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*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* National Medal of Technology and Innovation Nomination Application.

*Form Number(s):* None.

*Agency Approval Number:* 0651-0060.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 1,600 hours.

*Number of Respondents:* 40 responses.

*Avg. Hours per Response:* 40 hours. This includes time to gather the necessary information, create the documents, and submit the completed request to the USPTO.

*Needs and Uses:* The public uses the National Medal of Technology and Innovation Nomination Application to recognize through nomination an individual's or company's extraordinary leadership and innovation in technological achievement. The application must be accompanied by at least six letters of recommendation or support from individuals who have first-hand knowledge of the cited achievement(s).

*Affected Public:* Business or other for-profit; not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Nicholas A. Fraser, e-mail: [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov).

Once submitted, the request will be publically available in electronic format through the Information Collection Review page at <http://www.reginfo.gov>.

Paper copies can be obtained by:

- *E-mail:* [Susan.Fawcett@uspto.gov](mailto:Susan.Fawcett@uspto.gov). Include "0651-0060 National Medal of Technology and Innovation Nomination Application copy request" in the subject line of the message.

- *Fax:* 571-273-0112, marked to the attention of Susan K. Fawcett.

- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Administrative Management Group, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Written comments and recommendations for the proposed information collection should be sent on or before June 25, 2009 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) or by

fax to (202) 395-5167, marked to the attention of Nicholas A. Fraser.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer, Administrative Management Group.*

[FR Doc. E9-12290 Filed 5-22-09; 8:45 am]

**BILLING CODE 3510-16-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

[08-B IS-0005]

#### In the Matter of: Micei International, 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 July 1, 2008, and amended on January 9, 2009, the Bureau of Industry and Security ("BIS") alleged that Respondent Micei International ("Micei") committed fourteen violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (2009) ("Regulations")), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420) (the "EAA" or "Act"),<sup>1</sup> stemming from its knowing participation in seven export transactions using an individual subject to a Denial Order as an employee or agent to negotiate for and/or purchase items in the United States for export from the United States to Micei in Macedonia. The charges are as follows:

1. Since August 21, 2001, the Act has been in lapse, and the President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of July 23, 2008 (73 FR 43,603, July 25, 2008), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1707).

#### Charges 1-7; 15 CFR 764.2(b): Causing, Aiding, Abetting, Inducing and/or Permitting a Violation of a Denial Order

As described in further detail in the attached schedule of violations, which is incorporated herein by reference, on seven occasions between on or about July 2, 2003, and on or about October 8, 2003, Micei caused, aided, abetted, induced and/or permitted acts prohibited by the Regulations, namely, the violations by Yuri Montgomery

("Montgomery") of a BIS order denying Montgomery's export privileges under Section 766.25 of the Regulations (the "Denial Order"). Specifically, Micei authorized, requested, and/or arranged for Montgomery to negotiate for and/or make certain purchases for or on behalf of Micei of items subject to the Regulations for export from the United States to Micei in Macedonia. To further facilitate these purchases, Micei also contacted Montgomery and provided information on the items to be ordered and their approximate cost, and identified the vendors from which to order them. With Micei's knowledge and/or permission, Montgomery operated or held himself out as Micei's employee or agent, including indicating in an e-mail to a U.S. supplier that Micei had a U.S. regional office in Seattle, Washington, where Montgomery was located, and that Micei was interested in forming a distributorship relationship with the supplier. That e-mail was copied to Micei's president and signed by Montgomery with "Micei Int'l Reg[ional] Off[ice]." As part of these actions, Montgomery carried on negotiations concerning, ordered, bought, sold and/or financed various items that were subject to the Regulations and were exported or to be exported from the United States to Micei in Macedonia, and Montgomery benefitted from these transactions, in violation of the Denial Order.

The Denial Order is dated September 11, 2000, and was published in the **Federal Register** on September 22, 2000 (65 FR 57,313). Under the terms of the Denial Order, Montgomery "may not directly or indirectly, participate in any way in 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, including [c]arrying 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 \* \* \* [b]enefitting 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." The Denial Order is effective until January 22, 2009, and continued in force at the time of the aforementioned actions. In so doing, Micei committed seven violations of Section 764.2(b) of the Regulations.

**Charges 8–14; 15 CFR 764.2(e): Acting with Knowledge of a Violation**

As described in further detail in the attached schedule of violations, which is incorporated herein by reference, on seven occasions between on or about July 2, 2003 and on or about October 8, 2003, Micei ordered, bought, sold, used and/or financed various items subject to the Regulations with knowledge that violations of an order issued under the Regulations had occurred, was about to occur, or was intended to occur in connection with the items, namely, the violations by Yuri Montgomery (“Montgomery”) of a BIS order denying Montgomery’s export privileges under Section 766.25 of the Regulations (the “Denial Order”). Operating as Micei’s employee or agent or otherwise for or on its behalf during these transactions, Montgomery carried on negotiations concerning, ordered, bought, sold and/or financed various items that were subject to the Regulations and were exported or to be exported from the United States to Micei in Macedonia, and also benefitted from these transactions, in violation of the Denial Order. The Denial Order is dated September 11, 2000, and was published in the **Federal Register** on September 22, 2000 (65 FR 57,313). At the time of these actions, Montgomery’s export privileges were denied by the Denial Order. Micei knew that Montgomery was subject to the Denial Order because, *inter alia*, on November 6 and 13, 2003, Ili Malinkovski, then identified as a vice president of Micei, told BIS Special Agents that he was aware of the Denial Order on Montgomery and that Montgomery was subject to the Denial Order until January 2009. In so doing, Micei committed seven violations of Section 764.2(e) of the Regulations.

**January 9, 2009; Amended Charging Letter at 1–2**

In sum, Charges 1–7 alleged that on seven occasions between on or about July 2, 2003 and on or about October 8, 2003, Micei caused, aided, abetted and/or induced violations of a BIS denial order in violation of Section 764.2(b); in connection with those same transactions and items, Charges 8–14 allege that, in violation of Section 764.2(e), Micei acted with knowledge that the violations of the denial order had occurred, were about to occur, or were intended to occur.

