

AUG 31 2000



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

COPY

CERTIFIED MAIL - RETURN-RECEIPT REQUESTED

Immediate Customs Service, Inc.
148-05 175th Street
Jamaica, New York 114 13

Attention: *James J. Rea*
President

Dear Mr. Rea:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described in detail below, Immediate Customs Service, Inc. (hereinafter ICS) has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act).²

Facts constituting violations:

Charges 1 - 4

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on four separate occasions between on or about September 3, 1995, and on or about December 12, 1996, ICS participated in the export of U.S. origin commodities subject to the Regulations, *to wit*, perfume, to Cosmotrans AG in Switzerland, a person denied all U.S. export privileges by Order dated May 3, 1988. See 53 Fed. Reg. 16441, May 9, 1988. ICS's involvement in these transactions was contrary to the terms of the May 3, 1988 Order denying Cosmotrans AG all U.S. export privileges. BXA alleges that, by participating in the export of U.S. origin commodities from the United States to Cosmotrans AG in violation of or contrary to any provision of the Act or any regulation, order or license issued thereunder, ICS committed three violations of Section 787.6 and one violation of Section 787A.6 of the former Regulations, for a total of four violations.

¹ The violations at issue occurred in 1995 and 1996. The Regulations governing the violations at issue are found in the 1995 and 1996 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995) and 15 C.F.R. Parts 768-799 (1996), as amended (61 Fed. Reg. 12714, March 25, 1996)) (hereinafter the "former Regulations"). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25, 1996 *Federal Register* publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations define the various violations that BXA alleges occurred; the Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. SO1 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)) and August 10, 1999 (3 C.F.R., 1999 Comp. 302 (2000)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)).



Accordingly, ICS is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations),³

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If ICS fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7 of the Regulations,

ICS is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a consent settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, ICS's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of ICS's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Melissa B. Mannino, Esq." below the address. Ms. Mannino may be contacted by telephone at (202) 482-5304.

Sincerely,



Mark D. Menefee
Director
Office of Export Enforcement

Enclosures

³ The maximum civil penalty for any violation committed after October 23, 1996 is \$11,000 per violation. See 15 C.F.R. § 6.4(a)(3) (1999).

SCHEDULE A
IMMEDIATE CUSTOMS SERVICE, INC.

<i>Charge</i>	<i>Date</i>	<i>Commodity</i>	<i>Bill of Lading No.</i>	<i>Destination</i>
1	9/3/95	Perfume	EL0697 1	Switzerland
2	10/21/95	Perfume	EL07338	Switzerland
3	11/21/95	Perfume	EL07544	Switzerland
4	12/12/96	Perfume	125-93607054 (AWB)	Switzerland

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

In the Matter of:

Immediate Customs Service, Inc.

Respondent.

To: Joseph N. Ingolia
Chief Administrative Law Judge
U.S.Coast Guard

This will constitute our Answer and demand for appearing pursuant to 15 CFR Section 766.6 to the Charging Letter directed to our client Immediate Customs Service, Inc. ("ICS"). This will also constitute an appearance by the Law firm of Hodgson Russ Andrews Woods & Goodyear.

The Charging Letter in the above-captioned action alleges that ICS participated in the export of U.S. origin commodities subject to the Regulations, *to wit*, perfume, to Cosmotrans AG in Switzerland, a person denied of U.S. export privileges by Order dated May 3,1988.

The facts surrounding the general allegations as posed in the Charging Letter support a penalty amount in the lowest range permissible. ICS operates as a customhouse broker and an international freight forwarder. In its capacity as an offeror of services to importers and exporters, ICS does not have any pecuniary interest in the proceeds of any purchase or sale of merchandise imported or, as in this case, exported from the United States. ICS, its employees and members are authorized by both the United States Customs Service and the Federal Maritime

Commission to perform services relating to the import, export and international transportation of commercial commodities. Throughout its existence, the company has developed a top notch reputation for proficiency, efficiency and a knowledge of the requisite rules and regulations as they pertain to the import and export into and out of the United States.

In the instant case, although ICS acknowledges its responsibility as a freight forwarder to have knowledge of the fact that Cosmotrans was on the "Denied Person's list", there are extenuating circumstances as to why ICS failed to do this for this one and only entity.

As was explained to Special Agent Frankel of the Department of Commerce, Bureau of Export Administration more than two years ago, Cosmotrans was named as the consignee of the imported merchandise at the request of the shipper, Gold Eye. ICS was informed that Cosmotrans was the customs broker for the purchaser and that the commodity being shipped was perfume destined for Switzerland.

During the course of his investigation, Special Agent Frankel called our client several times and visited our client on a number of occasions. Each time the Special Agent called or made a visit, our client was fully cooperative in providing whatever documents and information were requested. During the course of his investigation he examined 15 files relating to Gold Eye shipments to Switzerland covering the years 1996 through 2000. Special Agent Frankel found that there were four files consigned to Cosmotrans. He found no other violations and was told that additional shipments had been sent from the United States with Gold Eye as the shipper but none of the other shipments had named Cosmotrans as the consignee.

It is our belief that, although erroneous, ICS reasonably relied upon the fact that Cosmotrans was not a beneficial owner of the shipped commodity and thus the failure to check

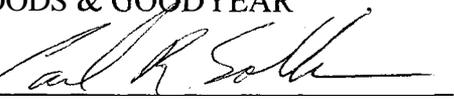
Cosmotrans' inclusion on the "Denied Person's list" is, and was, an error that can be easily understood. It is further the case that these four violations can be considered one continuing violation. There was only one determination made by ICS to ship this commodity without the requisite "Denied Person's" check. Since Cosmotrans was neither the purchaser nor beneficial owner of the perfume, and since both the commodity and the locations were non-sensitive, the failure to check the "Denied Person's" list, although a serious blunder, is one that does not deserve any severe monetary penalty.

