

Charge 2 (15 CFR 764.2(h)—Engaging in a Transaction With Intent To Evade the Regulations)

Between on or about October 19, 2000, and on or about November 22, 2000, Diaz Sanchez took actions with intent to evade the Regulations. Specifically, on or about October 19, 2000, Diaz Sanchez, acting through his company Winter Aircraft, acquired aircraft parts, items subject to the Regulations and classified under ECCN 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 22, 2000, Winter Aircraft transshipped the aircraft parts subject to the EAR to Iran with a substantial markup in price. In taking these actions, Diaz Sanchez committed one violation of Section 764.2(h) of the Regulations.

D. Penalty Recommendation

[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 CFR 766.22(c).

Dated: May 1, 2007.

The Honorable Joseph N. Ingolia,
Chief Administrative Law Judge.

[FR Doc. 07–2677 Filed 5–29–07; 8:45 a.m.]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 05–BIS–15]

In the Matter of: Winter Aircraft Products SA; a/k/a Ruf S. Lopez SA, C/Ferrocarril 41, 1 DCHA, 28045 Madrid, Spain; Respondent; Final Decision and Order

This matter is before me upon a Recommended Decision and Order of the Administrative Law Judge (“ALJ”).

In a charging letter filed on September 12, 2005, the Bureau of Industry and Security (“BIS”) alleged that Respondent, Winter Aircraft Products SA (hereinafter “Winter Aircraft”), also known as Ruf S. Lopez SA., committed two violations of the Export

Administration Regulations (currently codified at 15 CFR parts 730–774) (2007)) (“Regulations”)¹, issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the “Act”).² Specifically, the charging letter alleged that between on or about November 1, 2000, and on or about November 17, 2000, Winter Aircraft took actions with intent to evade the Regulations. Specifically, on or about November 1, 2000, Winter Aircraft acquired aircraft parts, items subject to the Regulations and classified under Export Control Classification Number (“ECCN”) 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 17, 2000, Winter Aircraft transshipped the aircraft parts subject to the Regulations to Iran. In taking these actions, Winter Aircraft committed one violation of Section 764.2(h) of the Regulations.

The charging letter further alleged that between on or about October 19, 2000, and on or about November 22, 2000, Winter Aircraft took actions with intent to evade the Regulations. Specifically, on or about October 19, 2000, Winter Aircraft acquired aircraft parts, items subject to the Regulations and classified under ECCN 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 22, 2000, Winter Aircraft transshipped the aircraft parts subject to the Regulations

to Iran. In taking these actions, Winter Aircraft committed one violation of Section 764.2(h) of the Regulations.

In accordance with Section 766.3(b)(1) of the Regulations, on September 12, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to Winter Aircraft at its last known address. The notice of issuance of a charging letter was received by Winter Aircraft on or about September 21, 2005. The file establishes that BIS and Winter Aircraft engaged in several months of correspondence regarding the matter, and that BIS counsel advised Winter Aircraft to file an answer to the charging letter. To date, however, Winter Aircraft 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 March 20, 2007. This Motion for Default Order recommended that Winter Aircraft be denied export privileges under the Regulations for a period of ten years. 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 found Winter Aircraft in default.

On May 1, 2007, ALJ issued a Recommended Decision and Order in which he found that Winter Aircraft committed two violations of Section 764.2(h). The ALJ also recommended the penalty of denial of Winter Aircraft’s export privileges for ten years.

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 in the ALJ’s Recommended Decision and Order.

Accordingly, it is therefore ordered,

First, that for a period of ten years from the date of this Order, Winter Aircraft Product SA, a/k/a Ruf S. Lopez SA, C/Ferrocarril 41, 28045 Madrid, Spain, its successors and assigns, and when acting for or on behalf of Winter Aircraft, its representatives, agents and

¹ The violations charged occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 CFR parts 730–774 (2000)). The 2007 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 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.

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.

Second, 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.

Third, 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.

Fourth, 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.

Fifth, 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: May 24, 2007.

Mark Foulon,

Acting Under Secretary of Commerce for Industry and Security.

Recommended Decision and Order

On September 12, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (BIS), issued a charging letter initiating this administrative enforcement proceeding against Winter Aircraft Products SA ("Winter Aircraft"), also known as Ruf S. Lopez SA. The charging letter alleged that Winter Aircraft committed two violations of the Export Administration Regulations (currently codified at 15 CFR parts 730-774 (2006)) (the "Regulations").¹ Issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) (the "Act").² In accordance with

¹ The violations charged occurred in 2000. The Regulations governing the violations at issue are found in the 2000 version of the Code of Federal Regulations (15 CFR parts 730-774 (2000)). 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 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

§ 766.7 of the Regulations, BIS has moved for the issuance of an Order of Default against Winter Aircraft as Winter Aircraft has failed to file an answer to the allegations in the charging letter issued by BIS within the time period required by law.

