OMB Control Number: 0579–0332.

Summary of Collection: Section 901–905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901) authorize the Secretary of Agriculture to issue guidelines for regulating the commercial transportation of equine for slaughter, by persons regularly engaged in that activity within the United States. Specifically, the Secretary is authorized to regulate the food, water, and rest provided to the equines equines while they are in transit and to review related issues be appropriate to ensuring that these animals are treated humanely. To implement the provisions of this Act, the Veterinary Services program of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has established minimum standards to ensure the humane movement of equines for slaughter.

Need and Use of the Information: APHIS will collect information in the form of owner-shipper certificates of fitness to travel to slaughter facility; certificate of veterinary inspection; application of backtags; collection of business information on any person found to be transporting horses to a slaughtering facility; and recordkeeping. The collected information is use to ensure that equines being transported for slaughter receive adequate food, water, and rest and are treated humanely. If the information was collected less frequently or not collected, APHIS' ability to ensure that equines destined for slaughter are treated humanely would be significantly hampered.

Description of Respondents: Business or other for profit, Individuals or Households, and Federal Government.

Number of Respondents: 332.

Frequency of Responses: Reporting: On occasion ; Recordkeeping, and Third-Party Disclosure:

Total Burden Hours: 8,608.

Animal and Plant Health Inspection Service

Title: National Veterinary Services Laboratories Request Forms.

OMB Control Number: 0579–0430.

Summary of Collection: The Animal Health Protection Act (7 U.S.C. 8301–8317) provides the Secretary of Agriculture broad authority to prohibit or restrict, through orders and regulations, the importation or entry of any animal, article, or means of conveyance if USDA determines that the prohibition or restriction is necessary to prevent the introduction or spread of any pest or disease of livestock within the United States. Disease prevention is the most effective method for maintaining a healthy animal population.

In connection with this disease prevention mission, the Animal and Plant Health Inspection Service (APHIS) National Veterinary Services Laboratories (NVSL) safeguard U.S. animal health and contribute to public health by ensuring that timely and accurate laboratory support is provided by their nationwide animal health diagnostic system.

Need and Use of the Information: APHIS will collect information using VS Form 4–9, Request for Reagents or Supplies; VS Form 4–10, NVSL Customer Contact Update; and VS Form 4–11, NVSL Application for Laboratory Training and; VS Form 12, NVSL Laboratories Kit and Instrument Order form. These forms are used to safeguard the U.S. animal population from pests and diseases. If the information was collected less frequently or not collected, APHIS would be unable to process reagent orders or provide requested training.

Description of Respondents: Foreign Federal Government; Individuals or households; Businesses; State, Local or Tribal Government.

Number of Respondents: 1,115.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,223.

Animal and Plant Health Inspection Service

Title: Standardizing Phytosanitary Treatment Regulations: Approval of Cold Treatment and Irradiation Facilities; Cold Treatment Schedules; Establishment of Fumigation and Cold Treatment Compliance Agree.

OMB Control Number: 0579–0450.

Summary of Collection: The United States Department of Agriculture (USDA) is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests and noxious weeds not widely distributed into the United States, and eradicating those imported pests when eradication is feasible. The Plant Protection Act (7 U.S.C. 7701—*et seq.*) authorizes the Department to carry out this mission. Under the Plant Protection Act, the Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests into the United States. The phytosanitary treatment regulations established generic criteria that allows for the approval of new cold treatment and irradiation facilities; cold treatment schedules; and the establishment of fumigation and cold treatment compliance agreements.

Need and Use of the Information: APHIS will collect information using PPQ form 519, Compliance Agreements, PPQ form 530, Limited Permit and other collection activities to provide generic criteria for new cold treatment and irradiation facilities, cold treatment schedules, and the establishment of fumigation and cold treatment compliance agreements.

Description of Respondents: Business or other for profit, State, Local, and Tribal Government; Federal Government (Foreign).

Number of Respondents: 92.

Frequency of Responses: Reporting; Annually.

Total Burden Hours: 196.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–05055 Filed 3–10–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 19–BIS–0001]

In the Matter of: Alexander Brazhnikov, Jr., Respondent; Final Decision and Order

This matter is before me upon a Recommended Decision and Order on Sanction (''Sanction RDO'') of an Administrative Law Judge (''ALJ''). On January 26, 2021, the ALJ referred the Sanction RDO to me pursuant to 15 CFR 766.17(b)(2). In the Sanction RDO, the ALJ found that Respondent Alexander Brazhnikov, Jr. (''Respondent'') violated 15 CFR 764.2(d) by conspiring with others to violate the Export Administration Regulations (currently codified at 15 CFR parts 730–774) (''EAR'' or ''Regulations'') by exporting regulated items to Russian End-Users on the Entity List without the required licenses. The ALJ recommended that a denial of export privileges for 15 years be assessed against Respondent. For the reasons set forth below, I affirm the Sanction RDO and issue the attached Order imposing sanction.

As described in further detail below, on April 21, 2020, in this same case, the ALJ issued an Order Partially Granting Motion for Summary Decision (''Summary Decision Order'') in which he found that Respondent had violated the EAR. The ALJ attached the Summary Decision Order to the

Sanction RDO. I affirm the Summary Decision Order as well.

I. Background

A. Respondent's Criminal Conviction

On June 11, 2015, Respondent pled guilty to a three-count Criminal Information in the U.S. District Court for the District of New Jersey. Count Three charged Respondent with conspiracy to willfully export from the United States to Russia electronic components under the jurisdiction of the Department of Commerce without first having obtained the required licenses from the Department of Commerce, in violation of 18 U.S.C. 371. The object of the conspiracy was to evade the EAR by supplying controlled electronics components to Russian end-users, including defense contractors licensed to procure parts for the Russian military, the Federal Security Service of the Russian Federation (FSB), and Russian entities involved in the design of nuclear weapons and tactical platforms. The overt acts alleged in furtherance of the conspiracy included that on or about November 20, 2013, and on or about April 23, 2014, Respondent and his co-conspirators caused the export of electronic components obtained from certain U.S. manufacturers to Russia on behalf of ''a banned entity for which no export license could have lawfully been obtained.'' Respondent specifically admitted to engaging in these overt acts as part of his plea allocution.

B. BIS Charging Letter

In a Charging Letter filed on April 22, 2019, the Bureau of Industry and Security (''BIS'') alleged that Respondent committed one violation of the EAR, stemming from his involvement in a conspiracy to violate the Regulations in connection with the export to Russia of U.S.-origin electronic components and other items subject to the Regulations. The violation alleged in the charging letter is as follows: [1]

Charge 1 15 CFR 764.2(d)—Conspiracy

1. Beginning in at least January 2008, and continuing through at least June 2014, Brazhnikov conspired and acted in concert with others, known and unknown, to bring about acts that constitute violations of the Regulations. The purpose of the conspiracy was to evade the Regulations in connection with the export to Russia of U.S.-origin electronic components and other items subject to the Regulations, including to Russian entities on BIS's Entity List, Supplement No. 4 to Part 744 of the Regulations.