The economic loss suffered by ICS' necessity to defend this penalty claim and its change of procedures in insuring that all parties to the export transaction are properly verified in the future, supports a finding of a minimal penalty amount. Additionally, we suggest that because of our client's non-beneficial interest in the profit from the purchase or sale of this commodity, a minimal penalty is justified.

In conclusion we ask that ICS' violations be seen in the light of it being a single error made by a very competent company and that any penalty amount be appropriately assessed. At this time, we request a demand for a hearing prior to any determination being made in this case.

Respectfully submitted,

HODGSON RUSS ANDREWS
WOODS & GOODYEAR

By: 

Carl R. Soller

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

In the Matter of:

Docket No. 00-BXA-06

**IMMEDIATE CUSTOMS
SERVICE, Inc.,**

**RECOMMENDED DECISION
AND ORDER**

RESPONDENT

BEFORE:

**PETER A. FITZPATRICK
United States Administrative Law Judge**

APPEARANCES:

FOR THE BUREAU OF EXPORT ADMINISTRATION

Melissa B. Mannino, Esq.
Office of Chief Counsel for Export Administration
U.S. Department of Commerce, Room H-3839
14th Street & Constitution Avenue, N. W.
Washington, D.C. 20230

FOR THE RESPONDENT

Carl R. Soller, Esq.
Hodgson, Russ, Andrews, Woods & Goodyear, LLP
65 East 55th Street, 10th Floor
New York, New York 10022

I. PRELIMINARY

On August 31, 2000, the Office of Export Enforcement, Bureau of Export Administration (BXA or Agency), United States Department of Commerce issued a Charging Letter against the Respondent, Immediate Customs Service, Inc., 148-05 175th Street, Jamaica, New York 11413. The Agency charged the Respondent with four (4) violations of the Export Administration Regulation (EAR)' as promulgated under the Export Administration Act of 1979 (EAA).² Following the grant by the Chief Administrative Law Judge of several stipulated extensions to file an Answer, the Respondent, on November 6, 2000, filed a timely Answer and requested a hearing before an Administrative Law Judge (ALJ). On November 15, 2000, this matter was assigned to the undersigned Judge by the Chief Administrative Law Judge to hear and adjudicate this case pursuant to the Administrative Procedure Act (APA), 5 U.S.C.A. §§ 5.51-59 (West Supp. 2000) and Export Administration Regulation, 15 C.F.R. Part 766 (2000).

On December 1, 2000, a Scheduling Order and Change of Hearing Location was issued by the undersigned and a hearing was set for February 28, 2001 at 09:30 A.M. at the United States Custom House, United States Coast Guard, ALJ Courtroom, Room 403, 40 South Gay Street, Baltimore, Maryland 21202. On December 13, 2000, the Agency served the Respondent its First Request for Admissions, Interrogatories and Production of

¹ The Export Administration Regulation (EAR) is currently codified at 15 C.F.R. Parts 730-74 (2000). At the time of the alleged offenses, the EAR was codified at 15 C.F.R. Parts 768-99 (1995, 1996). Unless otherwise noted, citations to the EAR refer to the 1995 and 1996 regulations.

² The Export Administration Act of 1979 (EAA) is codified at 50 U.S.C.A. §§ 2401-20 (West Supp. 2000). The EAA originally expired on August 20, 1994. It has been extended by numerous Presidential Notices and more recently by the International Emergency Economic Powers Act (codified at 50 U.S.C.A. §§ 1701-06 (West Supp. 2000)).

Documents [hereinafter Discovery Request]. On December 19, 2000, the Respondent signed receipt of the Agency's Discovery Request, The Respondent however, failed to respond to the Agency's Discovery Request.

On January 22, 2001, the Agency notified the Respondent that his response to the Agency's Discovery Request was overdue. In a letter dated January 30, 2001, the Agency notified the Respondent that his failure to respond to the Discovery Request constituted an admittance of matters of law and facts pursuant to 15 C.F.R. § 766.9 (2000). The Agency further stated that if the Respondent did not respond to the Agency's Discovery Request by February 5, 2001 it would seek to compel production.

The Respondent again failed to respond to the Agency's January 30, 2001 letter and instead, on February 5, 2001, filed a Motion requesting continuance (Continuance Motion) of the scheduled hearing. On February 8, 2001, the Agency filed an opposition to the Respondent's Continuance Motion. On February 14, 2001, I issued an Order denying the Respondent's Motion for continuance. On February 21, 2001, a pre-hearing conference was held with the parties to finalize discovery matters and set the scope for the hearing.

On February 28, 2001, the hearing convened as scheduled in the ALJ Courtroom in Baltimore, Maryland. At the hearing the Bureau of Export Administration was represented by Melissa B. Mannino, Esq. The Agency introduced the sworn testimony of Mr. Allan Frankel, Special Agent with the U.S. Department of Commerce, Office of

Export Enforcement and presented six (6) exhibits. The Respondent was represented by Mr. Carl R. Soller, Esq. and Mr. Philip Buglione, the Export Manager for Immediate Customs Service, Inc. The Respondent introduced the sworn testimony of Mr. Buglione and offered two (2) exhibits into evidence. A list of witnesses and exhibits is provided in ATTACHMENT A, Witness and Exhibit List.

