

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

In the Matter of:)
)
Patrick Gaillard)
Owner and President)
Oyster Bay Pump Works)
78 Midland Avenue)
P.O. Box 725)
Hicksville, New York 11802,)
)
Respondent.)
_____)

ORDER RELATING TO PATRICK GAILLARD

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Patrick Gaillard (“Gaillard”), in his individual capacity, of its intention to initiate an administrative proceeding against him pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),² through the issuance of a Proposed Charging Letter to Gaillard that alleged that he committed six violations of the Regulations. Specifically, the charges are:

Charge 1: 15 C.F.R. § 764.2(b) – Causing, Aiding or Abetting the Export of an Item to Cuba via Germany without the Required License

On or about November 17, 2003, Gaillard engaged in conduct prohibited by the Regulations by causing, aiding or abetting the export of a Ten Station Microplate Processing Conveyor System

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2010). The charged violations occurred between 2003-2006. The Regulations governing the violations at issue are found in the 2003 through 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-2006)). The 2010 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse. However, 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 13, 2009 (74 Fed. Reg. 41,325 (Aug. 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

(MPCS-10), an item subject to the Regulations and designated as EAR99,³ from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. In so doing, Gaillard committed one violation of Section 764.2(b) of the Regulations.

Charges 2-3: 15 C.F.R. § 764.2(e) – Selling Items for Export to Cuba via Germany with Knowledge of a Violation

On or about February 24, 2006 and on or about June 30, 2006, Gaillard sold items for export from the United States to Cuba via Germany with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the items. Specifically, on or about February 24, 2006, Gaillard sold three power supply units, items subject to the Regulations and designated as EAR99, which Gaillard knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. On a second occasion, on or about June 30, 2006, Gaillard sold a Ten Station Microplate Processing Conveyor System (MPCS-10), an item subject to the Regulations and designated as EAR99, which Gaillard knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. Gaillard had knowledge that violations of the Regulations were occurring or were about and intended to occur because Gaillard knew of the U.S. embargo of Cuba and that licenses were required to export these items to Cuba. On at least two occasions in or around 2004 and in or around 2005, OBPW staff researched export control laws and regulations and informed Gaillard that these items required a license to be exported to Cuba. Gaillard ordered OBPW staff to export the items without obtaining the required licenses. In so doing, Gaillard committed two violations of Section 764.2(e) of the Regulations.

Charge 4: 15 C.F.R. § 764.2(e) – Selling Items to Iran via the United Arab Emirates with Knowledge of a Violation

On or about November 27, 2006, Gaillard sold items for export from the United States to Iran via the United Arab Emirates (“U.A.E.”) with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the items. Specifically, on or about November 27, 2006, Gaillard sold a Three Station Microplate Processing Conveyor System (MPCS-3) and Test Tube Conveyor System (TTCS), items subject to the Regulations and designated as EAR99, which Gaillard knew would be exported to Iran via the U.A.E. without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations (“ITR”) maintained by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”),⁴ an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations

³ Under the Regulations, items designated as “EAR99” are items that are subject to the Regulations but which do not fall in any specific entry on the Commerce Control List. 15 C.F.R. § 734.3(c) (2003; 2006).

⁴ 31 CFR § 560 (2006).

and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein. Gaillard had knowledge that violations of the Regulations were occurring or were about and intended to occur because Gaillard knew of the U.S. embargo of Iran and that the items could not be exported to Iran without U.S. Government authorization. In or around November 2005, a sales representative from an Iranian company approached Gaillard for the sale and export of the items described above to Iran. When Gaillard declined, citing the U.S. embargo of exports to Iran, the sales representative arranged with Gaillard to have the items exported to the Iranian company's trading arm in the U.A.E., from where the items would be transshipped to Iran. The U.S. Government confiscated the items before the intended export took place. In so doing, Gaillard committed one violation of Section 764.2(e) of the Regulations.

