



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. William Kovacs
24 Georgetown Road
Boxford, MA 01921

Dear Mr. Kovacs:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS") has reason to believe that you, William Kovacs, acting as President of Elatec Technology Corporation ("Elatec") of Haverhill, MA, in your individual capacity ("Kovacs") have committed six violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that Kovacs committed the following violations:

Charge 1 15 C.F.R. §764.2(e) - Selling, Transferring, Forwarding and/or Disposing of a Furnace to China with Knowledge that a Violation Would Occur in Connection with the Export.

Beginning on or about November 23, 1998 and continuing to on or about July 20, 1999, Kovacs sold, transferred, forwarded and/or disposed of an industrial furnace, an item subject to the Regulations, to the Beijing Research Institute of Materials and Technology (hereinafter, "BRIMT") in China with knowledge that a violation of the Regulations would occur. Specifically, at the time that Kovacs sold, transferred, forwarded and/or disposed of the furnace he knew or had reason to know that a U.S. Department of Commerce license was required for the export under Section 744.3 of the Regulations,

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2005). The violations charged occurred from 1999 through 2001. The Regulations governing the violations at issue are found in the 1999 through 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2001)). The 2005 Regulations establish the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401- 2420 (2000). 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 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 *Fed. Reg.* 48763, August 10, 2004), continues the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis>



and that such license would not be obtained. The license was required because, at the time of the export, the exporter, Elatec, knew or had reason to know that the item would be used in the design, development, production, or use of missiles in or by China, as described in section 744.3(a)(2) of the Regulations. In so doing, Kovacs committed one violation of Section 764.2(e) of the Regulations.

Charge 2 15 C.F.R. §764.2(d) - Conspiring to Bring About a Violation of the Regulations.

Beginning on or about November 23, 1998 and continuing to on or about July 20, 1999, Kovacs conspired or acted in concert with others, known and unknown, to bring about acts that constituted a violation of the Regulations. The goal of the conspiracy was to export the furnace referenced in Charge One above to BRIMT in China without the U.S. Department of Commerce license required by Section 744.3 of the Regulations. Kovacs and his co-conspirators took acts in furtherance of the conspiracy, including selling and causing the export of the item without the required license. In so doing, Kovacs committed one violation of Section 764.2(d) of the Regulations.

Charge 3 15 C.F.R. §764.2(b) - Causing an Export to China without the Required U.S. Department of Commerce License.

On or about July 20, 1999, Kovacs caused the export of the furnace described in Charge One above to BRIMT in China without the required U.S. Department of Commerce license. Specifically, Kovacs worked with co-conspirators to negotiate the sale of the industrial furnace referenced in Charge One, thereby causing the furnace to be exported to BRIMT in China despite the fact that the U.S. Department of Commerce license required by Section 744.3 of the Regulations had not been obtained. In so doing, Kovacs committed one violation of Section 764.2(b) of the Regulations.

Charge 4 15 C.F.R. §764.2(h) - Taking Action with the Intent to Evade the Provisions of the Act and the Regulations.

Beginning on or about November 23, 1998 and continuing to on or about July 20, 1999, Kovacs took action with the intent to evade the provisions of the Regulations in connection with the export of the furnace described in Charge One. Specifically, after Elatec's export license application for the export of the furnace to BRIMT was denied, Kovacs participated in a scheme to export the furnace to BRIMT by falsifying the identity of the end-user on documents concerning the sale and export of the furnace and misrepresenting to Elatec's employees the details of the transaction. In so doing, Kovacs committed one violation of Section 764.2(h) of the Regulations.

Charge 5 15 C.F.R. §764.2(g) - False Statement to an Official of a U.S. Agency in the Course of an Investigation.

On or about May 22, 2001, Kovacs made a false representation to the U.S. Government in the course of an investigation concerning violations of the Regulations when he denied that Elatec sent a furnace to BRIMT in China. This was a false statement because Elatec did in fact send a furnace to BRIMT in China. In so doing, Kovacs committed one violation of Section 764.2(g) of the Regulations.

Charge 6 15 C.F.R. §764.2(g) - False Statement to an Official of a U.S. Agency in the Course of an Investigation.

On or about May 22, 2001, Kovacs made a false representation to the U.S. Government in the course of an investigation concerning violations of the Regulations when he stated that a delegation from BRIMT that had visited Elatec in April 1999 was visiting the plant for a sales presentation. This was a false statement because the delegation in question was visiting Elatec to investigate a furnace that was being built for them. In so doing, Kovacs committed one violation of Section 764.2(g) of the Regulations.