The Charging Letter charges the Respondent with four (4) violations of the Export Administration Regulation and alleges in part, that the Respondent exported a U.S. origin commodity, *to wit*, perfume to Cosmotrans AG, a person denied all U.S. export privileges. The Respondent's alleged acts constitute a violation of the former rules found under 15 C.F.R. § 787.6 and § 787A.6.³ The Charging Letter specifically alleges that:

1. On September 3, 1995, the Respondent, acting as the forwarding agent for Goldeye Distributors, Inc. shipped a U.S. origin commodity, *to wit*, perfume Bill of Lading number EL06971 to Cosmotrans AG, Zurich, Switzerland, a person denied all United States export privileges, and
2. On October 21, 1995, the Respondent, acting as the forwarding agent for Goldeye Distributors, Inc. shipped a U.S. origin commodity, *to wit*, perfume Bill of Lading number EL07338 to Cosmotrans AG, Zurich, Switzerland, a person denied all United States export privileges, and
3. On November 21, 1995, the Respondent, acting as the forwarding agent for Goldeye Distributors, Inc. shipped a U.S. origin commodity, *to wit*, perfume Bill of Lading number EL07544 to Cosmotrans AG, Zurich, Switzerland, a person denied all United States export privileges, and
4. On December 12, 1996, the Respondent, acting as the forwarding agent for Goldeye Distributors, Inc. shipped a U.S. origin commodity, *to wit*, perfume Bill of Lading number 125-93607054 (AWB) to Cosmotrans AG, Zurich, Switzerland, a person denied all United States export privileges.

³ Section 787.6 and 787A.6 are identical sections of the Export Administration Regulation. The regulation pertaining to the 1995 charges was contained in section 787.6. In 1996, BXA issued interim rules to accommodate the transition to the revised regulations. During the interim period, parties were given the option to select the newly revised rules or use the interim rules. The Respondent continued with the interim rules and thus section 787A.6 is cited for the December 1996 charge.

The Agency seeks a civil penalty sanction of thirty thousand (30,000) dollars for the four (4) alleged violations of the Export Administration Regulation. The Respondent does not deny that it exported perfume to Zurich, Switzerland and that it listed Cosmotrans as the ultimate consignee on the Shipper's Export Declaration Form. Nonetheless, the Respondent argues that its conduct is not a violation of the Export Administration Regulation and that the four (4) named shipments are not separate transactions, but one single and continuing business transaction. The Respondent further argues that the Agency's assessed civil penalty sanction is improper given its cooperative stance with the investigation and the nature and circumstances surrounding the exported commodities (cosmetics and perfume). At the conclusion of the hearing the parties were given the option to file post-hearing briefs, but declined to do so. On March 21, 2001, the Agency however, filed a Motion to restrict access to certain portions of the record pursuant to 15 C.F.R. § 766.20 (2000). My decision on this motion and recommendations to the Under Secretary are set forth below.

II. RECOMMENDED FINDINGS OF FACT

1. The Respondent, Immediate Customs Service, Inc. is a customs broker and international freight forwarder that facilitates the export of products and commodities from the United States to foreign countries for various companies and distributors. See TR 12 1 -22.⁴ The Respondent is not required and does not possess any license issued by the Department of Commerce to operate as a customs broker and

⁴ TR will designate Transcript references followed by the page number(s)

international freight forwarder. See TR 122. Mr. Buglione is the Export Manager for Immediate Customs Service, Inc. and has twenty years of experience in export management. See TR 143.

Typically, a freight forwarder facilitates the international shipment of products and commodities to foreign countries for various export companies and distributors and “will complete certain export documents on behalf of the exporter [including] book[ing] airlines or ocean vessels.” TR 34-35. “[I]t is not uncommon [for exporters to] rely, sometimes wholly rely on the freight forwarders in order to advise them with respect to compliance with the export regulations.” TR 96. As such, the freight forwarder is viewed by the Agency as a “front line defense” in helping to manage and control the export of products and commodities from the United States to foreign countries. See id

The Export Administration Regulation provides the rules and regulations controlling the export of products and commodities by freight forwarders and custom brokers. The Export Administration Regulation provides that freight forwarders may not export any commodity “in violation of or contrary to the terms, provisions, or conditions of . . . the Export Administration Act or any regulation . . . issued under the Act.” See 15 C.F.R. § 787.6 (1995); 15 C.F.R. § 787A.6 (1996).

2. Concerning the four (4) export shipments in question, Goldeye Distributors, Inc.⁵ contacted the Respondent to facilitate the export of cosmetics and perfumes from the United States to Switzerland. Goldeye Distributors, Inc. notified the Respondent that the overseas consignee for the four (4) named shipments is a customs broker located in Zurich, Switzerland named Cosmotrans. See TR 80-81, 142.
3. The Respondent listed Cosmotrans as the ultimate consignee on the Shipper's Export Declaration Form for the four (4) named shipments in question. See TR 142. The ultimate consignee was not actually Cosmotrans, but a perfume company located in Switzerland. See *id.* However, regardless of whether Cosmontrans is considered an intermediate or ultimate consignee, the Respondent for the four (4) named shipments exported cosmetics and perfumes to Cosmotrans, a person denied all U.S. export privileges. See TR 54, 141-42.
4. All of the Shipper's Export Declaration Forms list Cosmotrans, 8058 Zurich Airport, Cargo Building West, Zurich, Switzerland as the ultimate consignee. See Agency Exhibit 1-4. Cosmotrans is the same entity known as Cosmotrans AG, a/k/a Cosmotrans, Ltd. Office 274, CH 8058, Zurich, Switzerland and Cosmotrans USA, Inc., P.O. Box 30978, JFK International Airport, Jamaica, New York. See TR 46-50.
- 5: Cosmotrans is a person denied all export privileges and is listed on the Bureau of Export Administration's Denied Persons List. See TR 50-52; Agency Exhibit 5, 6.

⁵ Goldeye Distributors, Inc. was listed as Gold Eye, Gold Eye Dist. and Goldeye Distributors, Inc. on the Shipper's Export Declaration Form and for purposes of this order is referred to as Goldeye Distributors, Inc. See Agency Exhibit 1-4.

Cosmotrans has been denied all export privileges for the period starting May 3, 1988 to May 3, 2008. See Agency Exhibit 6. The Agency's Denied Persons List is also found in Supplement No. 1 to 15 C.F.R. Part 788. See Agency Exhibit 5.