2. Brazhnikov pled guilty in the U.S. District Court for the District of New Jersey on June 11, 2015, to having conspired to violate the International Emergency Economic Powers Act (''IEEPA'') (in violation of 18 U.S.C. 371), as well as to having conspired to smuggle goods from the United States (in violation of 18 U.S.C. 554) and to commit money laundering (in violation of 18 U.S.C. 1956(h)).[2]

3. Brazhnikov admitted under oath as part of his plea allocution that he and his co-conspirators acquired U.S.-origin electronic components and other items while routinely concealing from the U.S. manufacturers and distributors of the items who the intended end users were and where they were located.

4. Brazhnikov admitted under oath to further concealing the actual intended end users in an attempt to avoid detection by the U.S. Government, including by re-packaging and re-labeling the items and then having them shipped to various falsely-identified recipients and false addresses in Russia, some of which were vacant apartments or storefronts controlled by his Russian co-conspirators. If Brazhnikov had exported the items directly to a recipient or address on BIS's Entity List, it raised the possibility that the shipment would have been flagged or stopped by the U.S. Government. He also admitted that he and his Russian co-conspirators established a number of foreign bank accounts in third countries in the names of front companies, in order to conceal from the U.S. Government, the source of the funds and the identities of the end-users. Brazhnikov would receive funds laundered through these front accounts in third countries, rather than directly from the end users in Russia.

5. Brazhnikov also admitted under oath to having systematically falsified shipping documents to understate the value of the U.S.-origin items he was exporting, in order to evade the requirement to file Electronic Export Information (''EEI'') with the U.S. Government via the Automated Export System (''AES''). An EEI filing was required to be made in the AES for each export of items subject to the Regulations when the value of the items under a single Schedule B or Harmonized Tariff Schedule number is more than $2,500. 15 CFR 758.l (2008–2014); *see also* 15 CFR 30.37 (2008–2014).[3]

6. Brazhnikov's overt acts in furtherance of the conspiracy also included, *inter alia,* exporting U.S.-origin electronic components subject to the Regulations to the All-Russian Scientific Research Institute of the Technical Physics (''VNIITF'') in Russia, without the required BIS licenses, on or about November 20, 2013, and on or about April 23, 2014, respectively.[4] These items were designated EAR99 [5] under the Regulations and valued at approximately $26,732 and $19,937, respectively.

7. VNIITF was at all times relevant hereto listed on the Entity List, Supplement No. 4 to Part 744 of the Regulations.[6] Pursuant to Section 744.11 of the Regulations and VNIITF's Entity List entry, a BIS export license was at all relevant times required to export any item subject to the Regulations to VNIITF, including the electronic components described in Paragraph 6, *supra.*[7]

8. Brazhnikov engaged in the unlicensed exports described above knowing that that [sic] no BIS export license had been sought or obtained. He continued to do so, moreover, even after though [sic] BIS Special Agents conducted an outreach visit with him on or about January 23, 2013, during which the Special Agents discussed, inter alia, both the licensing requirements for exports to Russia and EEI filing requirements.

9. In so doing, as alleged in Paragraphs 1–8, *supra,* Brazhnikov violated Section 764.2(d) of the Regulations.

C. Summary Decision Order

On December 16, 2019, BIS filed a motion for summary decision pursuant to 15 CFR 766.8. BIS argued that as a result of Respondent's criminal conviction for Count Three, there was no genuine issue of material fact as to whether he had violated the EAR as alleged in the Charging Letter, and that BIS was entitled to a summary decision as a matter of law.[8] On February 10, 2020, Respondent filed an opposition to the motion.

On April 21, 2020, the ALJ issued the Summary Decision Order. The ALJ determined that BIS had met its burden to show that there was no genuine issue

[1] Unless otherwise indicated, I have reproduced the violation alleged in the Charging Letter exactly as it is written. It includes all of the footnotes in the charging section. The numbering of the footnotes is different because the Charging Letter had additional footnotes prior to the charging section.

[2] Brazhnikov pled guilty to all three counts of the Criminal Information in Case No. 2:15–CR–300–01 (D. N.J.). [The remainder of the footnote references an earlier footnote in the Charging Letter that was not part of the charging section.]

[3] A Schedule B number is a ten-digit number used in the United States to classify physical goods for export to another country.

[4] These two transactions were among the overt acts specifically alleged in Count Three (Conspiracy to Violate IEEPA) of the Criminal Information to which Brazhnikov pled guilty in the U.S. District Court for the District of New Jersey . . . . Brazhnikov admitted under oath that he was the owner, chief executive officer, and principal operator of the following four New Jersey-based companies—ABN Universal, Inc., ZOND–R, Inc., Telecom Multipliers, and Electronic Consulting, Inc.—and that these companies were used in furtherance of the conspiracy.

[5] The items were designated EAR99 under the Regulations, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 772.1.

[6] VNIITF has been on the Entity List since June 30, 1997. 62 FR 35,334 (Jun. 30, 1997). The VNIITF Entity List listing has at all times relevant hereto included VNIITF's full name, the ''VNIITF'' acronym, and various VNIITF aliases (and related acronyms), including the Federal State Unitary Enterprise Russian Federal Nuclear Center—Academician E.I. Zababkhin All-Russian Scientific Research Institute of Technical Physics (''FGUPRFYaTs-VNIITF''). FGUPRFYaTs-VNIITF was added to the listing as an alias of VNIITF on December 17, 2010. 75 FR 78,883 (Dec. 17, 2010).

[7] See 15 CFR 744.11 and Supplement No. 4 to part 744 of the Regulations (2008–2014).

[8] In its Motion, BIS attached a copy of the Criminal Information, Plea Agreement, Transcript of Plea Hearing, and Judgment. Pursuant to 15 CFR 766.22(c), I have considered these documents in my review.

of material fact as to the allegations supporting the violation alleged in the charging letter, and accordingly found that Respondent violated 15 CFR 764.2(d). As BIS had not argued for a particular sanction in its motion, the ALJ ordered the parties to submit written briefs stating their position as to an appropriate sanction. The ALJ did not certify his ruling in the Summary Decision Order to the Under Secretary for final decision.

D. Sanction RDO

On May 29, 2020, BIS submitted a brief requesting that the ALJ recommend that Respondent's export privileges be denied for at least 15 years. On that same day, Respondent filed a brief arguing that a six-month denial period was appropriate.

On January 26, 2021, the ALJ issued the Sanction RDO recommending a 15-year denial period. In the Sanction RDO, the ALJ again found that Respondent had violated 15 CFR 764.2. As previously stated, the Sanction RDO incorporated the Summary Decision Order as an attachment. The ALJ referred the Sanction RDO to me for review and final decision.