The Respondent filed a lengthy motion to dismiss on September 17, 2008, which raised several jurisdictional challenges, including whether the Regulations were in effect at the time of the violations and whether the

Regulations apply extraterritorially. After briefing on the motion was completed, in an order dated December 22, 2008, the ALJ ruled that a motion to dismiss is not provided for in the Regulations, but gave the Respondent the benefit of the doubt and reviewed the motion as if it were a motion for summary decision, which is provided for by Section 766.8 of the Regulations. ALJ Order Denying Motion To Dismiss; RDO at 4–5. The ALJ ruled that the motion was without merit and did not meet the requirements for summary decision under Section 766.8 of the Regulations, and set a deadline of January 12, 2009 for the Respondent to file an answer. *Id.*

On January 9, 2009, BIS filed an amended Charging Letter that was served by Federal Express, registered mail, fax, and e-mail, which under the Regulations extended Respondent’s time to answer arguably until February 12, 2009 (pursuant to the delivery by Federal Express), and certainly no later than February 19, 2009 (pursuant to the registered mail delivery). This amendment included limited additional allegations concerning the same transactions, items, and violations as alleged in the initial Charging Letter 2.

2. The items involved in the transactions were as follows: boots in Charges 1 and 8; firing range clearing devices in Charges 2 and 9; boots in Charges 3 and 10; shoes and remote strobe tubes in Charges 4 and 11; shirts in Charges 5 and 12; a load binder, ratchet strap, binder chain and safety shackle in Charges 6 and 13; and the items in order number 25473620/017 in Charges 7 and 14.

Respondent did not file anything further until February 23, 2009, when it filed not an answer, but what it styled a motion for a more definite statement. BIS filed a motion for a default order on March 24, 2009, arguing that Respondent had not filed an answer within the time provided by the Regulations (and the ALJ’s Order Denying Motion To Dismiss), and had waived its right to contest the allegations pursuant to Section 766.7 of the Regulations. Although BIS is not required under Section 766.7 to give notice of its motion for default order, BIS served its motion (and opposition to Respondent’s motion for a more definite statement) by Federal Express, fax, and e-mail.

Respondent has not filed an answer to the amended Charging Letter dated January 9, 2009, and did not file an answer to the initial Charging Letter dated July 1, 2008. It also did not respond to BIS’s motion for default order.

On April 14, 2009, the ALJ issued the RDO, denying Respondent’s motion for a more definite statement and granting BIS’s motion for a default order. Even though the ALJ did not specifically state that the Regulations provide for the filing of a motion for a more definite statement, the Regulations do not, in fact, provide for such a motion, just as they do not provide for a motion to dismiss. 15 CFR Part 766; In the Matter of Yuri Montgomery, ALJ Brudzinski’s Order Denying Respondent’s Motion for More Definite Statement at 6 (March 23, 2009) (“The regulations at 15 CFR Part 766 do not provide for motions for a more definite statement or for hearings thereon.”). Further, the Respondent’s motion was frivolous in that the Charging Letter clearly met all of the requirements of Section 766.3 of the Regulations, including setting forth the essential facts about the alleged violations, referring to the specific regulatory and other provisions involved, and giving notice of the available sanctions. 15 CFR 766.3(a). The Respondent’s motion for a more definite statement was, in fact, just another vehicle through which Respondent sought to avoid answering the charges, and instead repeated the arguments put forth in its motion to dismiss, which had previously been denied. The ALJ determined that the Respondent “ha[d] been given several opportunities to participate in the process” and contest the charges in this matter, but had demonstrated “a pattern of declining to file an answer.” RDO at 12.

3. Under the Federal Rules of Civil Procedure, *Federal* courts will only grant such a motion when the complaint is “so vague or ambiguous that a party cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e); *Brown v. Aramark Corp.*, 591 F. Supp. 2d 68 at 76 n. 5 (D.D.C. 2008) (the basis for granting a motion for a more definite statement under Rule 12(e) is “unintelligibility, not mere lack of detail”).

Pursuant to Section 766.7 of the Regulations, the ALJ found the facts to be as alleged in the Charging Letter and concluded that Micei committed seven violations of 764.2(b) when it caused, aided and abetted Montgomery’s violations of the Denial Order as alleged in Charges 1–7, and committed seven violations of 764.2(e) when, as alleged in Charges 8–14, it acted with knowledge of those violations of the Denial Order. The ALJ also recommended that Micei be assessed a monetary penalty of \$126,000 and a denial of its export privileges for five years, given, *inter alia*, that Micei deliberately participated in multiple

export transactions of items from the United States to Macedonia involving violations of a BIS Denial Order, and given its failure to contest the charged violations or meet the deadlines provided in the Regulations and orders issued in this matter.

The RDO, together with the entire record in this case, has been referred to me for final action under § 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law.

In doing so, I have determined that the ALJ properly found that the items at issue were located in the United States and were exported or (on one occasion) intended to be exported from the United States to Micei in Macedonia. Findings of Fact, RDO at 69. The ALJ also correctly concluded that the items at issue are subject to the Regulations. Conclusions of Law, RDO at 17.

In the Discussion section of the RDO (pages 9–16 of the RDO), the ALJ cited to both Sections 734.3(a)(1) (“all items in the United States”) and 734.3(a)(2) (“all U.S. origin items wherever located”). RDO at 9. In that section, the ALJ also subsequently referred to the items as being “of U.S. origin.” RDO at 10, 15. I have not determined as part of this decision whether the items were manufactured in the United States, and thus were “of U.S. origin,” and such a determination is not necessary because jurisdiction over the items is established in this matter under Section 734.3(a)(1), given the location of these items in the United States. Indeed, all of the items were purchased, or attempted to be purchased, in the United States for export from the United States to Micei in Macedonia, as found in the RDO. Thus, my determinations are entirely consistent with the allegations contained in the Charging Letter and the findings and conclusions contained in the RDO.