6. The Respondent is familiar with and knowledgeable of, the Export Administration Regulation during the pertinent times in question and knew that it was exporting cosmetics and perfumes to Cosmotrans. See TR 148-49.
7. The Respondent is also knowledgeable of the Agency's Denied Persons List, see TR 126, 143 and "acknowledges its responsibility as a freight forwarder to have knowledge of the fact that Cosmotrans was on the 'Denied Person's List . . .'" Respondent's Answer at 2; TR 152-53.
8. The Agency's Denied Persons List is published as a supplement to the Export Administration Regulation and is also found on the Department of Commerce web site. See TR 56. While the web site was not in service in 1995 and 1996, a loose-leaf subscription service was available. See TR 57-58. The Respondent maintained a copy of the Denied Persons List in its office. See TR 126.
9. The Respondent did not check the Denied Persons List to determine if Cosmotrans was denied United States export privileges for any of the four (4) named shipments. See TR 144, 150.
10. On September 3, 1995, Immediate Customs Service, Inc. was the freight forwarder or forwarding agent for Goldeye Distributors, Inc. See TR 14 1. The Respondent signed the Shipper's Export Declaration Form designating Cosmotrans, 8058 Zurich Airport, Cargo Building West, Zurich, Switzerland as the ultimate consignee for one (1) pallet box labeled "cosmetics." Agency Exhibit 1; TR 122-23, 14 1-42.

11. On October 21, 1995, Immediate Customs Service, Inc. was the freight forwarder or forwarding agent for Goldeye Distributors, Inc. See TR 141. The Respondent signed the Shipper's Export Declaration Form designating Cosmotrans, 8058 Zurich Airport, Cargo Building West, Zurich as the ultimate consignee for four (4) pallet boxes labeled "cosmetics" and "perfumery products." See Agency Exhibit 2; TR 122-23, 141-42.
12. On November 21, 1995, Immediate Customs Service, Inc. was the freight forwarder or forwarding agent for Goldeye Distributors, Inc. See TR 141. The Respondent signed the Shipper's Export Declaration Form designating Cosmotrans, 8058 Zurich Airport, Cargo Building West, Zurich, Switzerland as the ultimate consignee for six (6) pallet boxes labeled "cosmetics" and "perfumery products." See Agency Exhibit 3; TR 122-23, 141-42.
13. On December 12, 1996, Immediate Customs Service, Inc. was the freight forwarder or forwarding agent for Goldeye Distributors, Inc. See TR 14 1. The Respondent signed the Shipper's Export Declaration Form designating Cosmotrans, 8058 Zurich Airport, Cargo Building West, Zurich, Switzerland as the ultimate consignee for four (4) containers labeled "cosmetics." See Agency Exhibit 4; TR 122-23, 141-42.
14. During the investigation of this matter, the Respondent cooperated fully with the Agency and spent approximately two weeks going through its business records to produce the Shipper's Export Declaration Forms admitted against the Respondent by the Agency. See TR 83-84, 127-29, Agency Exhibits 1-4.

III. CONCLUSIONS OF LAW

1. The Respondent's failure to respond to the Agency's December 13, 2000 Discovery Request constitutes an admission of all requested "matters of fact or law" contained in the Discovery Request. See 15 C.F.R. § 766.9 (b) (2000;TR 26).
2. The Respondent is a customs broker or international freight forwarder and facilitates the export of products or commodities from the United States to foreign countries for various distributors and companies and is subject to the regulations and sanctions provided under the Export Administration Regulation. See 15 C.F.R.. Part 730, *et seq* (2000).
3. On September 5, 1995, the Respondent violated the provisions of the Export Administration Regulation by exporting a U.S. origin commodity, *to wit*, perfume to Zurich, Switzerland having listed Cosmotrans as the ultimate consignee. Cosmotrans is a person denied all United States export privileges for the periods in question and is listed on the Agency's Denied Persons List.
4. On October 21, 1995, the Respondent violated the provisions of the Export Administration Regulation by exporting a U.S. origin commodity, *to wit*, perfume to Zurich, Switzerland having listed Cosmotrans as the ultimate consignee. Cosmotrans is a person denied all United States export privileges for the periods in question and is listed on the Agency's Denied Persons List.
5. On November 21, 1995, the Respondent violated the provisions of the Export Administration Regulation by exporting a U.S. origin commodity, *to wit*, perfume to Zurich, Switzerland having listed Cosmotrans as the ultimate consignee. Cosmotrans

is a person denied all United States export privileges for the periods in question and is listed on the Agency's Denied Persons List.

6. On December 12, 1996, the Respondent violated the provisions of the Export Administration Regulation by exporting a U.S. origin commodity, to *wit*, perfume to Zurich, Switzerland having listed Cosmotrans as the ultimate consignee. Cosmotrans is a person denied all United States export privileges for the periods in question and is listed on the Agency's Denied Persons List.
7. The four (4) export shipments in question are separate and distinct violations of the Export Administration Regulation. See TR 144; Agency Exhibit 1-4.

IV. FINDINGS OF VIOLATION OF THE EXPORT ADMINISTRATION ACT

The Export Administration Act of 1979 (EAA) was enacted by Congress recognizing "the ability of United States citizens to engage in international commerce is a fundamental concern of United States policy . . . and important for the national interest." See 50 U.S.C. § 2401 (West Supp. 2000). To that end, the Department of Commerce, Bureau of Export Administration has issued rules and regulations pursuant to the EAA to govern the control of exports from the United States. See 15 C.F.R. §§ 730 *et seq.* (2000). The Export Administration Regulation provides that violations may result in a civil penalty sanction up to ten thousand (10,000) dollars per violation.⁶ See 15 C.F.R. § 787.1 (b) (2) (1995). The Respondent has been charged with four (4) separate violations of the Export Administration Regulation by conducting prohibited activities with

⁶ The civil penalty assessment has now been revised upward to eleven thousand dollars per violation pursuant to 5 C.F.R. § 15 (2000).