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 CFR 766.7 (2006).

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 registered mail to Winter Aircraft at its last known address on September 12, 2005. BIS has submitted evidence that establishes that this charging letter was received by Winter Aircraft on or about September 21, 2005. In addition, BIS also received a letter from Winter Aircraft acknowledging receipt of the charging letter on September 21, 2005. Further, BIS and Winter Aircraft have engaged in several months of correspondence regarding the matter. BIS counsel has advised Winter Aircraft repeatedly to file an answer to the charging letter with the Administrative Law Judge ("ALJ"). Winter Aircraft has failed to file an answer to the charging letter as required by section 766.6 of the Regulations.

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 CFR, 2001 Compo 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.

Accordingly, Winter Aircraft is in default.

C. Summary of Violations Charged

The charging letter filed by BIS included a total of two charges. Specifically, the charging letter alleged the following:

Charge 1 (15 CFR 764.2(h)—Engaging in a Transaction With Intent To Evade the Regulations)

Between on or about November 1, 2000, and on or about November 17, 2000, Winter Aircraft took actions with intent to evade the Regulations. Specifically, on or about November 1, 2000, Winter Aircraft acquired aircraft parts, items subject to the Regulations and classified under Export Control Classification Number ("ECCN") 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 17, 2000, Winter Aircraft transshipped the aircraft parts subject to the EAR to Iran with a substantial markup in price. In taking these actions, Winter Aircraft committed one violation of Section 764.2(h) of the Regulations.

Charge 2 (15 CFR 764.2(h)—Engaging in a Transaction With Intent To Evade the Regulations)

Between on or about October 19, 2000, and on or about November 22, 2000, Winter Aircraft took actions with intent to evade the Regulations. Specifically, on or about October 19, 2000, Winter Aircraft acquired aircraft parts, items subject to the Regulations and classified under ECCN 9A991, from U.S. suppliers with intent to transship such items to Iran. Winter Aircraft failed to inform the U.S. suppliers of the ultimate destination of the items and, as such, no license was obtained from the U.S. Government for this transaction, as was required by Section 746.7 of the Regulations. On or about November 22, 2000, Winter Aircraft transshipped the aircraft parts subject to the EAR to Iran with a substantial markup in price. In taking these actions, Winter Aircraft committed one violation of Section 764.2(h) of the Regulations.

D. Penalty Recommendation

[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 CFR 766.22(c).

Done and Dated May 1, 2007, Baltimore, Maryland.

The Honorable Joseph N. Ingolia,
Chief Administrative Law Judge.

[FR Doc. 07-2676 Filed 5-25-07; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Duty-Free Entry of Scientific Instrument or Apparatus

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 30, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via internet at dHynek@doc.gov.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Faye Robinson, Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, DC 20230; phone number (202) 482-1660, fax number (202) 482-0949 or via the Internet at Faye_Robinson@ita.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Departments of Commerce and Homeland Security ("DHS") are required to determine whether nonprofit institutions established for scientific or educational purposes are entitled to duty-free entry for scientific instruments the institutions import under the Florence Agreement. Form ITA-338P enables: (1) DHS to determine whether the statutory eligibility requirements for the institution and the instrument are fulfilled, and (2) Commerce to make a comparison and finding as to the scientific equivalency of comparable instruments being manufactured in the

United States. Without the collection of the information, DHS and Commerce would not have the necessary information to carry out the responsibilities of determining eligibility for duty-free entry assigned by law.

II. Method of Collection

A copy of Form ITA-338P is provided on and downloadable from a Web site at <http://ia.ita.doc.gov/sips/sipsfap> or the potential applicant may request a copy from the Department. The applicant completes the form and then forwards it via mail to DHS.

Upon acceptance by DHS as a valid application, the application is transmitted to Commerce for further processing.

III. Data

OMB Number: 0625-0037.

Form Number: ITA-338P.

Type of Review: Regular submission.

Affected Public: State or local government; Federal agencies; not for-profit institutions.

Estimated Number of Respondents: 65.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 130.

Estimated Total Annual Costs: \$2,860.

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7-10340 Filed 5-29-07; 8:45 am]

BILLING CODE 3510-DS-P