The jurisdictional challenges raised by Respondent have been considered and denied in prior matters, but there is value in repeating the central points. The continuation of the operation and effectiveness of the FAA and its regulations through the issuance of Executive Orders by the President constitutes a valid exercise of authority. See *Wisconsin Project on Nuclear Arms Control v. U.S. Dep't of Commerce*, 317 F.3d 275, 278–79 (D.C. Cir. 2003), and *Times Publ'g Co. v. U.S. Dep't of Commerce*, 235 F.3d 1286, 1290 (11th Cir. 2001)). Therefore, as the ALJ stated, “the laws and regulations underlying this enforcement action and the corresponding procedural requirements were in full force on the dates of the charged violations and have remained

in effect pursuant to the authority exercised by the President.” Order Denying Motion to Dismiss at 4.

Respondent's arguments challenging the extraterritorial reach of the FAA and the Regulations may be irrelevant in light of the allegations of its substantial contacts with the United States, including those contacts carried out through Montgomery acting, with Micei's knowledge and permission, as Micei's employee or agent. Nevertheless, to the extent that this matter concerns the extraterritorial application of the FAA and the Regulations, the ALJ correctly determined that both apply to persons extraterritorial so long as items subject to the Regulations are involved, and regardless of the person's nationality or locality. RDO at 10; In the Matter of Mahdi, 68 FR 57406 (Oct. 3, 2003); accord In the Matter of Petrom GmbH International Trade, 70 FR 32743 (June 6, 2005) and In the Matter of Petrochemical Commercial Co. Ltd., 71 FR 23983 (May 6, 2005). The Respondent is therefore subject to the Regulations based on its actions involving items subject to the Regulations that at the least were located in and purchased (or attempted to be purchased) from the United States and then exported from the United States to the Respondent. *United States v. McKeeve*, 131 F.3d 1 (1st Cir. 1997) (the First Circuit cited Section 1702(a)(1) when it rejected an extraterritorial challenge to an IEEPA conspiracy conviction brought by a foreign national in the context of a conspiracy involving foreign nationals to export computer equipment to Libya. The computer equipment was stored in Massachusetts and therefore “unquestionably subject to the jurisdiction of the United States”).

I also find that the penalty recommended by the ALJ based upon his review of the entire record is appropriate, given the nature of the violations, the facts of this case, and the importance of deterring future unauthorized exports or attempted exports. Micei deliberately participated in multiple export transactions of items from the United States to Macedonia involving violations of a BIS Denial Order, and its blatant disregard for U.S. export control laws is further highlighted by its conduct during this enforcement action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the RDO.

Accordingly, it is therefore ordered, First, that a civil penalty of \$126,000.00 is assessed against Micei International, which shall be paid to the

U.S. Department of Commerce within (30) thirty days from the date of entry of this Order.

Second, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 370 1–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Micei International will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and administrative charge.

Third, for a period of five (5) years from the date that this Order is published in the **Federal Register**, Micei International, Kamnik bb, 1000 Skopje, Republic of Macedonia, its successors or assigns, and when acting for or on behalf of Micei, its representatives, agents, officers or employees (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. 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.

Fourth, 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.

*Fifth*, that, after notice and opportunity for comment as provided in § 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 the Order.

*Sixth*, 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.

*Seventh*, that the final Decision and Order shall be served on Micei 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 also 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**.

Dated: May 14, 2009.

**Daniel Hill,**

*Acting Under Secretary of Commerce for Industry and Security.*

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United States of America, Department of Commerce, Bureau of Industry and Security.

*In the Matter of:* MICEI International, Respondent.

*Docket No.:* 08-BIS-0005.

Recommended Decision and Order Granting Motion for Default.

*Issued:* April 14, 2009.

*Issued by:* Hon. Michael J. Devine.

### I. Summary of Decision

This case arises from Respondent Micei International's (Micei) use of an individual subject to a Denial Order as an employee or agent to negotiate for Respondent Micei and facilitate exports from the United States. The charging letter identifies Yuri Montgomery ("Montgomery"), as the individual involved in transactions with Micei which violate the terms of a previously issued Denial Order in connection with his (Montgomery's) exporting various goods from the United States to Macedonia in 2003. Micei International, Inc. ("Micei" or "Respondent"), has been charged causing, aiding, or abetting Montgomery to violate the Denial Order and acting with knowledge of the violation. The Bureau of Industry Security, United States Department of Commerce ("BIS" or "Bureau") has alleged that Micei's conduct in connection with Montgomery violating his Denial Order constitutes fourteen (14) violations of the Export Administration Act of 1979 ("Act" or "EAA") and the Export Administration Regulations ("EAR"). 50 U.S.C. app. 2401-20 (1991), amended by Public Law 106-508, 114 Stat. 2360 (Supp. 2002) (EAA); 15 CFR Parts 730-74 (1997-1999) (EAR or Regulations). Montgomery is not a party to this enforcement action against Micei International.

The EAA and its underlying regulations establish a "system of controlling exports by balancing national security, foreign policy and domestic supply needs with the interest of encouraging export to enhance \* \* \* the economic well being" of the United States. *Times Publ'g Co. v. United States Dep't of Commerce*, 236 F.3d 1286, 1290 (11th Cir. 2001); *see also* 50 U.S.C. app. 240120.<sup>1</sup>

<sup>1</sup>The EAA and all regulations promulgated thereunder expired on August 20, 2001. *See* 50 U.S.C. App. 2419, Three days before its expiration, on August 17, 2001, the President declared the lapse of the EAA constitutes a national emergency. *See* Exec. Order. No. 13222, reprinted in 3 CFR at 783-784, 2001 comp. (2002). Exercising authority under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1701-1706 (2002), the President maintained the effectiveness of the EAA and its underlying regulations throughout the expiration period by issuing Exec. Order. No. 13222 on August 17, 2001. *Id.* The effectiveness of the export control laws and regulations were further extended by successive Notices issued by the President; the most recent being that of July 23, 2008. *See* Notice: Continuation of Emergency Regarding Export Control Regulations, 73 FR 43603 (July, 23, 2008).

