
UNITED STATES DEPARTMENT OF
COMMERCE
NEWS

WASHINGTON, D.C. 20230

BUREAU OF
EXPORT
ADMINISTRATION

FOR IMMEDIATE RELEASE
November 14, 2001
www.bxa.doc.gov

CONTACT: Catherine Willis
Eugene Cottilli
(202) 482-2721

**COMMERCE DEPARTMENT IMPOSES \$2.12 MILLION CIVIL PENALTY
ON MCDONNELL DOUGLAS FOR ALLEGED EXPORT CONTROL VIOLATIONS**

The Department of Commerce today imposed a \$2.12 million civil penalty against McDonnell Douglas Corporation of St. Louis, MO., as part of a settlement of charges that the company violated federal export control laws. The penalty is the maximum fine possible for the alleged violations.

“This settlement concludes a six-year investigation with the second-largest civil fine ever imposed by the Commerce Department in an export control case,” noted Under Secretary of Commerce for Export Administration Kenneth I. Juster.

The Order imposing the penalty, issued by the Assistant Secretary of Commerce for Export Enforcement Michael J. Garcia, terminates a six-year investigation into exports of machine tools to China between 1994 and 1995. The Department alleged that McDonnell Douglas submitted license applications containing false and misleading statements about the end-use and end-user of the machine tools. The Department also alleged that the exports violated the conditions of U.S. export licenses issued to the company.

In a related case concluded in May, the Department had imposed a \$1.32 million civil penalty and a denial of export privileges on a group of Chinese government-owned companies and their U.S. affiliates that had received the machine tools from McDonnell Douglas.

In addition to the civil penalty, the Order and settlement agreement require that McDonnell Douglas’ parent company, The Boeing Company, assume responsibility and liability for all exports under the Commerce Department’s jurisdiction made or to be made by McDonnell Douglas.

Assistant Secretary Garcia commented that “this case demonstrates that the Commerce Department will hold exporters strictly accountable for misrepresentations made in securing export licenses and for abiding by the terms and conditions of licenses once issued.”

The investigation was conducted by the Office of Export Enforcement’s Intelligence and Field Support Division in the Department of Commerce’s Bureau of Export Administration.



PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

McDonnell Douglas Corporation
PO Box 516
St. Louis, Missouri 63166

Attention: *John W. Walbran, Esq.*
General Counsel
McDonnell Douglas Corporation

Dear Mr. Walbran:

The Bureau of Export Administration, United States Department of Commerce ("BXA"), hereby charges that McDonnell Douglas Corporation ("MDC") violated the Export Administration Regulations (the "Regulations"),^{1/} which are issued under the authority of the Export Administration Act of 1979 (the "Act"),^{2/} on 50 occasions. Specifically, BXA charges that MDC committed the following violations described in the attached Schedule of Violations, which is enclosed herewith and incorporated herein by reference:

Charges 1-20

On or about May 26, 1994, MDC submitted 10 license applications to BXA for the export of machine tools (the "machine tools") from the United States to the China National Aero-Technology Import and Export Corporation ("CATIC") in China. CATIC and its

^{1/} The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2001). The violations charged occurred in 1994 and 1995. The Regulations governing the violations at issue are found in the 1994 and 1995 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1994 - 1995)) (the "former Regulations"). The former Regulations define the various violations that BXA alleges occurred, and the Regulations establish the procedures that apply to this matter.

^{2/} 50 U.S.C. app. 2401-2420 (1994 & Supp. V. 1999). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V. 1999)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bxa/>.



affiliates, CATIC National Aero-Technology International Supply Company, CATIC USA, Inc., and TAL Industries, Inc., provided Douglas Aircraft Company, a division of MDC, with information necessary to complete the license applications, including the information that the CATIC Machining Company, Ltd. in Beijing, China would be the end-user of the machine tools and the machining of the parts and components of civil aircraft in the Trunkliner program, a project between CATIC and MDC ("Trunkliner program"), was the end-use of the machine tools. On each of the 10 license applications, the CATIC Machining Company, Ltd. in Beijing, China was named as the end-user of the machine tools and the machining of the parts and components of civil aircraft in the Trunkliner program was described as the end-use of the machine tools. However, the CATIC Machining Company, Ltd. in Beijing, China was not the end-user of the machine tools and the Trunkliner program was not the end-use of the machine tools.