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

The maximum civil penalty allowed by law of \$11,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Kovacs 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 Kovacs defaults, the Administrative Law Judge may find the charges alleged in this letter to be true without hearing or further notice to Kovacs. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each charge in this letter.

Kovacs is further notified that he is entitled to an agency hearing on the record if he files a written demand for one with his answer. (Regulations, Section 766.6). Kovacs is also entitled to be

³ See 15 C.F.R. §6.4(a)(4) (2005).

William Kovacs
Charging Letter
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represented by counsel or other authorized representative who has power of attorney to represent him. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Kovacs have a proposal to settle this case, he or his representative should transmit the offer through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Kovacs' answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

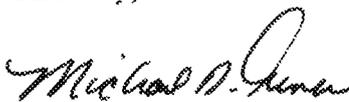
U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of Kovacs' answer must be served on BIS at the following address:

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

Charles Wall is the attorney representing BIS in this case; any communications that Kovacs may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,



Michael D. Turner
Director
Office of Export Enforcement

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

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In the Matter of:)
)
William Kovacs)
24 Georgetown Road)
Boxford, MA 01921)
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Respondent.)
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05-BIS-10

RECOMMENDED DECISION AND ORDER

On June 28, 2005, the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce, issued a Charging Letter initiating this administrative enforcement proceeding against William Kovacs ("Kovacs"). The Charging Letter alleged that Kovacs committed six violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2006)) ("Regulations"),¹ issued under the Export Administration Act of 1979, as amended (50 U.S.C. App. §§ 2401-2420 (2000)) ("Act").² In accordance with § 766.7 of Regulations, BIS moved for the issuance of an Order of Default against Kovacs for his failure to file an answer to the allegations in the Charging Letter issued by BIS within the time period required by law.

¹ The charged violations occurred during 1998, 1999 and 2001. The Regulations governing the violations at issue are found in the 1998, 1999 and 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1998-1999, 2001)). The 2006 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 12,924, 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 (2000) ("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 13,222 of August 17, 2001, 3 C.F.R., 2001 Comp. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (Aug. 7, 2006), has continued the Regulations in effect under the IEEPA.

A. Legal Authority for Issuing an Order of Default

Section 766.7 of the Regulations states that BIS may file a motion for an order of default if a respondent fails to file a timely answer to a charging letter. That section, entitled Default, provides in pertinent part:

Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.

15 C.F.R. § 766.7 (2005).

Pursuant to § 766.6 of the Regulations, a respondent must file an answer to the charging letter "within 30 days after being served with notice of the issuance of the charging letter . . ." initiating the proceeding.

B. Service of the Notice of Issuance of Charging Letter

In this case, BIS served notice of issuance of the Charging Letter in accordance with § 766.3(b)(1) of the Regulations when it sent a copy of the Charging Letter by certified mail to Kovacs at his last known address on June 28, 2005. The notice of issuance of a charging letter was received and signed for by Kovacs on July 5, 2005.

C. Summary of Violations Charged

The Charging Letter issued by BIS included a total of six (6) charges related to the illegal export of a manufacturing furnace to the Beijing Research Institute of Materials and Technology ("BRIMT") in the People's Republic of China. The export of the furnace, which took place in 1999, required a license because the exporter, Elatec (Kovacs' company), knew or had reason to

know at the time of the export that the item would be used in the design, development, production, or use of missiles in or by China, as described in § 744.3(a)(2) of the Regulations. A license application submitted for the export was explicitly denied by BIS before the export occurred, and no license for the export was ever obtained.

The Charging Letter alleged that Kovacs sold, transferred, forwarded and/or disposed of the furnace with knowledge that a violation would subsequently occur, that Kovacs conspired to export the furnace without a license, that Kovacs caused the furnace to be exported without a license, and that Kovacs took actions with the intent to evade the Regulations in connection with the furnace export. Furthermore, the Charging Letter alleged that Kovacs made two false statements to the U.S. Government during the investigation of the illegal export.

