermal imaging camera classified under ECCN 6A003.b.4 to the State Secretariat of Civil Defense (Military Police of the State of Rio de Janeiro) with the knowledge that doing so was a violation of condition 4 of license D274828, which forbade the resale, reexport, or transfer of the thermal imaging camera to any party other than that listed on the license without the prior approval of the United States Government. In so doing, S.P. Equipamentos committed one violation of Section 764.2(e) of the Regulations.

Accordingly, S.P. Equipamentos 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 up to \$11,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If S.P. Equipamentos fails to answer the charges 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. (Regulations, Sections 766.6 and 766.7). If S.P. Equipamentos defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to S.P. Equipamentos. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

³ See 15 C.F.R. § 6.4(a)(2).

S.P. Equipamentos
Charging Letter
Page 3

S.P. Equipamentos is further notified that it is entitled to an agency hearing on the record if S.P. Equipamentos files a written demand for one with its answer. (Regulations, Section 766.6). S.P. Equipamentos is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it 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, S.P. Equipamentos's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

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

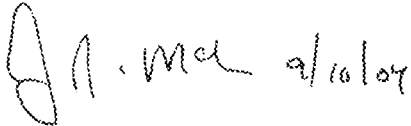
In addition, a copy of S.P. Equipamentos's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Peter R. Klason
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

S.P. Equipamentos
Charging Letter
Page 4

Peter R. Klason 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,

Handwritten signature of John M. McKenna and the date 9/16/04.

John M. McKenna
Acting Director
Office of Export Enforcement