Cosmotrans, a person subject to a denial order for all United States export privileges. For the reasons that follow, I find that the Agency has met its burden to show that the Respondent committed four (4) separate violations of the Export Administration Regulation by shipping a U.S. origin commodity, *to wit*, perfume to Cosmontrans, a person denied all U.S. export privileges for the periods in question.

A. The Respondent Exported a Commodity to Cosmotrans, a Person Denied all U.S. Export Privileges

1. The record and witness testimony clearly demonstrate that the Respondent violated the provisions of the Export Administration Regulation by shipping perfume on the four (4) named occasions to Cosmotrans, a person listed on the Agency's Denied Persons List. The Respondent admits that it exported perfume for Goldeye Distributors, Inc. to a customs broker in Zurich, Switzerland and that it listed Cosmotrans as the ultimate consignee on the Shipper's Export Declaration Form.⁷ See TR 11-12; 14-42; Agency Exhibit 1-4; Discovery Request, Agency's Request for Admissions 1-22. The Respondent admits that it did not check to see whether or not Cosmotrans was on the Agency's Denied Persons List for the four (4) named shipments. See TR 142-44; Agency Exhibit 1-4. Furthermore, the Respondent "acknowledges its responsibility as a freight forwarder to have knowledge of the fact

⁷ As customary in the export business, Cosmotrans was listed as the ultimate consignee on the Shippers Export Declaration Form even though it actually occupied a position as an intermediate consignee. The perfume was stored with Cosmotrans for ultimate shipment to a customs broker located in Zurich, Switzerland. See TR 142.

that Cosmotrans was on the ‘Denied Person’s List’ Respondent’s Answer at 2; TR 142.

2. The Respondent however, raises an argument that although the Denied Persons List refers to Cosmotrans, the specific individuals, namely Hans Wirth and Bruno Barbaritz are the named parties to whom the denial order is actually directed. I find the Respondent’s argument unpersuasive. The Denied Persons List specifically provides that Cosmotrans and its named business entities are to be denied United States export privileges. While the Denied Persons List contains a reference to Hans Wirth and Bruno Barbaritz, the Respondent introduced no testimony or evidence as to why Hans Wirth and Bruno Barbaritz should supplant Cosmotrans as the person listed on the Denied Persons List. Moreover, a person denied export privileges is defined as:

Any person, firm, corporation or other business organization whose export privileges are revoked or denied by any order or who is excluded by such order from practice before the Bureau of Export Administration.

15 C.F.R. § 787.12 (1995).

3. Equally unavailing are the Respondent’s arguments that the exported perfumes are not a U.S. origin commodity and that the four (4) named shipments constitute a single and continuing business transaction. The Export Administration Regulation broadly refers to “[a]ll items in the United States, including in a U.S. Foreign Trade Zone or moving intransit through the United States from one foreign country to another” as

being subject to the Export Administration Regulation. 15 C.F.R. § 734.3 (2000).⁸

The Respondent offered no testimony or evidence to demonstrate that the named commodities were not a U.S. origin commodity. In contrast, the record clearly indicates that the Respondent shipped perfumes from the United States to a foreign country as evidenced by the Respondent's own testimony and the Shipper's Export Declaration Forms. See Agency Exhibit 1-4.

4. The Respondent's argument with respect to a single and continuing business transaction is equally unavailing. The testimony and evidence demonstrate that the named export shipments occurred over a one-year period starting in September 1995 and ending in December 1996. The Respondent testified that Goldeye Distributors, Inc. contacted them on four (4) *separate* occasions to conduct export transactions for the four (4) named shipments in question. See TR 14 1. Therefore, a reasonable determination can be made that the four (4) export shipments named in the Charging Letter constitute separate transactions.

5. Given the above and the Respondent's failure to comply with discovery notwithstanding, the witness testimony and exhibits alone, provide probative, reliable, and credible evidence that the Respondent violated the Export Administration Regulation as charged in the Charging Letter.

⁸ See also 15 C.F.R. § 787.6 (1995) (providing that no person may export or transship commodities to any person or destination in violation of any provision of the Export Administration Regulation); 15 C.F.R. §

B. The Appropriate Sanction to be Assessed

1. Finding that the Respondent has committed four (4) separate violations of the Export Administration Regulation, the paramount issue is the determination of the appropriate civil penalty sanction. The Export Administration Regulation provides civil penalty sanctions that may include any and all of the following:
 - a. a maximum civil penalty not to exceed \$10,000 for each violation,
 - b. a denial of export privileges, and
 - c. exclusion from practice before the Agency.

15 C.F.R. § 764.3 (a) (1) – (3) (2000).⁹

2. The Agency, as “the appropriate penalty for this case” seeks a civil penalty sanction of thirty thousand dollars (\$30,000). See TR 16 1. The Respondent argues that given the nature of the commodity in question, its cooperative stance with the investigation and the circumstances surrounding the export to a denied person, the assessed civil penalty sanction proposed by the Agency is to severe. Upon review of the regulations and facts presented in this matter, I find merit with the Respondent’s arguments.
3. The regulations provide that when one or more violations of the Export Administration Regulation are found, the Administrative Law Judge “shall recommend an order imposing administrative sanctions” 15 C.F.R. § 766.17 (b) (2) (2000). In reaching an appropriate civil penalty sanction, I note that the cases

770.2 (1995) (defining commodity as any article, material or supply except technical data).

⁹ See also 15 C.F.R. § 788.3 (1995).

cited by the Agency in support of its proposed assessment are settled matters and not case decisions. With regard to settled matters, it is well known that parties may settle matters for any number of reasons and those reasons may or may not be within the public ambit. Therefore, I place little weight on the cited cases referred by the Agency. See also In the Matter of: Aluminum Company of America, 97-BXA-20, 1, 30 (1998) (finding Respondent's arguments to use settled matters unavailing as a basis to reduce the Agency's proposed civil penalty sanction).