Here, BIS alleges that Micei committed fourteen (14) violations of the EAR and seeks a denial of the Respondent's export privileges from the United States for a period of five (5) years as well as assessment of \$126,000 in civil penalties.

As discussed infra, Micei filed a Motion to Dismiss the charges and various briefs and materials in support of that motion, including a declaration by Iki Malinkovski. However, Micei has not filed an Answer or other appropriate responsive pleadings in this case. After the time for an Answer passed, BIS filed a Motion for Default. This Order finds that Respondent Micei is in default and that the fourteen (14) violations of the EAA and EAR alleged in the Amended Charging Letter are proven by default. Finally, this Order recommends imposing a five (5) year denial of export privileges and a \$126,000.00 civil penalty upon Respondent.

### II. Background

On July 2, 2008, BIS filed a Charging Letter with the Docketing Center alleging that Micei committed fourteen (14) violations of the Export Administration Regulations ("EAR") and the Export Administration Act of 1979 ("EAA").<sup>2</sup>

Specifically, BIS alleges that on seven (7) occasions between on or about July 2, 2003, and on or about October 8, 2003, Micei caused, aided, abetted, and/or induced an Montgomery to violate a BIS Order which denied that individual's export privileges under 15 CFR 766.25. These charges involve alleged illegal exportation of various goods from the United States to Macedonia.

BIS further alleges that these acts created seven (7) additional violations of the EAR because Micei committed them with knowledge that a violation of an order issued under the EAR had occurred, was about to occur, or was intended to occur in connection with the transactions.

On September 17, 2008, Respondent through counsel<sup>3</sup> filed Respondent's

Courts have held that the continuation of the operation and effectiveness of the EAA and its regulations through the issuance of Executive Orders by the President constitutes a valid exercise of authority. *See* Wisconsin Project on Nuclear Arms Control v. *U.S. Dep't of Commerce*, 317 F.3d 275, 278-79 (D.C. Cir. 2003); *Times Publ'g Co. v. U.S. Dep't of Commerce*, 236 F.3d 1286, 1290 (11th Cir. 2001).

<sup>2</sup>The EAR and EAA are currently in full force and effect and have been at all relevant times with respect to this case. *See* discussion supra n.1 wherein the history of these laws and regulations is examined.

<sup>3</sup>Note that the attorney initially representing Respondent requested to withdraw and that the

Motion to Dismiss and Demand for a Hearing on the Motion to Dismiss. With said filing, Respondent submitted a Memorandum of Points and Authorities in support of its Motion to Dismiss wherein Respondent made numerous arguments and included extensive discussion. After prehearing scheduling matters, including various filings, and interim Orders which need not be discussed here, BIS filed its Opposition to Respondent's Motion to Dismiss on November 25, 2008,<sup>4</sup> BIS addressed Respondent's Motion to Dismiss and the arguments and authorities contained therein. On December 16, 2008 Respondent submitted its Reply to BIS's Opposition to Respondent's Motion to Dismiss.<sup>5</sup>

On December 22, 2008, this Court issued an Order denying Respondent's Motion to Dismiss and Demand for Hearing on the Motion to Dismiss. Respondent's demand for a hearing on the Motion to Dismiss was denied because the Regulations do not provide for such a procedural step and because the parties already fully briefed the Court on the Motion to Dismiss, thus rendering a hearing on the matter unnecessary. After extensive briefing by the parties, Respondent's Motion to Dismiss was similarly denied because the Regulations do not provide for this procedural step, it was not sufficient to be a Motion for Summary Decision, and because there was no merit to Respondent's position. At the core of Respondent's argument was an assertion that this Court somehow lacked

company president step in as a non attorney representative until replacement counsel could be obtained. As noted in the file, the Respondent's counsel was not permitted to withdraw until after the Motion to Dismiss was resolved. On December 11, 2008, Mr. Vasko Tomanovic filed a Notice of Appearance of Respondent's Substitute Counsel. It is unclear whether Mr. Tomanovic is now the sole representative or whether the company president who has been serving as a non attorney representative retains any involvement as a representative. Unless the Court is notified to the contrary, Mr. Tomanovic and the company president will be treated as joint representatives in this case.

<sup>4</sup>Note that BIS's November 25, 2008 filing is a corrected version of a previous filing. For simplicity, BIS's November 25, 2008 filing will be discussed as if it were BIS sole opposition to Respondent's Motion to Dismiss.

<sup>5</sup>A Notice of Filing Corrected Version of Respondent's Reply Memorandum of Points and Authorities in Support of Memorandum to Dismiss was submitted by Vasko Tomanovic on behalf of Respondent Micei on December 18, 2008. This also included a declaration in support of the motion by Iki Malinkovski which contains various asserted "facts" regarding the Micei company and its interaction with his Uncle Yuri Montgomery. Since the motion was denied and no responsive Answer or pleading has been filed by Micei, none of the matters asserted in support of the motion will be considered either as admissions or as a basis for Micei to deny or contest the charged violations.

jurisdiction to adjudicate the case based on a Federal Civil Procedure process for civil lawsuits that does not apply to administrative regulation matters. This argument was rejected with an explanation of BIS's and the Court's jurisdiction along with a brief restatement of how administrative law functions.

Respondent's Motion to Dismiss could have been considered as non responsive and subject to default because it was not in proper form to be considered either as an Answer to the Charges or as a Motion permitted by the regulations. Since Respondent's Motion to Dismiss was not sufficient as an Answer, it was considered and analyzed as if it were a Motion for Summary Decision. The Motion was insufficient as a Motion for Summary Decision as well in that it failed to establish that there was no genuine issue of material fact and that based on the facts Respondent was entitled to judgment as a matter of law. The Motion was denied on December 22, 2008 and a Scheduling Order was issued that directed Respondent to file an Answer by January 12, 2009.

