

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-52-2020]

Foreign-Trade Zone 38; Application for Production Authority; Teijin Carbon Fibers, Inc.; (Polyacrylonitrile-Based Carbon Fiber); Extension of Comment Period on Submission Containing New Evidence

The comment period on a submission containing new evidence pertaining to the application, as amended, submitted on behalf of Teijin Carbon Fibers, Inc. requesting production authority within FTZ 38, is being extended to April 30, 2023, to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15-day period, until May 15, 2023. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov.

For further information, contact Diane Finver at Diane.Finver@trade.gov.

Dated: February 23, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Ilya Balakaev, Sharikopodshipnikovkaya 20-68, Moscow, Russian Federation; Radiotester OOO a/k/a Radiotester LLC, Sharikopodshipnikovskaya 11, Building 1, Moscow, 115088, Russian Federation; and Volgograd Prospect, House 2, Moscow, 109316, Russian Federation; Order Temporarily Denying Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations (the "Regulations" or "EAR"),¹ the Bureau of

¹ The Regulations, currently codified at 15 CFR parts 730-774 (2020), originally issued pursuant to the Export Administration Act (50 U.S.C. 4601-4623 (Supp. III 2015) ("EAA"), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by successive Presidential Notices, continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) ("IEEPA"). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801-4852 ("ECRA"). While section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or

Industry and Security ("BIS"), U.S. Department of Commerce, through its Office of Export Enforcement ("OEE"), has requested the issuance of an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of: Ilya Balakaev and Radiotester OOO a/k/a Radiotester LLC. OEE's request and related information indicates that these parties are located in the Russian Federation, at the respective addresses listed on the caption page of this order and on pages 12-13, *infra*, and that Balakaev, a Russian national, owns or controls Radiotester OOO a/k/a Radiotester LLC (referred to collectively as "Radiotester").

I. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an "imminent violation" of the Regulations. 15 CFR 766.24(b)(1) and 766.24(d). "A violation may be 'imminent' either in time or degree of likelihood." 15 CFR 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge "is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]" *Id.* A "[l]ack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." *Id.*

Pursuant to sections 766.23 and 766.24, a temporary denial order ("TDO") may also be made applicable to other persons if BIS has reason to believe that they are related to a respondent and that applying the order to them is necessary to prevent its evasion. 15 CFR 766.23(a)-(b) and 766.24(c). A "related person" is a person, either at the time of the TDO's issuance or thereafter, who is related to a respondent "by ownership, control, position of responsibility, affiliation, or

issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders.

other connection in the conduct of trade or business." 15 CFR 766.23(a). Related persons may be added to a TDO on an ex-parte basis in accordance with section 766.23(b) of the Regulations. 15 CFR 766.23(b).

II. OEE's Request for a Temporary Denial Order

As further detailed below, OEE's request is based upon facts indicating that Balakaev engaged in conduct prohibited by the Regulations by unlawfully procuring and exporting from the United States electronic devices subject to the EAR to the Federal Security Service of the Russian Federation ("FSB"), a BIS-listed entity located in the Russian Federation ("Russia"), and to the Democratic People's Republic of Korea ("North Korea" or "DPRK") without the required U.S. government authorization. "Export" is defined in the EAR as an "actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner." 15 CFR 734.13(a)(1).²

The FSB is listed on the Commerce Department's Entity List³ with a policy of denial for all items subject to the EAR with limited exceptions for transactions authorized by the Department of the Treasury's Office of Foreign Assets Control ("OFAC") pursuant to General License No. 1B of March 2, 2021.⁴ As a result of this listing, no item subject to the Regulations may be exported, reexported, or transferred (in-country) to the FSB without prior authorization from BIS, and BIS will review any license applications for the FSB pursuant to a policy of denial.⁵ The FSB was originally listed on the Entity List on January 4, 2017,⁶ with a license review policy of presumption of denial

² "Item" means "commodities, software, and technology." 15 CFR 772.1. Further, "technology" may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information revealed through visual inspection. *Id.*

³ The Entity List (supplement no. 4 to part 744 of the EAR) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States.

⁴ See 87 FR 34131 (Jun. 6, 2022). See also sections 734.9(g), 746.8(a)(3), and 744.21(b) of the EAR.

⁵ *Id.*

⁶ See 82 FR 722 (Jan. 4, 2017). See also 82 FR 18219 (Apr. 18, 2017), 86 FR 37903 (Jul. 19, 2021), 87 FR 12240 (Mar. 3, 2022), and 87 FR 34136 (Jun. 6, 2022) for additional listings of FSB-related entities on the Entity List.