II. Review by Under Secretary

A. Introduction

Under Section 766.17(b)(2) of the EAR, in proceedings such as this one, the ALJ shall issue a recommended decision that includes recommended findings of fact, conclusions of law, and findings as to whether there has been a violation of the EAR or any order, license or authorization issued thereunder. If the ALJ finds that one or more violations have been committed, the ALJ shall recommend an order imposing administrative sanctions, or such other action as the ALJ deems appropriate. The ALJ must also ''immediately certify'' the record to the Under Secretary for a final decision in accordance with Section 766.22 of the EAR.

The Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the ALJ based on the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision. 15 CFR 766.22(c).

On February 5, 2021, I issued a notice to the parties clarifying that my review of this case would include both the Sanction RDO and the incorporated Summary Decision Order and, taking note that Respondent had been representing himself, gave the parties additional time, until February 17, 2021, to respond to both decisions.

B. Submissions of the Parties in Response to the ALJ's Decisions and Orders

On February 17, 2021, BIS submitted a response recommending that I find that Respondent had violated the EAR and affirm the recommended sanction. Respondent did not submit a response or a reply to the BIS response.

C. Review of Summary Decision Order and Sanction RDO

In the Summary Decision Order and again in the Sanction RDO, the ALJ correctly found that ''[b]etween January 2008 through June 2014, Respondent violated 15 CFR 764.2(d) by conspiring with others to violate the EAR by exporting regulated items to Russian end-users on BIS' Entity List without the required licenses.'' Respondent, in pleading guilty to Count Three of the Information, admitted to all of the material facts alleged in the Charging Letter. The District Court, in accepting the Defendant's guilty plea, determined that there was a factual basis to support the plea. See Fed. R. Crim. P. 11(b)(3) (''Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.'').

As the ALJ concluded in the Summary Decision Order, under the doctrine of collateral estoppel, Respondent cannot challenge the underlying facts that he admitted to in his criminal case. *See SEC.* v. *Bilzerian,* 29 F.3d 689, 694 (D.C. 1994) (''[C]ollateral estoppel prohibits relitigation of an issue of fact or law that has been decided in earlier litigation.''). In this case, the Charging Letter included underlying facts from Respondent's criminal case that establish as a matter of law that Respondent violated Section 764.2(d).

The Sanction RDO recommended an order imposing a denial of export privileges for 15 years as a penalty against Respondent. In recommending this penalty, the ALJ noted the years-long scheme, the sophisticated effort to evade detection, the deliberateness of the violation, and that the end-user for the transactions described in the Charging Letter was an organization on BIS's Entity List that poses a risk to U.S. national security. The ALJ's analysis in support of the recommended sanction was well-reasoned and persuasive. I agree with his determination that a 15-year denial of export privileges is appropriate.

III. Conclusion and Final Order

Based on my review of the written record and for the reasons described above, I affirm the recommended finding in the Summary Decision Order and Sanction RDO that Respondent violated the EAR as alleged in the Charging Letter, and affirm the recommended sanction of a 15-year denial of export privileges in the Sanction RDO.

Accordingly, it is therefore ordered:

FIRST, that for a period of Fifteen (15) years from the date that this Order is published in the **Federal Register**, Alexander Brazhnikov, Jr., with a last known address of 234 Central Avenue, Mountainside, New Jersey 07092, and when acting for or on his behalf, his successors, assigns, representatives, agents, or employees (hereinafter collectively referred to as ''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 EAR, or in any other activity subject to the EAR, 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 EAR, or engaging in any other activity subject to the EAR; 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 EAR, or from any other activity subject to the EAR.

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 EAR;

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 EAR 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 EAR that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the EAR 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 EAR that has been or will be exported from the United States and which 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 EAR 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, after notice and opportunity for comment as provided in Section 766.23 of the EAR, any person, firm, corporation, or business organization related to the Denied Person by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

FOURTH, that this Order shall be served on Alexander Brazhnikov, Jr. and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Summary Decision Order and the Sanction RDO described above, shall also be published in the **Federal Register**, except for the section with the Recommended Order in the Sanction RDO.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: March 5, 2021.

Jeremy Pelter,

Senior Advisor for Policy and Program Integration, Performing the Nonexclusive Functions and Duties of the Under Secretary of Commerce for Industry and Security.

United States of America

Department of Commerce

Bureau of Industry and Security

In the Matter of: Alexander Brazhnikov, Jr., Respondent

Docket No. 19–BIS–0001

Recommended Decision and Order on Sanction

Issued: January 26, 2021

Issued By: Hon. Michael J. Devine, Presiding

Appearances

For the Bureau of Industry and Security

Gregory Michelsen, Esq., Opher Shweiki, Esq., Deborah A. Curtis, Esq., U.S. Department of Commerce, Room H–3839, 14th Street & Constitution Ave. NW, Washington, DC 20230

For Respondent

Alexander Brazhnikov, Jr., *pro se,* 234 Central Ave., Mountainside, NJ 07092

I. Procedural History

This case arises from Alexander Brazhnikov, Jr.'s (Respondent) violation of the Export Administration Regulations (EAR or Regulations). Prior to the institution of this administrative proceeding, Respondent pled guilty in the U.S. District Court for the District of New Jersey on June 11, 2015, to, *inter alia,* having conspired to violate the International Emergency Economic Powers Act (IEEPA), the statutory scheme that gave effect to the EAR.[9]

On April 22, 2019, the Bureau of Industry and Security (BIS or Agency) initiated this administrative proceeding by issuing a Charging Letter against Respondent alleging one violation, conspiracy to violate the EAR, under 15 CFR 764.2(d). The charge read as follows:

Charge 1 15 CFR 764.2(d)—Conspiracy

1. Beginning in at least January 2008, and continuing through at least June 2014, Brazhnikov conspired and acted in concert with others, known and unknown, to bring about acts that constitute violations of the Regulations. The purpose of the conspiracy was to evade the Regulations in connection with the export to Russia of U.S.-origin electronic components and other items subject to the Regulations, including to Russian entities on BIS' Entity List, Supplement No. 4 to Part 744 of the Regulations.

2. Brazhnikov pled guilty in the U.S. District Court for the District of New Jersey on June 11, 2015, to having conspired to violate the International Emergency Economic Powers Act (''IEEPA'') (in violation of 18 U.S.C. 371), as well as to having conspired to smuggle goods from the United States (in violation of 18 U.S.C. 554) and to commit money laundering (in violation of 18 U.S.C. 1956(h)).

3. Brazhnikov admitted under oath as part of his plea allocution that he and his co-conspirators acquired U.S.-origin electronic components and other items while routinely concealing from the U.S. manufacturers and distributors of the items who the intended end users were and where they were located.

4. Brazhnikov admitted under oath to further concealing the actual intended end users in an attempt to avoid detection by the U.S. Government, including by re-packaging and re-labeling the items and then having them shipped to various falsely-identified recipients and false addresses in Russia, some of which were vacant apartments or storefronts controlled by his Russian co-conspirators. If Brazhnikov had exported the items directly to a recipient or address on BIS' Entity List, it raised the possibility that the shipment would have been flagged or stopped by the U.S. Government. He also admitted that he and his Russian co-conspirators established a number of foreign bank accounts in third countries in the names of front companies, in order to conceal from the U.S. Government, the source of the funds and the identities of the end-users. Brazhnikov would receive funds laundered through these front accounts in third countries, rather than directly from the end users in Russia.