4. While I find merit with the Respondent's arguments, the fact remains that the Respondent has a legal responsibility as a freight-forwarder, to know of, and comply with, the rules and regulations governing the export of commodities from the United States. The Respondent's arguments that the regulations are complicated or cumbersome or that they were never told to check the Denied Persons List by any Department of Commerce official are wholly unpersuasive. See TR 134, see also United States v. Mohammad Reza Ehsan, 163 F.3d 855 (4th Cir. 1998) (finding the export regulations were not ambiguous and the defendant was subject to the knowledge that the exported item required an export license). Furthermore, intent or "knowledge is not a requirement in a civil penalty case." Iran Air v. Bureau of Export Administration, 996 F.2d 1253, 1255 (D.C. 1993). The Respondent cannot shift its legal responsibility to another party or hide behind Goldeye Distributors, Inc. simply because Goldeye provided Cosmotrans as the consignee for the named shipments. Further, the Respondent's argument that it had no direct business dealings with Cosmotrans is of no moment. See TR 135, 144.

5. The Respondent is legally obligated to ensure that all of its export shipments comply within the parameters of the law. Given the above, and the unique position that a freight-forwarder or customs broker holds in exporting commodities from the United States. I find that the proposed civil penalty assessment of thirty thousand (30,000) dollars to be appropriate and fair. However, the assessment of a civil penalty sanction does not end here. Agency regulations provide that “[a]ny order imposing administrative sanctions may provide for the suspension of the sanction imposed, in whole or in part and on such terms of probation or other conditions as the administrative law judge or the Under Secretary may specify.” 15 C.F.R. § 766.17 (c) (2000). In finding the appropriate degree of civil penalty sanction to be assessed against the Respondent, factors regarding “the seriousness of the violation, the culpability of the violator, and the violator’s record of cooperation with the Government in disclosing the violation” are to be considered. Iran Air v. Bureau of Export Administration, 996 F.2d 1253, 1259 (D.C. 1993).

6. The record demonstrates that the Respondent cooperated with the Agency in the investigation of this matter. Over the course of a two (2) week period, the Respondent researched its records and provided the Agency with the Shipper’s Export Declaration Forms that were introduced against them in this proceeding. See Agency Exhibits 1-4. Furthermore, while the violations are considered serious, they do not involve matters of national security interest.

Therefore, I recommend to the Under Secretary that the civil penalty sanction of thirty thousand (30,000) dollars be assessed as follows:

The Respondent shall immediately pay ten thousand (10,000) dollars with the remaining twenty thousand (20,000) dollars suspended on five years probation. Any violation of the Export Administration Act found proved against the Respondent during the probationary period will result in immediate payment of the suspended twenty thousand (20,000) dollar amount. If no such violation is proved, the twenty thousand (20,000) dollars will be remitted.

V. AGENCY'S MOTION TO RESTRICT ACCESS

1. Finally, at the conclusion of the hearing the Agency moved to seal the record pertaining to the admitted documents involving its investigative reports. The Respondent objected and argued that the contested information is within the public forum unless a statutory provision restricts dissemination. At the hearing I reserved judgement on the issue. On March 23, 2001, the Agency filed a written Motion to Restrict Access to the Part of the Record Containing Investigative Documents or References to Investigative Decisions [hereinafter Motion]. The Respondent did not file a written response to the Agency's written Motion.
2. In its Motion, the Agency argues that the statutory framework of the Export Administration Act of 1979 allows the Agency to restrict access to the named

documents and witness testimony. The Agency further argues that its investigative materials are restricted documents falling under the exceptions granted by the Freedom of Information Act (FOIA). First, it is clear that the issues involved in this matter do not pertain to any national security interest. Secondly, the relevant statute provides that “ Information obtained under this Act . . . may be withheld *only* to the extent permitted by statute, *except* that information obtained for the purpose of consideration of, or concerning, license applications under this Act” 50 U.S.C.A. App. § 2411 (c) (1) (West Supp. 2000) (emphasis added). The record clearly provides that the Respondent does not possess nor was he required to possess, a Department of Commerce license to conduct business as a freight forwarder. Therefore, the contested information can have no bearing on any license application filed by the Respondent. However, the Agency argues that the Freedom of Information Act (FOIA) provides public restriction to certain investigatory information and documents. The Agency presented a well crafted argument that the contested information sought to be restricted from the public falls within the statutory framework of the Freedom of Information Act and represents information normally restricted by the Agency. The Respondent did not provide any countervailing arguments. Therefore, I find that the statutory guidelines under the Freedom of Information Act (FOIA) provide the Agency with the necessary regulatory framework to restrict public access to the contested information. The Agency’s Motion is **HEREBY GRANTED.**

3. Following the determination of a Final Decision by the Under Secretary, the record in this matter shall be sealed and certain portions of the transcript redacted as indicated by the exhibits in the Agency's Motion. The restricted portions of the record shall be placed in a separate file and will be clearly marked to avoid any improper disclosure. See 15 C.F.R. § 766.20 (b) (2000).

VI. RECOMMENDED ORDER

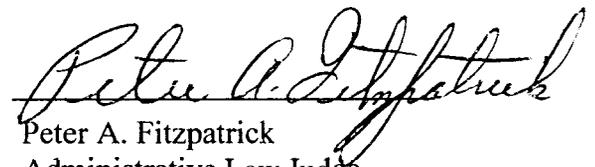
ACCORDINGLY, I recommend to the Under Secretary my finding that the Respondent has committed four (4) violations of the Export Administration Act and recommend a civil penalty sanction of thirty thousand (30,000) dollars to be assessed as follows:

The Respondent shall pay a civil penalty fine of ten thousand (10,000) dollars. The remaining twenty thousand (20,000) dollars will be suspended on probation for a five year period. If the Respondent is found within the five year probationary period to have violated the regulations under the Export Administration Act, the Respondent shall immediately pay the suspended amount of twenty thousand (20,000) dollars. Otherwise it will be remitted.