Charge 5: 15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records with Intent to Evade the Regulations

In or around February 2006, Gaillard took actions with intent to evade the provisions of the Regulations. Specifically, in or around February 2006, Gaillard directed OBPW staff to review files related to the transactions described in Charges 1-3 above involving exports from the United States to Cuba via Germany and to remove references to Cuba from those files and to destroy documents relating to exports to Cuba. In so doing, Gaillard committed one violation of Section 764.2(h) of the Regulations.

Charge 6: 15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records with Intent to Evade the Regulations

On or about November 28 or 29, 2006, Gaillard learned that the U.S. Government had confiscated the items described in Charge 4 above, that were intended for export from the United States to Iran via the U.A.E.. Gaillard directed OBPW staff to review the pertinent OBPW sales and export files and remove references and destroy documents relating to exports to Iran and the name of the Iranian company that was the true ultimate consignee.

WHEREAS, BIS and Gaillard have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, Gaillard shall be assessed a civil penalty in the amount of \$300,000. Gaillard shall pay \$25,000 to the U.S. Department of Commerce within 30 days of the date of the order. Payment of the remaining \$275,000 penalty shall be suspended for a period of one (1) year from

the date of issuance of the Order and thereafter shall be waived, provided that during the period of suspension, Gaillard has committed no violation of the Act, or any regulation, order, or license issued thereunder and has made full and timely payment of \$25,000 as set forth above..

SECOND, for a period of three (3) years from the date of this Order, Patrick Gaillard, 78 Midland Avenue, P.O. Box 725, Hicksville, New York 11802, his representatives, assigns or agents (hereinafter collectively referred to as "Denied Person") may not participate, directly or indirectly, 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.

THIRD, 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 which 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.

FOURTH, 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 Gaillard 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 the Order.

FIFTH, 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.

SIXTH, that, as authorized by Section 766.18(c) of the Regulations, the denial period set forth above shall be suspended in its entirety for a period of three years from the date of this Order, and shall thereafter be waived, provided that during the period of suspension, Gaillard has committed no violation of the act or any regulation, order or license issued thereunder and has made full and timely payment of the \$25,000 monetary penalty described above.

SEVENTH, that the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

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



David W. Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 21 day of June, 2010.

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

In the Matter of:)
)
Patrick Gaillard)
Owner and President)
Oyster Bay Pump Works)
78 Midland Avenue)
P.O. Box 725)
Hicksville, New York 11802,)
)
)
Respondent)
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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Patrick Gaillard ("Gaillard"), and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively referred to as "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations ("Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended ("Act"),²

WHEREAS, BIS has notified Gaillard of its intention to initiate an administrative proceeding against it pursuant to the Act and the Regulations,

WHEREAS, BIS has issued a proposed charging letter to Gaillard that alleged that he committed six violations of the Regulations, specifically:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2010). The charged violation occurred between 2003-2006. The Regulations governing the violation at issue are found in the 2003 through 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-2006)). The 2010 Regulations govern the procedural aspects of this case.

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 13, 2009 (74 Fed. Reg. 41,625 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 et seq. (2000)).

Charge 1: 15 C.F.R. § 764.2(b) – Causing, Aiding or Abetting the Export of an Item to Cuba via Germany without the Required License

On or about November 17, 2003, Gaillard engaged in conduct prohibited by the Regulations by causing, aiding or abetting the export of a Ten Station Microplate Processing Conveyor System (MPCS-10), an item subject to the Regulations and designated as EAR99,³ from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. In so doing, Gaillard committed one violation of Section 764.2(b) of the Regulations.