An applicant for a license is strictly accountable for the information set forth on a license application regardless of the fact that the information was provided by others.³ Therefore, BXA alleges that MDC committed 20 violations of section 787.5(a)(1) of the former Regulations by submitting 10 export license applications (export control documents as defined in section 770.2 of the former Regulations) that each contained two false statements of material fact.

Charges 2 1-50

On or about September 14, 1994, BXA issued 10 export licenses to MDC that authorized the export of the machine tools to China for use in the Trunkliner program. The export licenses named China National Aero-Technology International Supply Company as the purchaser, China Aviation Supply and Marketing Corporation, North China Branch, as the intermediate consignee, and CATIC Machining Company, Ltd. as the ultimate consignee.

The licenses further contained a number of conditions, including:

3. The machine tools approved under the licenses included in this [Trunkliner] program will be installed at the CATIC Machining Company Ltd. . . . Should the CATIC facility not be ready when the equipment arrives, the equipment will be stored in one facility.
6. No resale, transfer or reexport of any of the items exported under the individual validated license without prior written approval from the [United States Government].
7. This equipment is licensed exclusively for the civil use of implementing the

³ See *In the Matter of Aluminum Company of America*: Decision and Order, 64 *Fed. Reg.* 9470, 9471 (Feb. 26, 1999) and *Iran Air v. Robert F. Kugelman*, 996 F.2d 1253, 1259 (D.C. Cir. 1993).

MD80/90 series McDonnell Douglas design for the development of the Chinese Trunkline [program]....

On or about September 12, 1994, CATIC assured the United States Government in writing that it would comply with all license conditions, including those listed above, applicable to these exports.

Between on or about November 12, 1994 and on or about February 18, 1995, the machine tools were exported from the United States and then, in violation of license conditions 3 and 6, the machine tools were transferred and stored by CATIC at unauthorized locations, including the Nanchang Aircraft Manufacturing Company. Further, in violation of license condition 7, CATIC attempted to use the machine tools for purposes other than the Trunkliner program.

As the licensee on the validated licenses, MDC is, pursuant to sections 786.1 (a) and 787.9 of the former Regulations, strictly accountable for due performance of all the licenses' terms, conditions, and provisions. Therefore, BXA alleges that MDC committed 30 violations of section 787.6 of the former Regulations.

Based upon the foregoing, BXA alleges that MDC committed 50 violations of the former Regulations (20 violations of section 787.5(a)(1), and 30 violations of section 787.6, of the former Regulations).

* * *

Accordingly, MDC is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$100,000 per violation for national security violations, or \$10,000 per violation for all other violations;

Denial of export privileges; and/or

Exclusion from practice before BXA.

If MDC fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If MDC defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to MDC. The Under Secretary for Export Administration may then impose up to the maximum penalty on each of the charges set forth in this letter.

MDC is further notified that it is entitled to an agency hearing on the record if it files a written

demand for one with its answer. (Regulations, Section 766.6). MDC is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing BXA named below.

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

Chief Counsel for Export Administration
Attention: Melissa B. Mannino
Room H-3 839
United States Department of Commerce
14th Street and Constitution Avenue, NW
Washington, D.C. 20230

Melissa B. Mannino is the attorney representing BXA in this case; any communications that you may wish to have concerning this matter should occur through her. She may be contacted by telephone at (202) 482-5304.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

Enclosures

**SCHEDULE OF VIOLATIONS
MCDONNELL DOUGLAS CORPORATION**

| Date Shipped | Commodity | Export License | ECCN | Stated Destination | Actual Destination | Value (\$) | Reason(s) Controlled |
|---------------------|--|-----------------------|-------------|---------------------------|---------------------------|-------------------|-----------------------------|
| 11/12/94 | Model III Kerney & Trecker Mill | 9/14/94 D211640 | 2B01 | Beijing, PRC | Tianjin, PRC | 53,000 | NS/NP |
| 12/9/94 | Cincinnati Millacron Vertical Bed | 9/14/94 D211618 | 2B01 | Beijing, PRC | Nanchang, PRC | 3 @ 100,000 | NS/NP |
| 12/9/94 | White Sundstrand Machining Center | 9/14/94 D211693 | 2B01 | Beijing, PRC | Tianjin, PRC | 190,000 | NS/NP |
| 12/18/94 | Milling Machine | 9/14/94 D211621 | 2B01 | Beijing, PRC | Nanchang, PRC | 2 @ 132,500 | NS/NP |
| 12/18/94 | Pratt & Whitney Vertical Profiler | 9/14/94 D211624 | 2B01 | Beijing, PRC | Tianjin, PRC | 65,000 | NS/NP |