On January 9, 2009, BIS filed a Notice of Amended Charging Letter containing limited additional allegations involving the same charged violation. The amendments asserted additional support for the allegations that Respondent conducted itself with knowledge that a violation of Montgomery's Denial Order would occur. This amendment was allowed by rule because Respondent had yet to file an answer at that time. 15 CFR 766.3(a). An Answer to the Amended Charging Letter was due on February 10, 2009 in keeping with the regulations that require an Answer within 30 days of notice of the amendment to the charges. 15 CFR 766.6(a).

On February 23, 2009, Respondent filed a Motion for a More Definite Statement and Demand for Hearing. This motion repeats much of the argument asserted in the Motion to Dismiss that was denied by the Order of December 22, 2008.

On March 24, 2009, BIS filed a Motion for Default Order and Opposition to Respondent's Motion for a More Definite Statement. BIS sought a civil penalty of \$126,000 and a five (5) year denial of export privileges for Micei. On April 1, 2009, BIS filed a Motion to Stay Further Running of the Court's Scheduling Order. As discussed below, Respondent's Motion for a More Definite Statement is denied and BIS's Motion for Default is granted. This Order fully resolves this matter, therefore BIS's Motion to Stay Further

Running of the Court's Scheduling Order is moot. Likewise any other Motions pending in this case are moot.

### III. Recommended Findings of Fact

In light of the Respondent's failure to file an answer within the time provided, the facts alleged in the Amended Charging Letter are found proven. 15 CFR 766.7(a). The facts found proven include the following:

1. Micei International is a company of Skopje, Macedonia.

2. Micei has a regional office in Seattle, WA.

3. The supplier at issue in this case is a U.S. supplier.

4. Iki Malinkovski was the vice president of Micei at all relevant times.

5. Yuri Montgomery is an individual subject to a BIS Denial Order at all relevant times.

6. The Denial Order regarding Yuri Montgomery dated September 11, 2000, was published in the **Federal Register** on September 22, 2000 (65 FR 57,313), and has been and continued to be effective until January 22, 2009.

7. Under the terms of the Denial Order, Montgomery "may not directly or indirectly, participate in any way in 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, including [c]arrying 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 \* \* \* [b]enefiting in any way from the 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."

8. On July 2, 2003, Micei authorized, requested, and/or arranged for Montgomery to negotiate for and/or purchase 61 pair of Magnum boots valued at \$3,355 for or on behalf of Micei for export from the United States to Micei in Macedonia. On the same day and acting through its employee or agent Montgomery, Micei Ordered, bought, sold, used and/or financed this purchase with knowledge that Montgomery would be violating his Denial Order. Montgomery participated in and benefited from this transaction.

9. On July 18, 2003, Micei authorized, requested, and/or arranged for Montgomery to negotiate for and/or purchase 2 firing range clearing devices

valued at \$1,136 for or on behalf of Micei for export from the United States to Micei in Macedonia. On the same day and acting through its employee or agent Montgomery, Micei Ordered, bought, sold, used and/or financed this purchase with knowledge that Montgomery would be violating his Denial Order. Montgomery participated in and benefited from this transaction.

10. On August 5, 2003, Micei authorized, requested, and/or arranged for Montgomery to negotiate for and/or purchase 10,800 pair of boots with an undetermined value for or on behalf of Micei for export from the United States to Micei in Macedonia. On the same day and acting through its employee or agent Montgomery, Micei Ordered, bought, sold, used and/or financed this purchase with knowledge that Montgomery would be violating his Denial Order. Montgomery participated in and benefited from this transaction.

11. On August 5, 2003, Micei authorized, requested, and/or arranged for Montgomery to negotiate for and/or purchase 45 pair of Oxford shoes and 5 remote strobe tubes valued at \$2,562 for or on behalf of Micei for export from the United States to Micei in Macedonia. On the same day and acting through its employee or agent Montgomery, Micei Ordered, bought, sold, used and/or financed this purchase with knowledge that Montgomery would be violating his Denial Order. Montgomery participated in and benefited from this transaction.

12. On August 13, 2003, Micei authorized, requested, and/or arranged for Montgomery to negotiate for and/or purchase 150 shirts valued at \$1,744 for or on behalf of Micei for export from the United States to Micei in Macedonia. On the same day and acting through its employee or agent Montgomery, Micei Ordered, bought, sold, used and/or financed this purchase with knowledge that Montgomery would be violating his Denial Order. Montgomery participated in and benefited from this transaction.

13. On September 9, 2003, Micei authorized, requested, and/or arranged for Montgomery to negotiate for and/or purchase 2 load binders, 1 ratchet strap, 1 binder chain, and 1 safety shackle for or on behalf of Micei for export from the United States to Micei in Macedonia. On the same day and acting through its employee or agent Montgomery, Micei Ordered, bought, sold, used and/or financed this purchase with knowledge that Montgomery would be violating his Denial Order. Montgomery participated in and benefited from this transaction.

14. On October 8, 2003, Micei authorized, requested, and/or arranged for Montgomery to negotiate for and/or purchase Items in Order # 25473620/

017 for or on behalf of Micei for export from the United States to Micei in Macedonia. On the same day and acting through its employee or agent Montgomery, Micei Ordered, bought, sold, used and/or financed this purchase with knowledge that Montgomery would be violating his Denial Order. Montgomery participated in and benefited from this transaction.

15. To further facilitate these purchases, Micei contacted Montgomery and provided information on the items to be ordered and their approximate cost, and identified the vendors from which to order them. With Micei's knowledge and/or permission, Montgomery operated or held himself out as Micei's employee or agent, including indicating in an e-mail to a U.S. supplier that Micei had a U.S. regional office in Seattle, Washington, where Montgomery was located, and that Micei was interested in forming a distributorship relationship with the supplier. That e-mail was copied to Micei's president and signed by Montgomery with "Micei Int'l Regional Office]."

#### IV. Discussion

##### A. Application of EAR and EAA to Respondent and to Montgomery

Throughout this enforcement proceeding, Micei has repeatedly contended that the Bureau lacks jurisdiction over Micei and the relevant transactions at issue in this case. These arguments are rejected and have been fully discussed in a previous Order. The jurisdictional grounds for this enforcement action are nevertheless briefly outlined below.