5. Brazhnikov also admitted under oath to having systematically falsified shipping documents to understate the value of the U.S.-origin items he was exporting, in order to evade the requirement to file Electronic Export Information (''EEI'') with the U.S. Government via the Automated Export System (''AES''). An EEI filing was required to be made in the AES for each export of items subject to the Regulations when the value of the items under a single Schedule B or Harmonized Tariff Schedule number is more than $2,500. 15 CFR 758.1 (2008–2014; *see also* 15 CFR 30.37 (2008–2014).

6. Brazhnikov's overt acts in furtherance of the conspiracy also included, *inter alia,* exporting U.S.-origin electronic components subject to the Regulations to the All-Russian Scientific Research Institute of the Technical Physics (''VNIITF'') in Russia, without the required BIS licenses, on or about November 20, 2013, and on or about April 23, 2014, respectively. These items were designated EAR99 under the Regulations and valued at

[9] The Export Administration Regulations, 15 CFR parts 730–774, were promulgated under the Export Administration Act of 1979 (''EAA''), formerly codified at 50 U.S.C. 4601–4623. The offenses in this case occurred between January 2008 and June 2014. Although the EAA had expired prior to 2008, the President, through Executive Order 13,222 of August 17, 2001, and through successive Presidential Notices, continued the EAR in full force and effect under the International Emergency Economic Powers Act (''IEEPA''), codified at 50 U.S.C. 1701, *et seq.* Accordingly, at the time the offenses occurred, BIS had jurisdiction over this matter pursuant to the IEEPA and the EAR. The EAA was repealed in 2018, with the enactment of the Export Control Reform Act (''ECRA''). *See* 50 U.S.C. 4826. The ECRA provides BIS with permanent statutory authority to administer the EAR. The ECRA specifically states that all administrative or judicial proceedings commenced prior to its enactment are not disturbed by the new legislation. *See Id.* Accordingly, BIS currently has jurisdiction over this matter, as it did at the time of the alleged offenses.

approximately $26,732 and $19,937, respectively.[10]

7. VNIITF was at all times relevant hereto listed on the Entity List, Supplement No. 4 to Part 744 of the Regulations. Pursuant to Section 744.11 of the Regulations and VNIITF's Entity List entry, a BIS export license was at all relevant times required to export any item subject to the Regulations to VNIITF, including the electronic components described in Paragraph 6, *supra.*

8. Brazhnikov engaged in the unlicensed exports described above knowing that no BIS export license had been sought or obtained. He continued to do so, moreover, even after though [sic] BIS Special Agents conducted an outreach visit with him on or about January 23, 2013, during which the Special Agents discussed, inter alia, both the licensing requirements for exports to Russia and EEI filing requirements.

9. In so doing, as alleged in Paragraph 1–8, *supra,* Brazhnikov violated Section 764.2(d) of the Regulations.

Neither party requested a hearing in this case, and accordingly, the ALJ issued an Order on October 18, 2019, holding that the parties had waived their right to a hearing and the case would proceed on the record, and further setting forth a schedule for discovery, motions, and final briefs. *See* 15 CFR 766.6(c) and 766.15.

On December 16, 2019, BIS filed a Motion for Summary Decision with supporting documentation, contending Respondent's criminal conviction in U.S. District Court demonstrates there is no dispute Respondent committed a violation of the EAR under 15 CFR 764.2(d). In response, Respondent filed an opposition to the motion.

On April 21, 2020, the ALJ issued an Order Partially Granting Motion for Summary Decision (Summary Decision Order), finding Respondent's arguments did not create a genuine issue of material fact and that BIS was entitled to a decision as a matter of law that Respondent violated the EAR under 15 CFR 764.2(d). Respondent did not dispute his conviction and did not object to the documents BIS attached to its Motion, which included his plea allocution. Respondent was thus collaterally estopped from denying the facts set forth in the Charging Letter, as they were the same facts to which Respondent admitted through his guilty plea in the federal criminal case. Accordingly, the ALJ found Charge 1 proved, but reserved ruling on the sanction. The Summary Decision Order included Recommended Findings of Fact and Recommended Ultimate Findings of Fact and Conclusions of Law. *See* Attachment A.

On May 29, 2020, BIS submitted a final brief contending Respondent should be denied export privileges for at least 15 years. On the same date, Respondent filed a brief, in the form of a letter, arguing that deprivation of export privileges for six months would be a sufficient sanction.

The record is now ripe for decision on sanction.

II. Recommended Findings of Fact Regarding Sanction

After considering the whole record, including the parties' final briefs, and the Summary Decision Order, I find the following facts proved by preponderant evidence:

1. As part of the conspiracy lasting between January 2008 and June 2014, Russian customers, including Russian defense contractors, paid Respondent and his co-conspirators to procure the U.S.-origin electronics. (Mot. for Summ. Dec., Ex. 4 at p. 18 (Respondent's Plea Allocution)).

2. To conceal the source of the funds and thus the identities of the Russian customers, Respondent and his co-conspirators established bank accounts held by foreign shell companies and moved the funds from the Russian customers to those bank accounts. (Mot. for Summ. Dec., Ex. 4 at pp. 17–21 (Respondent's Plea Allocution)).

3. Respondent deliberately concealed the identities of the true end-users (including the VNIITF) of the electronics from the U.S. vendors and U.S. authorities by utilizing New Jersey corporations founded by Respondent to repackage the items for export to Russia, and by shipping the items to false addresses in Russia, *e.g.,* vacant apartments. (Mot. for Summ. Dec., Ex. 4 at pp. 21–22 (Respondent's Plea Allocution)).

4. Respondent falsified the value of the exported items to evade the requirements for filing EEI forms, in an attempt to conceal the extent of the activities from U.S. authorities. (Mot. for Summ. Dec., Ex. 4 at p. 22 (Respondent's Plea Allocution)).

5. Respondent and his co-conspirators were responsible for illegal export transactions totaling over $65 million. (Mot. for Summ. Dec., Ex. 4, p. 24 (Respondent's Plea Allocution)).

III. Discussion

A. Burden of Proof

The Administrative Procedure Act (APA) governs proceedings for administrative penalties for EAR violations. 5 U.S.C. 554, *et seq. See* 50 U.S.C. 4819(c)(2) (''Any civil penalty under this subsection may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of Title 5.'') Pursuant to the APA, the burden in this proceeding lies with BIS to prove the charge against Respondent by reliable, probative, and substantial evidence. 5 U.S.C. 556(d). The ''reliable, probative, and substantial'' standard is synonymous with the ''preponderance of the evidence'' standard of proof. *Steadman* v. *SEC,* 450 U.S. 91, 102 (1981); *In the Matter of Abdulmir Madi, et al.,* 68 FR 57406 (October 3, 2003).