**SCHEDULE OF VIOLATIONS
MCDONNELL DOUGLAS CORPORATION**

| Date Shipped | Commodity | Export License | ECCN | Stated Destination | Actual Destination | Value (\$) | Reason(s) Controlled |
|---------------------|--|-----------------------|-------------|---------------------------|---------------------------|-------------------|-----------------------------|
| 12/18/94 | Model II Kerney & Trecker Mill | 9/14/94 D211632 | 2B01 | Beijing, PRC | Tianjin, PRC | 47,500 | NS/NP |
| 12/18/94 | Model II Kerney & Trecker Mill | 9/14/94 D211635 | 2B01 | Beijing, PRC | Tianjin, PRC | 47,500 | NS/NP |
| 12/18/94 | Model II Kerney & Trecker Mill | 9/14/94 D211637 | 2B01 | Beijing, PRC | Tianjin, PRC | 47,500 | NS/NP |
| 12/18/94 | White Sundstrand Machining Center | 9/14/94 D211694 | 2B01 | Beijing, PRC | Nanchang, PRC | 190,000 | NS/NP |
| 2/18/95 | Stretch Press | 9/14/94 D211643 | 2B44 | Beijing, PRC | Nanchang, PRC | 750,000 | NP |

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

| | |
|-------------------|---|
| In the Matter of: |) |
| |) |
| MCDONNELL DOUGLAS |) |
| CORPORATION, |) |
| |) |
| Respondent. |) |

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between McDonnell Douglas Corporation (“MDC”) and the Bureau of Export Administration, United States Department of Commerce (“BXA”), pursuant to Section 766.1 S(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2001)) (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (the “Act”),² and

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2001). The violations charged occurred in 1994 and 1995. The Regulations governing the violations at issue are found in the 1994 and 1995 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1994 -1995)) (the “former Regulations”). The former Regulations define the various violations that BXA alleges occurred, and the Regulations establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (1994 & Supp. V 1999)) (“IEEPA”). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

which are currently maintained in force under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)).

WHEREAS, BXA has notified MDC of its intention to initiate an administrative proceeding against MDC pursuant to the Regulations, based on allegations in the proposed charging letter that MDC committed 50 violations of the former Regulations - - 20 violations of section 787.5(a)(1) and 30 violations of section 787.6 of the former Regulations. Specifically, the proposed charges are:

1. *20 Violations of 15 CFR § 787.5(a)(1):* On or about May 26, 1994, MDC submitted 10 license applications to BXA for the export of machine tools from the United States to the China National Aero-Technology Import and Export Corporation (“CATIC”) in China that stated that the CATIC Machining Company, Ltd. in Beijing, China was the end-user of the machine tools and the machining of the parts and components of civil aircraft in the Trunkliner program, a project between CATIC and MDC (“Trunkliner program”), was the end-use of the machine tools. CATIC and its affiliates, CATIC National Aero-Technology International Supply Company, CATIC USA, Inc., and TAL Industries, Inc., provided Douglas Aircraft Company, a division of MDC, with information necessary to complete the license applications, including the information that the CATIC Machining Company, Ltd. in Beijing, China would be the end-user of the machine tools and that the machining of the parts and components of civil aircraft in the Trunkliner program was the end-use of the machine tools. However, the CATIC Machining Company, Ltd. in Beijing, China was not the end-user of the machine tools and the Trunkliner program was not the end-use of the machine tools. An applicant for a license is strictly

accountable for the information set forth on a license application regardless of the fact that the information was provided by others.’

2. *30 Violations of 15 C. F. R. §787.6*: On or about September 14, 1994, BXA issued 10 export licenses to MDC that authorized the export of machine tools to China for use in the Trunkliner program. The licenses contained a number of conditions, including:

3. The machine tools approved under the licenses included in this [Trunkliner] program will be installed at the CATIC Machining Company Ltd. . . . Should the CATIC facility not be ready when the equipment arrives, the equipment will be stored in one facility.