The authority delegated by Congress to the President of the United States under the EAA is extensive. The EAA gives the President authority to regulate or prohibit the export of goods, technology, and information "to the extent necessary to further the foreign policy of the United States or fulfill its international obligation." 50 U.S.C. app. 2405(a)(1).

##### 1. BIS Authority Over These Items

The instant case involves various goods supplied to Micei through a U.S. supplier for shipment abroad to Macedonia. Based on the above referenced authority, the Regulations specify that "all U.S. origin items wherever located" are subject to the EAR and are therefore "items \* \* \* over which BIS exercises regulatory jurisdiction under the EAR." 15 CFR 734.3(a)(1)-(a)(2). The Regulations further specify that "item" simply means "commodity," which is defined

as "[a]ny article, material, or supply." 15 CFR 772.1. This case involves the materials noted in the charges as being exported to Macedonia by the action of Micei and its agents or employees, including: Boots, firing range clearing devices, shoes, remote strobe tubes, shirts, load binders, a ratchet strap, a binder chain, a safety shackles, and other items included in order #25473620/017. The various goods at issue in this case are clearly articles, materials, and supplies and are therefore commodities, and thus are "items" under the regulations. Since their supplier was located in the U.S., they were of U.S. origin and therefore subject to the EAR, giving BIS regulatory authority.

##### 2. BIS Authority Over Micei and Montgomery

At the time in question, the EAR affirmatively stated that no "person" may engage in a variety of prohibited acts. 15 CFR 764.2(b), (e). The EAR defines a person as a "natural person, including a citizen or national of the United States or of any foreign country; any firm;\* \* \* and any other association or organization whether or not organized for profit." 15 CFR 772.1. From the plain language of the export laws and Regulations, it is clear that the EAA and EAR were intended to apply to natural persons and companies extraterritorially, regardless of a person's or company's nationality or locality, so long as items subject to the EAR are involved. In the Matter of Mahdi, 68 FR 57406-02 (Oct. 3, 2003). Thus, it is immaterial whether Micei and/or Montgomery are of a foreign country. To hold otherwise would contravene existing law and regulations, and would completely undermine the effectiveness of the EAA and the EAR. Both Micei and Montgomery are persons subject to the EAR through their actions in exporting activity, giving BIS regulatory authority over them.

##### B. Default

Generally, the Agency has the burden of proving the allegations in the Charging Letter by reliable, probative, and substantial evidence. 5 U.S.C. 556(d). When the respondent fails to file an answer within the time provided, however, this "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 CFR 766.7(a).

In the instant case, BIS filed its original Charging Letter on July 1, 2008. As previously discussed, Respondent did not file an Answer as required under the Regulations, but instead filed a Motion to Dismiss on September 17, 2008. This Motion was denied, but in giving Respondent the benefit of the doubt, this filing was treated as a Motion for Summary Decision and Respondent's time to file an Answer was extended to January 12, 2009. Prior to this deadline on January 9, 2009, BIS filed an Amended Charging Letter adding limited additional allegations serving the same on Respondents via courier and facsimile. This amendment was allowed by rule since Respondent had not yet filed an Answer. 15 CFR 766.3(a). Pursuant to 15 CFR 766.6(a), a Respondent must answer “within 30 days of notice of any supplement or amendment to a charging letter, unless time is extended under § 766.16 of this part.” Since there have been no extensions given under § 766.16, Respondent's Answer to the Amended Charging Letter would have been due on February 9, 2009.

Respondent submitted its next filing in this case on February 23, 2009. In addition to the fact that this filing was submitted 14 days after the due date for Respondent to file an Answer, it was not an Answer in form or substance. Instead, it was titled Respondent's Motion for a More Definite Statement and Demand for Hearing. In this filing, Respondent again asserted its previous argument that BIS and the Court lack jurisdiction in this case. Furthermore, this filing was not at all responsive to BIS's Amended Charging Letter and did not admit or deny specifically each separate allegation of the Amended Charging Letter as required under the Regulations. 15 CFR 766.6(b).

On March 5, 2009, Respondent made three additional filings—Response to BIS's Request for Admissions by Respondent Micei International, Response to BIS's First set of Interrogatories and Requests for production of Documents by Respondent Micei International, and Response to BIS's Second set of Interrogatories and Requests for Production of Documents by Respondent Micei International. Similar to Respondent's previous filing, these three filings were submitted well after Respondent's time to file an Answer to BIS's Amended Charging Letter and cannot be construed to constitute an Answer in form or substance. Instead, these filings amount to a continuation of

Respondent's pattern of declining to follow the regulatory requirement of filing an Answer in this case. This filing was not at all responsive to BIS's Amended Charging Letter and did not admit or deny specifically each separate allegation of the Amended Charging Letter. 15 CFR 766.6(b). Respondent has instead restated the previously rejected argument that no jurisdiction exists in this case and fell short of satisfying its regulatory requirement to file an Answer to BIS's Amended Charging Letter. The Respondent has previously been provided with copies of the procedural regulations and has been given several opportunities to participate in the process provided by the regulations to contest these charges. Respondent has declined to take advantage of this opportunity.

On March 24, 2009, BIS filed a Motion for Default Order arguing that Respondent has yet to file an Answer as required under the Regulations. BIS argued that Respondent's Answer was actually due on February 9, 2009, but due not later than February 19, 2009 under any conceivable construction of the Regulations. I agree.

As of the date of this Order (April 14, 2009) Respondent has still failed to file an Answer (or any other permitted responsive pleading under the Regulations) to BIS's Amended Charging Letter. In light of the fact that Respondent has still not filed an Answer after being given multiple opportunities to properly contest this case within the process provided by the Regulations, BIS's Motion is granted and Respondent is held to be in default. As such, the findings of fact contained in this Order are found as alleged in the Amended Charging Letter. 15 CFR 766.7(a). Appropriate conclusions of law and the recommended sanctions will be based thereon. *Id.*

### C. Violations of the EAA and EAR

Micei has been charged with seven (7) counts of counseling, aiding, and abetting Montgomery to violate a BIS Denial Order, and with seven (7) counts of acting with knowledge of a violation.