As noted in the Summary Decision Order, BIS has already established there is no genuine dispute of material fact concerning the alleged violations. *Concrete Pipe & Products* v. *Construction Laborers Pension Trust,* 508 U.S. 602, 622 (1993). Therefore, at this stage of the proceedings, those facts in the Summary Decision Order are established. However, BIS still retains the burden to prove any additional aggravating facts offered in support of its request for sanction with preponderant evidence, meaning BIS must show the fact's existence is more probable than not. 5 U.S.C. 556(d). After determining which facts have been proven by preponderant evidence, it is then up to the ALJ to determine an appropriate sanction.[11]

B. Determining an Appropriate Sanction

Section 764.3 of the EAR describes the permissible sanctions BIS may seek for the violation charged in this proceeding: (1) A civil penalty, (2) a denial of export privileges under the Regulations, and (3) an exclusion from practice. *See* 15 CFR 764.3. Supplement Number 1 to 15 CFR part 766, titled Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases (''Penalty Guidance''), provides non-binding guidance on penalty determinations in the context of settlement discussions between BIS and respondents in administrative enforcement cases. The Penalty Guidance was created to aid settlement negotiations, and does not create any right or obligation as to what penalty or sanction BIS may seek after litigation; however, it provides helpful guideposts for considering an appropriate sanction even in the context of a litigated enforcement action.

1. Aggravation

The Penalty Guidance discusses actions that may be considered ''aggravating factors.'' Such actions include conduct that shows the respondent knew he/she was violating U.S. laws or regulations, *i.e.,* a

[10] While the Charging Letter stated the value of the transactions as $26,732 and $19,937, the invoices produced by BIS to support this allegation showed that the amounts were listed in rubles, not dollars. This discrepancy did not affect the ALJ's determination that Respondent violated the EAR.

[11] 15 CFR 766.17(b)(2) states, in pertinent part, ''If the administrative law judge finds that one or more violations have been committed, the judge shall recommend an order imposing administrative sanctions, as provided in part 764 of the EAR, or such other action as the judge deems appropriate.''

deliberate intent to violate the EAR; intentional concealment of conduct for the purpose of misleading authorities or other parties involved in the transaction; and conduct that implicates U.S. national security and/or U.S. foreign policy, *e.g.,* by exporting items to individuals/organizations on BIS ''Entity List.'' *See* 15 CFR part 766, Supp. No. 1, at § III ''Aggravating Factors.''

As addressed in the Findings of Fact, above, Respondent admitted to engaging in deliberate acts with his co-conspirators meant to conceal their actions, including creating bank accounts for shell companies to conceal the true source of the funds, using his New Jersey-based corporations to repackage and ship the items to the Russian end-users, shipping components to false addresses to conceal the true identity of the Russian end-users, and falsifying the value of the exports to evade EEI filing requirements. Respondent admitted to these acts in his plea allocution before the Federal District Court, and accordingly BIS has proven these facts by preponderant evidence. (Mot. for Summ. Dec., Ex. 4 (Respondent's Plea Allocution)). A party's deliberateness in violating the EAR and concealment of the conduct are aggravating factors that are given substantial weight. *See* 15 CFR part 766, Supp No. 1, at §§ III(A) and IV(B). There is no dispute that Respondent willfully and deliberately used sophisticated tactics to evade detection by U.S. authorities and to conceal the identities of the true end-users from the U.S. vendors.

In its final brief, BIS asserts that pursuant to section 764.3 of the regulations, BIS may seek administrative sanctions including a civil penalty of up to $307,922 per violation or twice the value of the transaction upon which the penalty is imposed, whichever is greater. BIS also states that in view of the $65 million criminal forfeiture imposed in regard to the criminal action, BIS is not recommending an additional civil penalty in this matter, but contends Respondent's conduct is of such a serious nature that a 15-year denial of export privileges is ''not only necessary but proportionate to other cases, especially considering the activities of the prohibited end-users at issue such as VNIITF.'' (BIS Final Brief, p. 9).[12] BIS argues that VNIITF assists Russia in the development of its nuclear weapons program.[13] VNIITF is currently, and was at the time of Respondent's conduct, on BIS' Entity List. The Entity List was established to identify organizations that pose a significant national security concern:

> The Entity List (supplement no. 4 to part 744) identifies persons reasonably believed to be involved, or to *pose a significant risk* of being or becoming involved, in *activities contrary to the national security or foreign policy interests of the United States.* The entities are added to the Entity List pursuant to sections of part 744 (Control Policy: End–User and End–Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.
>
> 15 CFR 744.16 (emphasis supplied).

The degree to which the conduct implicates national security concerns due to the sensitivity of the items exported or the nature of the recipient of the exports is another factor that is given substantial weight. Here, the recipient, VNIITF, is considered an organization to which exports must be carefully controlled because of potential harm to the national security or foreign policy. Respondent's conduct in providing VNIITF with electronic components is highly troubling.

2. Mitigation

The Penalty Guidance likewise discusses actions that may be considered ''mitigating factors.'' Such actions include immediate cessation of the unlawful conduct once it was discovered, quick and decisive efforts to ascertain the cause and extent of the violation, and exceptional cooperation with the agency to investigate and resolve violations. *See* 15 CFR part 766, Supp. No. 1, at § III ''Mitigating Factors.''

In his Final Brief, Respondent presents the following in support of his contention that a six-month denial of export privileges is appropriate:

> [C]onsidering that throughout the whole time of COVID–19 I have been working at the forefront and providing services to the community, as well as a small amount of offense, I believe that deprivation of export privileges for 6 months will be sufficient sanctions.
>
> Resp. Final Brief, p. 1.

Respondent did not elaborate on his efforts to aid those impacted by COVID–19 or explain why that should be considered a mitigating factor in these administrative enforcement proceedings.

In his opposition to BIS' Motion for Summary Decision, Respondent did not acknowledge his responsibility for his violations of the EAR, but instead asserted that his father took responsibility for the charges. Respondent's failure to acknowledge his responsibility came after he pled guilty in the criminal case and formally admitted in a plea hearing before a U.S. District Court judge that he had engaged in the violations and acts of concealment discussed above. In addition to avoiding an admission of responsibility, Respondent has not presented any evidence that he will implement an export compliance program, or make any effort to ensure his activities comport with export regulations, if he is allowed to continue in the export business. Likewise, he has not demonstrated cooperation in any significant manner with BIS in the present case. A mere contention of some form of community service relating to the COVID–19 pandemic is not evidence and does not present any valid basis for mitigation of sanctions for the charged violations.

3. Analysis of Respondent's Conduct in Comparison With Other Administrative Penalty Cases

BIS points to the imposition of a 10-year denial of export privileges in the case *In the Matters of: Trilogy International Associates, Inc., William Michael Johnson, Respondents,* 83 FR 9259 (Mar. 5, 2018). In *Trilogy,* the course of conduct lasted from January 2010 through May 2010, wherein the respondents exported an explosives detector and 115 analog to digital converters to Russia. The Under Secretary of Commerce for Industry and Security found the respondents were ''willfully ignoring, or, at best, blinding themselves to their compliance obligations.'' 83 FR at 9262. *Trilogy* did not involve export of items to an organization on the Entity List, and the time period of the illegal acts was much briefer than Respondent's four-year course of conduct. Moreover, unlike the instant case, the respondents in *Trilogy* were found to have ''willfully ignored'' or ''blinded themselves'' to the regulations, as opposed to having engaged in extensive, deliberate concealment efforts. As such, a harsher penalty for Respondent seems appropriate.