6. No resale, transfer or reexport of any of the items exported under the individual validated license without prior written approval from the [United States Government].

7. This equipment is licensed exclusively for the civil use of implementing the MD80/90 series McDonnell Douglas design for the development of the Chinese Trunkline [program]. . . .

On or about September 12, 1994, CATIC assured the United States Government in writing that it would comply with all license conditions, including those listed above, applicable to these exports. Between on or about November 12, 1994 and on or about February 18, 1995, the machine tools were exported from the United States and then, in violation of license

³ See *In the Matter of Aluminum Company of America*: Decision and Order, 64 *Fed. Reg.* 9470,947 1 (Feb. 26, 1999) and *Iran Air v. Robert F. Kugelman*, 996 F.2d 1253, 1259 (D.C. Cir. 1993).

conditions 3 and 6, the machine tools were transferred and stored by CATIC at unauthorized locations, including the Nanchang Aircraft Manufacturing Company. Further, in violation of license condition 7, CATIC attempted to make use of the machine tools for purposes other than the Trunkliner program. As the licensee on the validated licenses, MDC is, pursuant to sections 786.1(a) and 787.9 of the former Regulations, strictly accountable for due performance of all the licenses' terms, conditions, and provisions.

WHEREAS, MDC has reviewed a proposed charging letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

WHEREAS, MDC fully understands the terms of this Settlement Agreement and the Order that will be issued to give effect to this Settlement Agreement ("Order"), MDC enters into this Settlement Agreement voluntarily and with full knowledge of its rights;

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

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

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

WHEREAS, MDC agrees to be bound by the Order giving effect to the terms of this Settlement Agreement, when entered;

NOW THEREFORE, MDC and BXA agree as follows:

1. BXA has jurisdiction over MDC, under the former Regulations and Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against MDC in complete settlement of the alleged violations set forth in the proposed charging letter:

- a. MDC shall be assessed a civil penalty in the amount of \$2,120,000, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.
- b. The timely payment of the civil penalty agreed to in paragraph 2a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to MDC. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of MDC's export privileges for a period of one year from the date of entry of the Order imposing the civil penalty.
- c. Upon the signing of the Order, The Boeing Company, the parent company of MDC, shall assume responsibility and liability for all aspects of exports made or to be made by MDC subject to the Export Administration Regulations. This responsibility and liability, includes, but is not limited to, determinations as to whether export licenses are required, applications for export licenses, compliance with all the terms and conditions of export licenses, compliance with all export clearance requirements, completion of export control documents, and compliance with the recordkeeping requirements under Part 762 of the Regulations.

3. Subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, MDC hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the Order, when entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Settlement Agreement and the Order, when entered; and (c) seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.

4. BXA agrees that, upon entry of the Order, it will not initiate any administrative proceeding against MDC in connection with any violation of the former Regulations or Regulations arising out the transactions identified in the proposed charging letter.

5. MDC understands that BXA will make the proposed charging letter, this Settlement Agreement, and the Order, when entered, available to the public.

6. BXA and MDC agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and the Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and MDC agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that the parties shall not be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement serve to bind,

constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

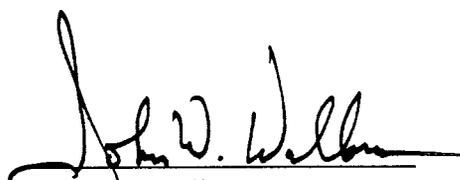
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF EXPORT ADMINISTRATION

MCDONNELL DOUGLAS
CORPORATION



Mark D. Menefee
Director
Office of Export Enforcement.


John W. Walbran
Vice President and General Counsel

D a t e : &

Date: November 14, 2001

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
MCDONNELL DOUGLAS)
CORPORATION,)
)
Respondent.)