#### 1. Causing, Aiding or Abetting the Violation of a Denial Order, 15 CFR 764.2(b)

“No person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder.” 15 CFR 764.2(b). As with most of the 764.2 provisions, 764.2(b) of the Regulations is a strict liability offense. *See* 15 CFR 764.2; *Iran Air v. Kugelman*, 996 F.2d

1253, 1258–9 (D.C. Cir. 1993) (upholding the Department of Commerce's reading of the Regulations as allowing for strict liability charges); *In the Matter of Kabba & Amir Investments, Inc., d.b.a. Int'l Freight Forwarders*, 73 FR 25649, 25652 (May 7, 2008) (concluding that Section 764.2(b) is a strict liability offense), *aff'd* by Under Secretary, 73 FR 25648; *see also* *In the Matter of Petrom GmbH Int'l Trade*, 70 FR 32743, 32754 (June 6, 2005). Micei can be found to have counseled, aided, or abetted Montgomery to violate his Denial Order by the Agency demonstrating that Micei participated in the transactions noted in Charges 1–7 and that Montgomery was a “person denied export privileges” and subject to a BIS Denial Order. That is, these charges can be found proven against Micei if the actions that Montgomery was taking in connection with Micei would constitute a violation of an active Denial Order. Here, the Respondent is in default and the facts alleged in the charges are deemed proven. I find that the alleged conduct would violate the Denial Order.

On September 22, 2000, Montgomery became a “person denied export privileges” when BIS issued a Denial Order against him effective until January 22, 2009. The Denial Order was published in the **Federal Register** on September 22, 2000 (65 FR 57313) and was in continuous effect from September 22, 2000 to January 22, 2009 and continued in force at the time of the actions alleged in the charges.

The Amended Charging Letter alleges that Montgomery's Denial Order mandates that Montgomery “may not directly or indirectly, participate in any way in 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, including [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 \* \* \* [b]enefiting in any way from the 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.”

As previously discussed, in view of Respondent Micei's failure to answer the charges, Micei has waived the right to contest the facts as alleged in the Amended Charging Letter in keeping

with 15 CFR 766.7(a). The Amended Charging Letter clearly alleges that Montgomery directly and indirectly participated in at least seven (7) transactions involving items to be exported from the United States to Macedonia. This occurred when Montgomery negotiated to be a purchasing agent for Micei for the boots, firing range clearing devices, shoes, remote strobe tubes, shirts, load binders, a ratchet strap, a binder chain, safety shackles, and other items included in order #25473620/017. These goods are subject to the Regulations because they are items of U.S. origin. The Amended Charging Letter goes on to allege that Montgomery participated in and benefited from these transactions.

There is no doubt that the facts alleged in the Amended Charging Letter are sufficient to show that Montgomery was subject to an active Denial Order and that his actions constituted a violation of said Denial Order on each of the seven (7) transactions alleged in the Amended Charging Letter. Clearly then, Micei's authorizing, requesting, and/or arranging Montgomery's actions to purchase boots, firing range clearing devices, shoes, remote strobe tubes, shirts, load binders, a ratchet strap, a binder chain, safety shackles, and other items included in order #25473620/017 constitute causing, aiding, abetting, counseling, commanding, inducing, procuring, or permitting Montgomery to violate said Denial Order. Since knowledge is not a required element for the first seven (7) charges, these facts alone are sufficient to find that Micei's actions constitute seven (7) violations of the EAR as charged.

## 2. Acting With Knowledge of a Violation 15 CFR 764.2(e)

BIS has also charged Respondent with seven (7) charges alleging that Micei was acting with knowledge of a violation with regard to Montgomery's violation of his Denial Order. As discussed above, Montgomery was subject to an active BIS Denial Order and that his actions and attempted actions were in direct contradiction or violation of the Denial Order. The question then is whether Micei's actions in regard to Montgomery's violation of the Denial Order were taken "with knowledge" of a violation. I find that they were and that knowledge of a violation was present.

The Regulations mandate that "[n]o person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any item exported or to be exported from the United States, or that is otherwise

subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item."

In the Amended Charging Letter, BIS alleged that Micei had actual and constructive knowledge that a violation of Montgomery's Denial Order has occurred, is about to occur, or is intended to occur in connection with the items and transactions at issue in this case. Specifically, BIS alleged that shortly after the alleged transactions occurred, Micei, through its vice president, told BIS special investigators that Micei was aware of Montgomery's Denial Order. BIS goes on to allege that Montgomery's Denial Order was published in the **Federal Register** imputing knowledge to Micei that Montgomery was a "person denied export privileges" at all relevant times.

It is therefore clear that the allegations are adequate to support the charges that Micei acted "with knowledge" that Montgomery was subject to a Denial Order. In keeping with 15 CFR 766.7(a), the facts as alleged are therefore sufficient to prove the seven (7) additional violations in connection with the negotiations and transactions by Montgomery and Micei at issue in this case.

## V. Recommended Conclusions of Law

1. The boots, firing range clearing devices, shoes, remote strobe tubes, shirts, load binders, a ratchet strap, a binder chain, safety shackles, and other items included in order #25473620/017 at issue in this case are items subject to the Regulations, giving BIS regulatory authority.

2. Both Montgomery and Micei are "persons" subject to the Regulations, giving BIS regulatory authority.

3. Micei has failed to file an Answer to BIS's Amended Charging Letter as required by the Regulations and upon BIS's Motion, Micei is found to be in default.

4. Because Micei has been found to be in default, the facts have been found as alleged in the Amended Charging Letter.

5. At all relevant times, Montgomery was subject to a BIS Denial Order and violated said Denial Order seven (7) times between on or about July 2, 2003 and on or about October 8, 2003.