The parties are HEREBY NOTIFIED that this Recommended Decision and Order will be immediately referred to the Under Secretary for final decision. The Under Secretary will issue a Final Decision within thirty (30) days upon receipt of this Recommended Decision and Order. Upon finding by the Under Secretary, the charged party may appeal

the Under Secretary's written order within fifteen (15) days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. App. § 2412 (c) (3). See 15 C.F.R. § 766.22 (e) (2000).

The parties are FURTHER NOTIFIED that they may submit simultaneous responses to this Recommended Decision and Order within twelve (12) days of issuance of this Recommended Decision and Order. The parties shall then have eight (8) days from the receipt of any responses in which to submit replies. See 15 C.F.R. § 766.22 (b) (2000). A copy of 15 C.F.R. §766.22 is provided as ATTACHMENT B. The parties shall file any responses to the Under Secretary and copy to the undersigned Judge at: United States Coast Guard , Norfolk Federal Office Building, 200 Granby Street, Room 602, Norfolk, Virginia 23510-1888.


Peter A. Fitzpatrick
Administrative Law Judge
United States Coast Guard

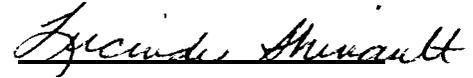
Done and dated this 9 of May, 2001 at
Norfolk, Virginia

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing RECOMMENDED DECISION AND ORDER to the following persons by Federal Express:

Melissa B. Mannino, Esq.
Office of Chief Counsel for Export Administration
U.S. Department of Commerce, Room H-3839
1 4th Street & Constitution Avenue, N. W.
Washington, D.C. 20230
Phone: 202 482-53 11
Fax: 202 482-0085

Carl R. Soller
Hodgson, Russ, Andrews,
Woods & Goodyear, LLP
65 East 55th Street, 10th Floor
New York, N.Y. 10022
Phone: 212 751-4300
Fax: 212 751-0928



Lucinda Shinault
Legal Assistant to the
Administrative Law Judge

Done and dated this 9th of May, 2001 at
Norfolk, Virginia

ATTACHMENT A
WITNESS and EXHIBIT LIST

In the Matter of:
Immediate Customs Service, Inc.
OO-BXA-06

LIST OF WITNESSES

AGENCY'S WITNESSES

1. Allan R. Frankel

RESPONDENT'S WITNESS

1. Philip Buglione

LIST OF EXHIBITS

AGENCY'S EXHIBITS

1. Shipper's Export Declaration Form, September 3, 1995.
2. Shipper's Export Declaration Form, October 21, 1995.
3. Shipper's Export Declaration Form, November 21, 1995.
4. Shipper's Export Declaration Form, December 12, 1996.
5. Supplement No. 1 to Part 788, page 8, Denial Orders.
6. Denied Persons List, Supplement No. 2 to Part 764, page 10, EAB 286-August 1997.

RESPONDENT'S EXHIBITS

- A. Report of Investigative Activity, dated June 17, 1997.
- B. Investigative Report (5 pages) written by Alan R. Frankel.

ATTACHMENT B

TITLE 15--COMMERCE AND FOREIGN TRADE
CHAPTER VII--BUREAU OF EXPORT ADMINISTRATION, DEPARTMENT OF COMMERCE
PART 766--ADMINISTRATIVE ENFORCEMENT PROCEEDINGS
Sec. 766. 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 Sec. 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. Sec. 2412(c)(3).

UNITED STATES DEPARTMENT OF COMMERCE
UNDER SECRETARY FOR EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
Immediate Customs Service, Inc.) oo-BXA-06
)
Respondent)

DECISION AND ORDER

On May 9, 2001, Administrative Law Judge Peter A. Fitzpatrick (hereinafter the "ALJ") issued a Recommended Decision and Order in the above-captioned matter. The Recommended Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. The Recommended Decision and Order sets forth the procedural history of the case, the facts of the case, and detailed findings of fact and conclusions of law. The findings of fact and conclusions of law concern whether Immediate Customs Service, Inc. of Jamaica, New York (hereinafter "ICS") committed four violations of the Export Administration Regulations,¹ a recommended penalty for those violations, and whether to grant the Motion of the Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA") to Restrict Access to the Part of the Record Containing Investigative Documents or References to Investigative Decisions (hereinafter "Motion to Restrict Access").

¹ The violations at issue occurred in 1995 and 1996. The Regulations governing the violations are found in the 1995 and 1996 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995) and 15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996)) (hereinafter the "former Regulations"). The March 25, *Federal Register* publication redesignated, but did not republish, the then existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25, 1996 *Federal Register* publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-744, effective April 24, 1996. The former Regulations define the various violations that the Bureau of Export Administration of the United States Department of Commerce alleges occurred; the Regulations establish the procedures that apply to this matter.

Based upon my review of the entire record, I affirm the Recommended Order and all but one aspect of the Recommended Decision. As described in detail below, I affirm the findings of fact and conclusions of law that ICS committed four violations of the former Regulations and the recommended penalty for those violations. I also affirm the ruling to grant BXA's Motion to Restrict Access on the ground that denying public access to the investigative documents and references to investigative decisions is authorized by the Freedom of Information Act, 5 U.S.C. 552. However, because the ALJ did not need to reach the issue of whether Section 12(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. IV 1998)) (hereinafter the "Act")² restricted public access to the investigative information, I do not affirm that aspect of the Recommended Decision. Accordingly, the ALJ's conclusion on that issue should not be considered as precedent.

A. I Affirm the ALJ's Findings of Fact and Conclusions of Law for the Violations of the Export Administration Regulations and the Recommended Penalty for Those Violations.