BIS also cites two cases in which administrative enforcement actions were brought against the respondents after they had been convicted of conspiracy to violate the IEEPA under 18 U.S.C. 371 and 50 U.S.C. 1705, as in the instant case, by exporting items to Russian end-users. In those cases, *In the Matter of: Alexey Krutilin,* 82 FR 43218 (Sep. 14, 2017) and *In the Matter of:*

[12] BIS demonstrated by preponderant evidence that Respondent shipped items to VNIITF in violation of the EAR, as set forth fully in the Summary Decision Order.

[13] BIS cites to the information provided by the Nuclear Threat Initiative on its website, *https://www.nti.org/learn/facilities/926/.*

Dmitrii Karpenko, 82 FR 43217 (Sep. 14, 2017), the Office of Export Enforcement proceeded under 15 CFR 766.25, which allows the immediate imposition of an administrative penalty without the need for a charging letter and opportunity for hearing, but restricts the penalty to a maximum ten-year denial of export privileges. The respondent in *Krutilin* was given the maximum ten-year denial penalty. The respondent in *Karpenko* was given a five-year denial penalty. Neither of those cases mentioned the involvement of Russian organizations on the Entity List.

Another case cited by BIS involving a clearly deliberate violation of export control regulations is *In the Matter of: Yavuz Cizmeci,* 80 FR 18194 (Apr. 3, 2015), wherein the respondent aided Iran Air in procuring a Boeing 747 in direct violation of a Temporary Denial Order (''TDO''). The TDO, issued on June 6, 2008, prohibited a company called Ankair from ''directly or indirectly, participating in any way in any transaction involving the Boeing 747 . . . .'' Yet, on June 26, 2008, the respondent, CEO of Ankair, assisted in transferring possession of the plane to Iran Air. The transaction value was estimated at approximately $5.3 million. The respondent settled the administrative enforcement action and agreed to a $50,000 civil penalty and a 20-year denial of export privileges. While this case is factually distinct, both cases involve intentional violations of the EAR and transactions in the millions of dollars.

4. Sanction Determination

Respondent violated the EAR by conspiring with others to, *inter alia,* export electronic components to an organization on the Entity List. Respondent further admitted to engaging in a years' long, sophisticated scheme to evade detection by U.S. authorities. The deliberateness of Respondent's violations and concealment efforts, the extent of the activity, and the fact that Respondent helped to export controlled items to an organization that is considered to pose a risk to U.S. national security, all justify an extensive period of denial of export privileges. Respondent failed to provide any mitigating evidence. Considering the 20-year denial imposed in *Cizmeci,* the ten-year denials imposed in *Trilogy* and *Krutilin,* and the five-year denial imposed in *Karpenko,* a 15-year denial of export privileges for Respondent's conduct is comparable to sanctions imposed in similar cases and reasonable when considered in light of the applicable Penalty Guidance factors. Accordingly, I find that a 15-year denial of export privileges is appropriate.

IV. Conclusions of Law

1. Respondent and the subject matter of this proceeding are properly within the jurisdiction of BIS pursuant to the Export Control Reform Act of 2018 and the EAR. 50 U.S.C. 4826; 15 CFR parts 730–774.

2. Between January 2008 through June 2014, Respondent violated 15 CFR 764.2(d) by conspiring with others to violate the EAR by exporting regulated items to Russian end-users on BIS' Entity List without the required licenses.

V. Recommended Order

[Redacted Section]

This Recommended Decision and Order is being referred to the Under Secretary for review and final action by overnight carrier as provided under 15 CFR 766.17(b)(2). Due to the short period of time for review by the Under Secretary, all papers filed with the Under Secretary in response to this Recommended Decision and Order must be sent by personal delivery, facsimile, express mail, or other overnight carrier as provided in 15 CFR 766.22(a).

Submissions by the parties must be filed with the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room H–3898, 14th Street and Constitution Avenue NW, Washington, DC 20230, within twelve (12) days from the date of issuance of this Recommended Decision and Order. Thereafter, the parties have eight (8) days from receipt of any responses in which to submit replies. *See* 15 CFR 766.22(b).

Within thirty (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). A copy of the regulations regarding review by the Under Secretary can be found in *Attachment B.*

[Signature of Michael J. Devine]

Michael J. Devine
U.S. Coast Guard Administrative Law Judge

Done and dated January 26, 2021, at Baltimore, Maryland

Attachment A: April 21, 2020 Order Partially Granting Motion for Summary Decision

Attachment B: Review by Under Secretary, 15 CFR 766.22

Attachment A

United States Department of Commerce

Bureau of Industry and Security

Washington, DC

In the Matter of: Alexander Brazhnikov, Jr.
Respondent
Docket No. 19–BIS–0001

Order Partially Granting Motion for Summary Decision

Issued: April 21, 2020

Issued By: Hon. Michael J. Devine, Presiding

Appearances

For the Bureau of Industry and Security

Gregory Michelsen, Esq., Joseph V. Jest, Esq., Deborah A. Curtis, Esq., U.S. Department of Commerce, Room H–3839, 14th Street & Constitution Ave. NW, Washington, DC 20230

For Respondent

Alexander Brazhnikov, Jr., *pro se,* 234 Central Ave., Mountainside, NJ 07092

I. Preliminary Statement

The Bureau of Industry and Security (BIS) initiated this administrative enforcement action against Alexander Brazhnikov, Jr. (Respondent) by serving a Charging Letter against him on April 22, 2019. BIS brought one Charge against Respondent, under 15 CFR 764.2(d), alleging he conspired with others to do acts that constitute violations of the Export Administration Regulations (EAR).

As the basis for Charge 1, BIS alleged Respondent conspired with others from January 2008 through June 2014 to export regulated electronic components from the U.S. to Russian customers listed on BIS's ''Entity List'' without the required licenses.[14] BIS supports Charge 1 with Respondent's June 11, 2015 guilty plea and subsequent conviction in the U.S. District Court for the District of New Jersey of conspiracy to violate the International Emergency Economic Powers Act (IEEPA) by acting with others to cause the export of electronic components from United States manufacturers to Russia on behalf of an entity for which no export license could have lawfully been obtained. According to the Charging Letter, the facts underlying the criminal case are the same as the facts underlying this administrative action.

On December 16, 2019, BIS filed a Motion for Summary Decision, arguing

[14] The Entity List is found in Supplement No. 4 to 15 CFR Part 744. It designates foreign persons, businesses, and organizations to which export is prohibited without a license.