6. On seven (7) occasions between on or about July 2, 2003 and on or about October 8, 2003 Micei caused, aided, or abetted Montgomery to violate a standing BIS Denial Order.

7. On seven (7) occasions between on or about July 2, 2003 and on or about October 8, 2003 Micei acted with

knowledge of a violation when it caused, aided, or abetted Montgomery to violate a standing BIS Denial Order.

## VI. Recommended Sanction

BIS has proposed a sanction against Micei of a five- (5)-year denial of U.S. export privileges under 15 CFR 764.3(a)(2) and a \$126,000.00 civil penalty under 15 CFR 764.3(a)(1). BIS argues that this penalty is appropriate because Micei has deliberately participated in multiple export transactions of items from the United States to Macedonia involving violations of a BIS Denial Order with knowledge of the violations. BIS goes on to assert that Micei has demonstrated a "severe and blatant disregard for U.S. export control laws" and that this is highlighted by Respondent's conduct during the various phases of this Enforcement Action.

BIS cites several previous export enforcement cases wherein similar conduct and violations were assessed a penalty comparable to that which has been proposed in this case. In the Matter of Suburban Guns (Pty) Ltd., Docket No. 05-BIS-02, 70 FR 69,314 (Nov. 15, 2005). In Suburban Guns, the ALJ found that Respondent ordered firearm parts and accessories from a U.S. supplier and had them exported from the U.S. to its location in South Africa on two occasions in violation of a standing Denial Order. The ALJ recommended a five- (5)-year denial of export privileges and a civil penalty of \$44,000. However, each case is determined separately based on the individual facts and circumstances presented.

While Micei's conduct in the instant case is, to some extent, analogous to that of the respondents in the above mentioned cases, the information in the record could support an assertion that the violations are intentional and that could justify a significantly harsher penalty than that which BIS proposes. Micei has failed to contest for the charged violation of U.S. export laws and regulations in declining to follow the Regulations provided and failing to meet the deadlines provided in the Regulations and by the Orders issued in this matter. However, since the record in this matter is limited because it is being decided on a default motion, and Micei has also waived an opportunity to present any mitigating evidence it may have, I do not recommend increasing the penalty proposed by BIS. Therefore, I recommend that BIS's proposed penalty of a five- (5)-year denial of export privileges and a \$126,000 civil penalty are deemed appropriate.

**VII. Recommended Order***[REDACTED SECTION]**[REDACTED SECTION]*

The Recommended Decision and Order is being referred to the Under Secretary for review and final action. As provided by Section 766.17(b)(2) of the EAR, the recommended decision and order is being served by express mail. Because the Under Secretary must review the decision in a short time frame, all papers filed with the Under Secretary in response to the recommended decision and order must be sent by personal delivery, facsimile, express mail, or other overnight carrier as provided in Section 766.22(a) of the EAR. Submissions by the parties must be filed with the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room H-3898, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within 12 days from the date of issuance of this Recommended Decision and Order. Thereafter, the parties have eight days from receipt of any response(s) in which to submit replies.

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 CFR 766.22(c).

PLEASE TAKE NOTE THAT Respondent has one year from the date of entry of this Order to file a petition to vacate this default order. 15 CFR 766.7(b).

Administrative Law Judge in Norfolk, Virginia.

Done and dated April 14, 2009.  
Norfolk, VA.

Hon. Michael J. Devine,  
*Administrative Law Judge, U.S. Coast Guard.*

6. United States Coast Guard Administrative Law Judges perform adjudicatory functions for the Bureau of Industry and Security with approval from the Office of Personnel Management pursuant to a memorandum of understanding between the Coast Guard and the Bureau of Industry and Security.

**Certificate of Service**

I hereby certify that I have served the foregoing Scheduling Order upon the following parties (or designated representatives) at the address indicated below:

Eric Clark, Attorney-Advisor and Parvin Huda, Senior Counsel, and Joseph Jest, Chief of Enforcement and Litigation, Attorneys for Bureau of

Industry and Security, Office of Chief Counsel for Industry and Security. U.S. Department of Commerce, Room H-3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230. Fax: 202-482-0085. Sent by Facsimile and Federal Express.

Vasko Tomanovic, Counsel for Respondent, "Kaminik" b.b., 1000 Skopje, Republic of Macedonia. Tel: 389-70-436068. Fax: 41-44-567-1892. Sent by Facsimile and Federal Express.

ALJ Docketing Center, Attn: Hearing Docket Clerk, United States Coast Guard, 40 South Gay Street, Rm. 412, Baltimore, MD 21202. Fax: 410-962-1746. Sent by Facsimile and Federal Express.

Mr. Iki Malinkovski, Micei International, Kaminik b.b., 1000 Skopje, Republic of Macedonia. Fax: 011-389-2252-2039. Sent by Facsimile and Federal Express. Done and dated April 14, 2009.

Janice L. Parker,  
*Paralegal Assistant to the Administrative Law Judge.*

Notice to the Parties Regarding Review by Under Secretary.  
*Title 15—Commerce and Foreign Trade. Subtitle B—Regulations Relating to Commerce and Foreign Trade. Chapter VII—Bureau of Industry and Security, Department of Commerce. Subchapter C—Export Administration Regulations. Part 766—Administrative Enforcement Proceedings. 15 CFR 766.22.*

**§ 766.22 Review by Under Secretary**

(a) *Recommended decision.* For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) *Submissions by parties.* Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from

receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) *Final decision.* Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 766.20 of this part.

(e) *Appeals.* The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. 2412(c)(3).

[FR Doc. E9-11885 Filed 5-22-09; 8:45 am]

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**DEPARTMENT OF COMMERCE****International Trade Administration**

A-552-802

**Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the Second New Shipper Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("Department") is conducting a new shipper review of BIM Seafood Joint Stock Company ("BIM Seafood") and the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"). See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005) ("*Shrimp Order*."). We preliminarily found that BIM Seafood did not sell subject merchandise at less than normal value ("NV") and thus assigned a zero margin for the period of review ("POR"), February 1, 2007, through January 31, 2008. See *Certain Frozen*