Charges 2-3: 15 C.F.R. § 764.2(e) – Selling Items for Export to Cuba via Germany with Knowledge of a Violation

On or about February 24, 2006 and on or about June 30, 2006, Gaillard sold items for export from the United States to Cuba via Germany with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the items. Specifically, on or about February 24, 2006, Gaillard sold three power supply units, items subject to the Regulations and designated as EAR99, which Gaillard knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. On a second occasion, on or about June 30, 2006, Gaillard sold a Ten Station Microplate Processing Conveyor System (MPCS-10), an item subject to the Regulations and designated as EAR99, which Gaillard knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. Gaillard had knowledge that violations of the Regulations were occurring or were about and intended to occur because Gaillard knew of the U.S. embargo of Cuba and that licenses were required to export these items to Cuba. On at least two occasions in or around 2004 and in or around 2005, OBPW staff researched export control laws and regulations and informed Gaillard that these items required a license to be exported to Cuba. Gaillard ordered OBPW staff to export the items without obtaining the required licenses. In so doing, Gaillard committed two violations of Section 764.2(e) of the Regulations.

Charge 4: 15 C.F.R. § 764.2(e) – Selling Items to Iran via the United Arab Emirates with Knowledge of a Violation

On or about November 27, 2006, Gaillard sold items for export from the United States to Iran via the United Arab Emirates (“U.A.E.”) with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the items. Specifically, on or about November 27, 2006, Gaillard sold a Three Station

³ Under the Regulations, items designated as “EAR99” are items that are subject to the Regulations but which do not fall in any specific entry on the Commerce Control List. 15 C.F.R. § 734.3(c) (2003; 2006).

Microplate Processing Conveyor System (MPCS-3) and Test Tube Conveyor System (TTCS), items subject to the Regulations and designated as EAR99, which Gaillard knew would be exported to Iran via the U.A.E. without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations ("ITR") maintained by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"),⁴ an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein. Gaillard had knowledge that violations of the Regulations were occurring or were about and intended to occur because Gaillard knew of the U.S. embargo of Iran and that the items could not be exported to Iran without U.S. Government authorization. In or around November 2005, a sales representative from an Iranian company approached Gaillard for the sale and export of the items described above to Iran. When Gaillard declined, citing the U.S. embargo of exports to Iran, the sales representative arranged with Gaillard to have the items exported to the Iranian company's trading arm in the U.A.E., from where the items would be transhipped to Iran. The U.S. Government confiscated the items before the intended export took place. In so doing, Gaillard committed one violation of Section 764.2(e) of the Regulations.

Charge 5: 15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records with Intent to Evade the Regulations

In or around February 2006, Gaillard took actions with intent to evade the provisions of the Regulations. Specifically, in or around February 2006, Gaillard directed OBPW staff to review files related to the transactions described in Charges 1-3 above involving exports from the United States to Cuba via Germany and to remove references to Cuba from those files and to destroy documents relating to exports to Cuba. In so doing, Gaillard committed one violation of Section 764.2(h) of the Regulations.

Charge 6: 15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records with Intent to Evade the Regulations

On or about November 28 or 29, 2006, Gaillard learned that the U.S. Government had confiscated the items described in Charge 4 above, that were intended for export from the United States to Iran via the U.A.E.. Gaillard directed OBPW staff to review the pertinent OBPW sales and export files and remove references and destroy documents relating to exports to Iran and the name of the Iranian company that was the true ultimate consignee.

⁴ 31 CFR § 560 (2006).

WHEREAS, Gaillard has reviewed the proposed charging letter and is aware of the allegations made against him and the administrative sanctions which could be imposed against him if the allegations are found to be true;

WHEREAS, Gaillard fully understands the terms of this Agreement and the Order (“Order”) that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Gaillard enters into this Agreement voluntarily and with full knowledge of his rights;

WHEREAS, Gaillard states that no promises or representations have been made to him other than the agreements and considerations herein expressed;

WHEREAS, Gaillard neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Gaillard wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Gaillard agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Gaillard, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanctions shall be imposed against Gaillard in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the proposed charging letter:
 - a. Gaillard shall be assessed a civil penalty in the amount of \$300,000.

Gaillard shall pay \$25,000 to the U.S. Department of Commerce within 30

days of the date of the Order. Payment of the remaining \$275,000 shall be suspended for a period of one (1) year from the date of issuance of the Order and thereafter shall be waived, provided that during the period of suspension, Gaillard has committed no violation of the Act, or any regulation, order, or license issued thereunder, and has made full and timely payment of \$25,000 as set forth above.