Respondent's conviction demonstrates there is no dispute Respondent committed a violation of the EAR under 15 CFR 764.2(d). Respondent filed a late response on February 10, 2020, listing his contentions in three numbered paragraphs, arguing (1) his father took responsibility for all of the actions alleged in the Charging Letter, (2) BIS did not prove that ''these parts were U.S.-Origin,'' and (3) the total cost of the exported items listed in two sample invoices attached by BIS to its Motion for Summary Decision was $734.58. For the reasons set forth below, the undersigned is PARTIALLY GRANTING BIS' Motion for Summary Decision.

II. Recommended Findings of Fact

1. Respondent pled guilty to a federal criminal charge of conspiracy to violate the International Emergency Economic Powers Act (IEEPA) in the U.S. District Court for the District of New Jersey on June 11, 2015, Case. No. 2:15–CR–00300–WJM–1. (Mot. for Summ. Dec., p. 4–5; Ex. 2; Ex. 3; Ex. 4; Ex. 5).

2. Between January 2008 and June 2014, Respondent exported electronic components from U.S. vendors to Russian end-users. (Mot. for Summ. Dec., pp. 5–6, 8; Ex. 4 at p. 17–18).

3. On or about November 20, 2013, Respondent exported multiple shipments of electronic components to the All-Russian Scientific Research Institute of Technical Physics (VNIITF) Academician E.I. Zababakhina. (Mot. for Summ. Dec., Ex. 2 at p. 15; Ex. 4 at p. 24; Ex. 11).

4. Some of the items in the November 20, 2013 shipments were electronic components on the Commerce Control List under ECCN EAR99. (Mot. for Summ. Dec., Ex. 9).

5. On or about April 23, 2014, Respondent exported electronic components to VNIITF Academician E.I. Zababakhina. (Mot. for Summ. Dec., Ex. 2 at p. 15; Ex. 4 at 24; Ex. 12).

6. The components in the April 23, 2014 shipment were on the Commerce Control List under ECCN EAR99. (Mot. for Summ. Dec., Ex. 10).

7. BIS placed the VNIITF on the Entity List in 1997, and it remained there at all times during 2008 through 2014. (Mot. for Summ. Dec., pp. 8–9); *see* Entity List at Supplement No. 4 to 15 CFR part 744.

8. BIS added the Academician E.I. Zababakhina to the Entity List as an alias for the VNIITF in 2010. (Mot. for Summ. Dec., pp. 8–9); *see* Entity List at Supplement No. 4 to 15 CFR part 744.

9. Respondent exported the aforementioned items without obtaining a BIS license.

III. Discussion

A. Jurisdiction

The alleged offenses occurred between January 2008 and June 2014. At that time, BIS had jurisdiction over this matter pursuant to the IEEPA and the EAR promulgated under the Export Administration Act of 1979 (EAA), codified at 50 U.S.C. 4601–4623. *See* 15 CFR parts 730–774. Although the EAA had lapsed at that time, the President, through Executive Order 13,222 of August 17, 2001, and through successive Presidential Notices, continued the regulations in full force and effect under the IEEPA. 50 U.S.C. 1701, *et seq*.

In August 2018, Congress enacted the John S. McCain National Defense Authorization Act containing the Export Control Reform Act of 2018, which repealed much of the EAA but provided BIS with permanent statutory authority to administer the EAR. *See* 50 U.S.C. 4826. The 2018 Act specifically states all administrative actions made or administrative proceedings commenced prior to its enactment are not disturbed by the new legislation. *See Id.* Accordingly, BIS currently has jurisdiction over this matter, as it did at the time of the alleged offenses.

B. Standard of Review for Summary Decision

The regulations governing BIS civil penalty enforcement proceedings allow a party to move for summary decision disposing of some or all of the issues in the case if there is no genuine issue as to any material fact and the moving party is entitled to summary decision as a matter of law. 15 CFR 766.8. A dispute over a material fact is ''genuine'' if the evidence is such that a reasonable fact finder could render a ruling in favor of the non-moving party. *Anderson* v. *Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986).

The moving party bears the initial burden of production to identify those portions of the record that demonstrate an absence of genuine issues of material fact. *Celotex Corp.* v. *Catrett,* 477 U.S. 317, 330–331 (1986). Once the moving party meets that initial burden, the burden of production then shifts to the non-moving party to identify specific evidentiary material that demonstrates a genuine issue for trial. *Id.* Mere denials of allegations are not sufficient to demonstrate a genuine issue of material fact. *Sanders* v. *Nunley,* 634 F.Supp. 474, 476 (N.D. Ga. 1985).

When considering the ultimate burden of persuasion, the ALJ must apply the ''substantive evidentiary standard of proof that would apply at the trial on the merits.'' *Liberty Lobby,* 477 U.S. at 252. Here, the standard of proof is the standard set forth in the Administrative Procedure Act—a preponderance of the evidence. 50 U.S.C. 4819(c)(2); *Sea Island Broadcasting Corp. of S.C.* v. *F.C.C.,* 627 F.2d 240, 243 (1980).

C. No Genuine Issue of Material Fact Exists

1. Legal Basis for Charge 1 (15 CFR 764.2(d)—Conspiracy)

According to Charge 1, BIS alleges Respondent conspired with others to violate the EAR under 15 CFR 764.2(d), from January 2008 through June 2014 to procure electronic components from U.S. vendors and export the components to Russian end-users, while evading U.S. licensing regulations prohibiting such export transactions. (Mot. for Summ. Dec., Ex. 1 [Charging Letter], pp. 1–3). The electronic components were listed on BIS's Commerce Control List. The Russian end-users were listed on BIS' Entity List, and, as such, were entities deemed by the U.S. ''to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States.'' 15 CFR 744.16.

a. Regulation of Items on the Commerce Control List

BIS maintains authority over the exportation of certain items. These items are listed on the Commerce Control List (CCL), and divided into categories, such as ''nuclear materials,'' ''telecommunications and information security,'' and ''aerospace and propulsion.'' 15 CFR 774.1(a); 15 CFR 738.2(a). Categories are divided into groups, such as ''materials,'' ''software,'' and ''technology.'' 15 CFR 738.2(b). Within each category and group, items are identified by an Export Control Classification Number (ECCN). 15 CFR 738.2(d).

An ECCN listing provides information on the reasons that BIS regulates that particular item; one must cross-reference the information in the ECCN listing with information provided in the Commerce Country Chart to determine if a license is required to export the item to a particular country. 15 CFR 738.2, 738.4; Supplement No. 1 to Part 738 (Commerce Country Chart).

b. Regulation of Exports to Entities on the Entity List

In addition to the Commerce Control List, the EAR provides another layer of regulation by way of the Entity List, which specifies individuals, businesses, and organizations to whom the export of certain items is prohibited without a license. With regard to the Entity List, the EAR provides:

> The Entity List (Supplement No. 4 to part 744) identifies persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign

policy interests of the United States. The entities are added to the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

(a) License requirements. The public is hereby informed that in addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer (in-country) items specified on the Entity List to listed entities without a license from BIS. The specific license requirement for each listed entity is identified in the license requirement column on the Entity List in Supplement No. 4 to this part.