D. Penalty Recommendation

[REDACTED SECTION]

[REDACTED SECTION]

[REDACTED SECTION]

[REDACTED SECTION]

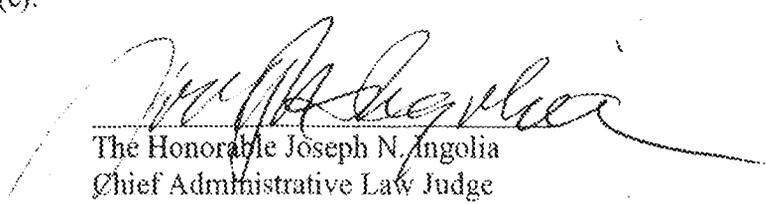
[REDACTED SECTION]

E. Conclusion

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondent, as provided in § 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. See 15 C.F.R. § 766.22(c).

Dated: January 26, 2007


The Honorable Joseph N. Angolia
Chief Administrative Law Judge

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

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In the Matter of:)
)
William Kovacs)
24 Georgetown Road)
Boxford, MA 01921)
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Respondent)
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Docket No: 05-BIS-10

FINAL DECISION AND ORDER

This matter is before me upon a Recommended Decision and Order of an Administrative Law Judge ("ALJ"), as further described below.

In a charging letter filed on June 28, 2005, the Bureau of Industry and Security ("BIS") alleged that Respondent, William Kovacs, committed six violations of the Export Administration Regulations ("Regulations")¹, issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) (the "Act"),² related to the illegal export of an industrial furnace to the Beijing Research Institute of Materials and Technology ("BRIMT") in the People's Republic of China. The export of the furnace, which took place in 1999, required a license because the exporter, Elatec (Kovacs' company), knew or had reason to know at the time of the export that the item would be used in the design, development, production, or use of

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¹ The charged violations occurred from 1998, 1999 and 2001. The Regulations governing the violations at issue are found in the 1998, 1999 and 2001 versions of the Code of Federal Regulations (15 CFR Parts 730-774 (1998-1999, 2001)). Actions taken during this administrative enforcement proceeding are governed by the Regulations in effect at the time such actions take place.

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 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("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, (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006, (71 FR 44,551 (August 7, 2006)), has continued the Regulations in effect under IEEPA.

missiles in or by China, as described in Section 744.3(a)(2) of the Regulations. A license application submitted for the export was explicitly denied by BIS before the export occurred, and no license for the export was ever obtained.

The charging letter alleged that Kovacs sold, transferred, forwarded and/or disposed of the furnace with knowledge that a violation would subsequently occur, that Kovacs conspired to export the furnace without a license, that Kovacs caused the furnace to be exported without a license, and that Kovacs took actions with the intent to evade the Regulations in connection with the furnace export. Further, the charging letter alleged that Kovacs made two false statements to the U.S. Government during the investigation of the illegal export.

In accordance with Section 766.3(b)(1) of the Regulations, on June 28, 2005, BIS mailed the notice of issuance of the charging letter by certified mail to Kovacs at his last known address. The notice of issuance of a charging letter was received and signed for by Kovacs on July 5, 2005. To date, Kovacs has not filed an answer to the charging letter with the ALJ, as required by the Regulations.

In accordance with Section 766.7 of the Regulations, BIS filed a Motion for Default Order on January 11, 2007. This Motion for Default Order recommended that Kovacs be denied export privileges under the Regulations for a period of five years and be assessed a monetary penalty of \$66,000. Under Section 766.7(a) of the Regulations, “[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent’s right to appear,” and “on BIS’s motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter.” Based upon the record before him, the ALJ held Kovacs in default.

On January 26, 2007, the ALJ issued a Recommended Decision and Order in which he found that Kovacs committed one violation each of Sections 764.2 (b), (d), (e) and (h) of the Regulations, and two violations of Section 764.2(g) of the Regulations. The ALJ also recommended the penalty of denial of Kovacs' export privileges for five years and a monetary penalty of \$66,000.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations.

I find that the record supports the ALJ's findings of fact and conclusions of law. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations and the facts of this case, and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law contained in the ALJ's Recommended Decision and Order.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that a civil penalty of \$66,000 is assessed against Kovacs which shall be paid to the 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 (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, Kovacs will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as further described in the attached Notice.

THIRD, that, for a period of five years from the date of this Order, William Kovacs, 24 Georgetown Road, Boxford, MA 01921, and when acting for or on behalf of Kovacs, his

representatives, agents, assigns and employees (hereinafter collectively referred to as the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

FIFTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

SIXTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

SEVENTH, that this Order shall be served on the Denied Person and on BIS, and shall be published in the *Federal Register*. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the *Federal Register*.

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

Dated: 2.22.07



Mark Foulon
Acting Under Secretary of Commerce
for Industry and Security

Attachments