- b. For a period of three years from the date of issuance of the Order, Gaillard and when acting for or on behalf of Gaillard, his representatives, agents, assigns or employees, (hereinafter collectively referred to as the "Denied Person") may not participate, directly or indirectly, 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:
- i. Applying for, obtaining, or using any license, License Exception, or export control document;
 - ii. 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

- iii. 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.
 - c. BIS agrees that, as authorized by Section 766.18(c) of the Regulations, the three year denial period set forth in paragraph 2.b shall be suspended in its entirety, and shall thereafter be waived, provided that during the period of suspension, Gaillard has committed no violation of the act or any regulation, order, or license thereunder, and that Gaillard has made full and timely payment of the monetary penalty set forth in paragraph 2(a).
3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Gaillard hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if issued), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued.
4. BIS agrees that, upon issuance of the Order, it will not initiate any further administrative proceeding against Gaillard in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.
5. BIS will make the proposed charging letter, this Agreement, and the Order, if issued, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.
8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE



John Sonderman
Acting Director
Office of Export Enforcement

Date: 6/15/10

PATRICK GAILLARD



Patrick Gaillard

Date: 6/7/10

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Patrick Gaillard
Owner and President
Oyster Bay Pump Works
78 Midland Avenue
P.O. Box 725
Hicksville, New York 11802

Dear Mr. Gaillard:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that you, Patrick Gaillard (“Gaillard”), in your individual capacity as owner and President of Oyster Bay Pump Works (“OBPW”), of Hicksville, New York, has committed five violations of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that Gaillard committed the following violations, described in greater detail in the attached Schedule of Transactions, which is enclosed herewith and incorporated herein by reference:

Charge 1: 15 C.F.R. § 764.2(b) – Causing, Aiding or Abetting the Export of an Item to Cuba via Germany without the Required License

As described in greater detail in the attached Schedule of Transactions, on or about November 17, 2003, Gaillard engaged in conduct prohibited by the Regulations by causing, aiding or abetting the export of a Ten Station Microplate Processing Conveyor System (MPCS-10), an item subject to the Regulations and designated as EAR99,³ from the United States to Cuba via

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2008). The violations charged occurred during 2003-2006. The Regulations governing the violations at issue are found in the 2003-2006 versions of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2003-2006). The 2008 Regulations govern the procedural aspects of this case.

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)), as extended most recently by the Notice of July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)).

³ Under the Regulations, items designated as “EAR99” are items that are subject to the Regulations but which do not fall in any specific entry on the Commerce Control List. 15 C.F.R. § 734.3(c) (2003; 2006).

Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. In so doing, Gaillard committed one violation of Section 764.2(b) of the Regulations.

Charges 2-3: 15 C.F.R. § 764.2(e) – Selling Items for Export to Cuba via Germany with Knowledge of a Violation

As described in greater detail in the attached Schedule of Transactions, on or about February 24, 2006 and on or about June 30, 2006, Gaillard sold items for export from the United States to Cuba via Germany with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the items. Specifically, on or about February 24, 2006, Gaillard sold three power supply units, items subject to the Regulations and designated as EAR99, which Gaillard knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. On a second occasion, on or about June 30, 2006, Gaillard sold a Ten Station Microplate Processing Conveyor System (MPCS-10), an item subject to the Regulations and designated as EAR99, which Gaillard knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. Gaillard had knowledge that violations of the Regulations were occurring or were about and intended to occur because Gaillard knew of the U.S. embargo of Cuba and that licenses were required to export these items to Cuba. On at least two occasions in or around 2004 and in or around 2005, OBPW staff researched export control laws and regulations and informed Gaillard that these items required a license to be exported to Cuba. Gaillard ordered OBPW staff to export the items without obtaining the required licenses. In so doing, Gaillard committed two violations of Section 764.2(e) of the Regulations.