The ALJ found, consistent with the allegations in the charging letter, that ICS committed four violations, *to wit*, three violations of Section 787.6 and one violation of Section 787A.6 of the former Regulations, for shipping perfume on four separate occasions from the United States to Cosmotrans AG, a person listed on the Department of Commerce Denied Persons List. See Recommended Decision and Order at pages 12-14. The ALJ further found that the recommended penalty for those violations is a \$30,000 fine, \$10,000 of which shall be paid

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which had been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (1994 & Supp. IV 1998)) until November 13, 2000 when the Act was reauthorized. See Pub. L. No. 106-508, 114 Stat. 2360.

immediately and the remaining \$20,000 of which shall be suspended for five years provided that during that five-year period ICS is not found to have committed any violation of the Export Administration Act. See Recommended Decision and Order at pages 15- 18.

Based upon my review of the entire record, I affirm the Recommended Decision and Order that ICS committed four violations of the former Regulations and the penalty for those violations.

B. I Affirm the ALJ's Granting of BXA's Motion to Restrict Access to the Part of the Record Containing Investigative Documents or References to Investigative Decisions.

In accordance with Section 766.20 of the Regulations, BXA filed a Motion to Restrict Access.³ In its Motion, BXA argued that public access to the investigative records and the references to investigative decisions is restricted by Section 12(c) of the Act, and because BXA does not release that type of information to the public under the Freedom of Information Act, 5 U.S.C. §552. The ALJ granted BXA's Motion to Restrict Access on the ground that the investigative records and references to investigative decisions fall under exceptions to the Freedom of Information Act. See Recommended Decision and Order at page 19. However, because no license was involved in the case, the ALJ rejected BXA's position that Section 12(c) of the Act precludes public release of the information at issue. See *Id.*

³ Section 766.20(b) of the Regulations provides that a party or the administrative law judge may make a motion to restrict access to a "portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings." Section 766.20(c)(2)(ii) provides that "documents will be available only after the final administrative disposition of the case . . . [and] parties desiring to restrict access to any portion of the record under paragraph (b) of this section must assert their claim of confidentiality, together with the reasons for supporting the claim, before the close of the proceeding."

1. *I Affirm the ALJ's Ruling to Grant BXA's Motion to Restrict Access Because the Investigative Information Falls Under an Exception to the Freedom of Information Act.*

In his Recommended Decision and Order, the ALJ correctly concludes that the “statutory guidelines under the Freedom of Information Act provide [BXA] with the necessary regulatory framework to restrict public access to the contested information.” See Recommended Decision and Order at page 19. The parties do not challenge this ruling.

Based upon my review of the entire record, I affirm the Recommended Order that grants BXA's Motion to Restrict Access on the ground that denying public access to the investigative information is authorized by the Freedom of Information Act.

2. *Because the ALJ Was Not Required to Reach the Issue of Whether Section 12(c) of the Export Administration Act Provides a Statutory Basis for Restricting Public Access to BXA's Investigative Documents and References to BXA's Investigative Decisions, I Do Not Affirm that Aspect of the ALJ's Recommended Decision.*

In his ruling on BXA's Motion to Restrict Access, the ALJ concludes that Section 12(c) of the Act does not provide a statutory basis for restricting public access to the two reports of investigative activity and references in the hearing transcript to BXA's investigative decisions. See Recommended Decision and Order at page 19. The ALJ did not need to reach this issue because, as noted above, the ALJ granted BXA's Motion to Restrict Access to investigative information based on exceptions to the Freedom of Information Act. Accordingly, the ALJ's conclusion that Section 12(c) of the Act does not restrict public access to the investigative documents and references to investigative decisions is dictum. I do not affirm that aspect of the

ALJ's Recommended Decision, and the ALJ's conclusion on that issue should not be considered as precedent.

IT IS THEREFORE ORDERED:

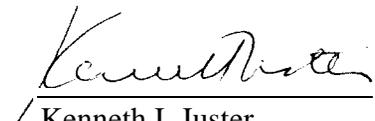
FIRST, that a civil penalty of \$30,000 is assessed against Immediate Customs Service, Inc. of Jamaica, New York, \$10,000 of which shall be paid to the U.S. Department of Commerce within thirty days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions. Payment of the remaining \$20,000 shall be suspended on probation for a five-year period. If ICS is found within the five-year probationary period to have violated the Export Administration Act (or any regulation, license, or order issued thereunder), ICS shall immediately pay the suspended amount of \$20,000. Otherwise, it will be remitted.

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, ICS will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that, as authorized by Section 1 l(d) of the Act, 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 ICS. Accordingly, if ICS should fail to pay the civil penalty in a timely manner, the undersigned will enter an Order under the authority of Section 1 l(d) of the Act denying all of ICS's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that public access to the two reports of investigative activity and references in the hearing transcript to BXA's investigative decisions is restricted as authorized by the Freedom of Information Act, 5 U.S.C. §552.

This Decision and Order constitutes the final agency action in this matter.


/ Kenneth I. Juster
Under Secretary for Export Administration

Entered this 6th day of June, 2001.

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 2000)), and the Federal Claims Collection Standards (4 C.F.R. Parts 101-105 (2000)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the Order. See 31 U.S.C.A. § 3717 and 39 C.F.R. 901.9.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. Although, the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. 93717 and 39 C.F.R. 901.9.

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2001, I caused a copy of the foregoing DECISION AND ORDER signed by Kenneth I. Juster, Under Secretary for Export Administration, In the Matter of IMMEDIATE CUSTOMS SERVICE, Inc. to be sent by U.S. Mail to:

Carl R. Soller, Esq.
Hodgson, Russ, Andrews,
Woods & Goodyear, LLP
65 East 55th Street, 10th Floor
New York, N.Y. 10022
Phone: (212) 751-4300
Fax: (212) 751-0928

I hereby also certify that on June 6, 2001, a copy of the same foregoing DECISION AND ORDER was delivered to:

Melissa B. Mannino, Esq.
Office of Chief Counsel for Export Administration
U.S. Department of Commerce, Room H-3839
14th & Constitution Avenue, N. W.
Washington, D.C. 20230.
Phone: (202) 482-5311
Fax: (202) 482-0085



Bonnie A. Mason
Executive Secretariat
Bureau of Export Administration