ORDER

The Bureau of Export Administration, United States Department of Commerce (“BXA”), having notified McDonnell Douglas Corporation (“MDC”) of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (the “Act”),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2001)) (the “Regulations”),² based on allegations in the proposed charging letter that MDC committed 50 violations of the former Regulations - - 20 violations of section 787.5(a)(1) of the former Regulations and 30 violations of section 787.6 of the former Regulations. Specifically, the

¹ From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations then in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 *Fed. Reg.* 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

² The violations charged occurred in 1994 and 1995. The Regulations governing the violations at issue are found in the 1994 and 1995 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1994 -1995)) (the “former Regulations”). The former Regulations define the various violations that BXA alleges occurred, and the Regulations establish the procedures that apply to this matter.

proposed charges are:

1. *20 Violations of 1.5 CFR § 787.5(a)(1)*: On or about May 26, 1994, MDC submitted 10 license applications to BXA for the export of machine tools from the United States to the China National Aero-Technology Import and Export Corporation (“CATIC”) in China that stated that the CATIC Machining Company, Ltd. in Beijing, China was the end-user of the machine tools and the machining of the parts and components of civil aircraft in the Trunkliner program, a project between CATIC and MDC (“Trunkliner program”), was the end-use of the machine tools. CATIC and its affiliates, CATIC National Aero-Technology International Supply Company, CATIC USA, Inc., and TAL Industries, Inc., provided Douglas Aircraft Company, a division of MDC, with information necessary to complete the license applications, including the information that the CATIC Machining Company, Ltd. in Beijing, China would be the end-user of the machine tools and the machining of the parts and components of civil aircraft in the Trunkliner program was the end-use of the machine tools. However, the CATIC Machining Company, Ltd. in Beijing, China was not the end-user of the machine tools and the Trunkliner program was not the end-use of the machine tools. An applicant for a license is strictly accountable for the information set forth on a license application regardless of the fact that the information was provided by others.³

2. *30 Violations of 15 C.F.R. § 787.6*: On or about September 14, 1994, BXA issued 10 export licenses to MDC that authorized the export of machine tools to China for use in the

³ See *In the Matter of Aluminum Company of America: Decision and Order*, 64 Fed. Reg. 9470, 9471 (Feb. 26, 1999) and *Iran Air v. Robert F. Kugelman*, 996 F.2d 1253, 1259 (D.C. Cir. 1993).

Trunkliner program. The licenses contained a number of conditions, including:

3. The machine tools approved under the licenses included in this [Trunkliner] program will be installed at the CATIC Machining Company Ltd. . . . Should the CATIC facility not be ready when the equipment arrives, the equipment will be stored in one facility.
6. No resale, transfer or reexport of any of the items exported under the individual validated license without prior written approval from the [United States Government],
7. This equipment is licensed exclusively for the civil use of implementing the MD80/90 series McDonnell Douglas design for the development of the Chinese Trunkline [program]....

On or about September 12, 1994, CATIC assured the United States Government in writing that it would comply with all license conditions, including those listed above, applicable to these exports. Between on or about November 12, 1994 and on or about February 18, 1995, the machine tools were exported from the United States and then, in violation of license conditions 3 and 6, the machine tools were transferred and stored by CATIC at unauthorized locations, including the Nanchang Aircraft Manufacturing Company. Further, in violation of license condition 7, CATIC attempted to make use of the machine tools for purposes other than the Trunkliner program. As the licensee on the validated licenses, MDC is, pursuant to sections 786.1 (a) and 787.9 of the former Regulations, strictly accountable for due performance of all the licenses' terms, conditions, and provisions.

BXA and MDC having 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 the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$2,120,000 is assessed against MDC, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

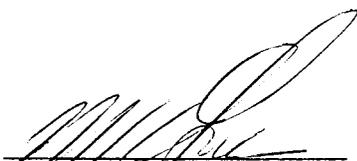
SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§3701-3720E (1983 and Supp. 2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, MDC will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to MDC. Accordingly, if MDC should fail to pay the civil penalty in a timely manner, the undersigned will enter an Order denying all of MDC's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that upon the signing of this Order, The Boeing Company, the parent company of MDC, shall assume responsibility and liability for all aspects of exports made or to be made by MDC subject to the Export Administration Regulations. This responsibility and liability, includes, but is not limited to, determinations as to whether export licenses are required, applications for export licenses, compliance with all the terms and conditions of export licenses, compliance with all export clearance requirements, completion of export control documents, and compliance with the recordkeeping requirements under Part 762 of the Regulations.

FIFTH, 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.



Michael J. Garcia
Assistant Secretary of Commerce
for Export Enforcement

Entered this 14th day of November, 2001.