Charge 4: 15 C.F.R. § 764.2(e) – Selling Items to Iran via the United Arab Emirates with Knowledge of a Violation

As described in greater detail in the Schedule of Transactions, on or about November 27, 2006, Gaillard sold items for export from the United States to Iran via the United Arab Emirates (“U.A.E.”) with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the items. Specifically, on or about November 27, 2006, Gaillard sold a Three Station Microplate Processing Conveyor System (MPCS-3) and Test Tube Conveyor System (TTCS), items subject to the Regulations and designated as EAR99, which Gaillard knew would be exported to Iran via the U.A.E. without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations (“ITR”) maintained by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”),⁴ an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in

⁴ 31 CFR § 560 (2006).
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the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein. Gaillard had knowledge that violations of the Regulations were occurring or were about and intended to occur because Gaillard knew of the U.S. embargo of Iran and that the items could not be exported to Iran without U.S. Government authorization. In or around November 2005, a sales representative from an Iranian company approached Gaillard for the sale and export of the items described above to Iran. When Gaillard declined, citing the U.S. embargo of exports to Iran, the sales representative arranged with Gaillard to have the items exported to the Iranian company's trading arm in the U.A.E., from where the items would be transshipped to Iran. The U.S. Government confiscated the items before the intended export took place. In so doing, Gaillard committed one violation of Section 764.2(e) of the Regulations.

Charge 5: 15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records with Intent to Evade the Regulations

In or around February 2006, Gaillard took actions with intent to evade the provisions of the Regulations. Specifically, in or around February 2006, Gaillard directed OBPW staff to review files related to the transactions described in Charges 1-3 above involving exports from the United States to Cuba via Germany and to remove references to Cuba from those files and to destroy documents relating to exports to Cuba. In so doing, Gaillard committed one violation of Section 764.2(h) of the Regulations.

Charge 6: 15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records with Intent to Evade the Regulations

On or about November 28 or 29, 2006, Gaillard learned that the U.S. Government had confiscated the items described in Charge 4 above, that were intended for export from the United States to Iran via the U.A.E.. Gaillard directed OBPW staff to review the pertinent OBPW sales and export files and remove references and destroy documents relating to exports to Iran and the name of the Iranian company that was the true ultimate consignee.

* * * * *

Accordingly, Gaillard is hereby notified that an administrative proceeding is instituted against him 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 the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation;⁵

⁵ 50 U.S.C. § 1705(b) (2008).
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- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Gaillard 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. *See* 15 C.F.R. §§ 766.6 and 766.7. If Gaillard defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Gaillard. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Gaillard is further notified that it is entitled to an agency hearing on the record if he files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Gaillard 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 Gaillard have a proposal to settle this case, Gaillard should transmit it to the attorney representing BIS named below.

Gaillard is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Gaillard may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Gaillard'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 Gaillard's answer must be served on BIS at the following address:

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

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Adrienne Frazier is the attorney representing BIS in this case; any communications that Gaillard may wish to have concerning this matter should occur through her. Ms. Frazier may be contacted by telephone at (202) 482-5301.

Sincerely,

Thomas Madigan
Director
Office of Export Enforcement

Patrick Gaillard
Schedule of Transactions

Schedule of Transactions

Transaction	Export Date	Commodity	Quantity	Value	Country of Ult. Dest.	Invoice #	AWB Number	SED ITN
1	11/17/2003	MPCS-10	1	\$125,196.00	Cuba	5351	Unknown	20031118000058
2	2/24/2006	Power Supply Units	3	Unknown	Cuba	6326	Unknown - Documentation Unavailable	
3	6/30/2006	MPCS-10	1	\$128,857.00	Cuba	6468	300-504-124-8	20060629057121
4	Detained on 11/29/06	TTCS-3	1	\$179,741.00	Iran	6642	020JFK57365980	20061127022822
5	Detained on 11/29/06	MPCS-3	1	\$121,666.10	Iran	6641	020JFK57365976	20061127023774