15 CFR 744.16.

As stated in the regulation, above, items subject to regulation by virtue of being on the Commerce Control List may also be subject to additional regulation if the end-users are listed on the Entity List.

c. Respondent Is Collaterally Estopped From Denying the Facts Set Forth in the Charging Letter Due to Guilty Plea in Related Federal Criminal Case

BIS contends no genuine issue of material fact exists as to Charge 1 because Respondent pled guilty to a Federal criminal charge of conspiracy to violate the IEEPA [15] in the U.S. District Court for the District of New Jersey on June 11, 2015, in Case. No. 2:15–CR–00300–WJM–1. (Mot. for Summ. Dec., p. 4–5; Ex. 2 (Criminal Information); Ex. 3 (Plea Agreement); Ex. 4 (Transcript of Plea Hearing); Ex. 5 (Judgment in a Criminal Case). The facts underlying the criminal case are the same facts underlying this administrative action.

BIS attached the Criminal Information for Case. No. 2:15–CR–00300–WJM–1 to its Motion for Summary Decision, which describes in detail the actions taken by Respondent and his co-conspirators to export regulated items to Russian organizations on the Entity List without obtaining the required licenses. (Mot. for Summ. Dec., Ex. 2). BIS also attached the plea agreement executed by Respondent, the transcript of the plea hearing, the judgment of conviction, and Respondent's response to BIS's Requests for Admission in this administrative action. (Mot. for Summ. Dec., Exs. 3–6, respectively).

Through his responses to the Requests for Admission, Respondent conceded the authenticity of the documents related to his criminal conviction attached to BIS' Motion for Summary Decision. (Mot. for Summ. Dec., Ex. 6 at Requests for Admission Nos. 1–3). Respondent also admitted to many of the underlying facts in his response to the Requests for Admission. (Mot. for Summ. Dec., Ex. 6 at Requests for Admission Nos. 5, 7, 14, 16, 19, 26–30). The facts Respondent did not admit to in the Requests for Admission are contradicted by Respondent's statements made under oath during the plea hearing. For example, Respondent denied the following Request for Admission:

15. Admit that Respondent Alexander Brazhnikov, Jr., and his co-conspirators exported electronic components from the United States to Russia knowing that, although licenses were required that licenses had not been obtained.

Response: DENY. I had never sent any electronic parts which required licensing. I am not responsible for any ''co-conspirators.''

(Mot. for Summ. Dec., Ex. 6).

Despite Respondent's denial of that Request for Admission, he answered as follows in his plea hearing in the criminal case:

U.S. Attorney: As part of the conspiracy to evade the International Emergency Economic Powers Act as alleged in Count 3 of the Information, did you and your co-conspirators purposefully export electronics components from the United States to Russia knowing that, although licenses were required for such exports, licenses had not been obtained?

Brazhnikov: Yes.

(Mot. for Summ. Dec., Ex. 5, p. 23).

Collateral estoppel prevents Respondent from denying or re-litigating the facts set forth in the Charging Letter, because they are the same facts he admitted in his federal criminal case. *Smith* v. *SEC.,* 129 F.3d 356, 362 (6th Cir. 1997) (conviction for insider trading creates situation where ''[i]n order to prevail in the civil action, the SEC now needs only to move for summary judgment on the basis of the collateral estoppel effect of that conviction.''); *SEC.* v. *Bilzerian,* 29 F.3d 689, 693–694 (D.C. Cir. 1994) (''the district court found that Bilzerian was collaterally estopped from contesting the facts set forth in support of the SEC's civil claims because the same facts formed the basis of his criminal conviction.''). Accordingly, there is no genuine dispute over whether Respondent committed acts constituting conspiracy to violate the EAR. The specific facts are set forth in the following section.

2. Material Facts as to Charge 1

Respondent was the owner, operator, and CEO of several business incorporated in New Jersey. Respondent's father was the owner, operator, and CEO of several Russian business entities. Respondent's father was one of Respondent's co-conspirators with respect to the following actions. Between January 2008 and June 2014, Respondent and his co-conspirators, through the afore-mentioned businesses, exported electronic components from the U.S. to Russian end-users, knowing the EAR required licenses for such exports and not obtaining the required licenses. (Mot. for Summ. Dec., pp. 5–6, 8; Ex. 4 at pp. 17–18, 23).

One of the end-users to which Respondent and his co-conspirators exported items was the All-Russian Scientific Research Institute of Technical Physics (VNIITF) Academician E.I. Zababakhina. BIS placed the VNIITF on the Entity List in 1997, and it remained there at all times from 2008 to 2014. BIS added the Academician E.I. Zababakhina to the Entity List as an alias for the VNIITF in 2010. (Mot. for Summ. Dec., pp. 8–9); *see* Entity List at Supplement No. 4 to 15 CFR part 744.

On November 20, 2013, Respondent and his co-conspirators sent multiple shipments of electronic components, evidenced by four invoices, to VNIITF Academician E.I. Zababakhina. (Mot. for Summ. Dec., Ex. 2 at p. 15; Ex. 4 at p. 24; Ex. 11). BIS, through certified Licensing Determinations, determined some of the items in the shipments were electronic components found on the Commerce Control List under ECCN EAR99. (Mot. for Summ. Dec., Ex. 9).

On April 23, 2014, Respondent and his co-conspirators again shipped electronic components to VNIITF Academician E.I. Zababakhina. (Mot. for Summ. Dec., Ex. 2 at p. 15; Ex. 4 at 24; Ex. 12). BIS performed a certified Licensing Determination, concluding the components were found on the Commerce Control List under ECCN EAR99. (Mot. for Summ. Dec., Ex. 10).

Pursuant to the Entity List, a license was required to export ''all items subject to the EAR'' to VNIITF Academician E.I. Zababakhina. *See* Supplement No. 4 to Part 744. As the November 20, 2013 and April 23, 2014 shipments contained items subject to the EAR, Respondent was prohibited from exporting the items without obtaining a license from BIS. 15 CFR 744.16(a). As evidenced by his statement at the plea hearing, Respondent and his co-conspirators knew licenses were required for these exports and failed to obtain them. (Mot. for Summ. Dec., Ex. 4 at p. 23–24).

[15] Respondent was convicted of the crime codified at 18 U.S.C. 371 (''Conspiracy to commit offense or to defraud United States''). The IEEPA specifies that violation of its terms can result in criminal penalties pursuant to 50 U.S.C. 1705 (''Penalties'').

3. Respondent Failed To Identify Any Genuine Issues of Material Fact

a. Respondent Claims His Father Took All Responsibility

In his Response to the Motion for Summary Decision, Respondent makes three contentions. First, Respondent contends his father ''took all responsibility for it.'' (Resp. to Mot. for Summ. Dec., p. 1). In support, Respondent attached a document drafted in Russia, along with a translated copy, purportedly made by Respondent's father on October 10, 2019. The document states Respondent's father is the owner of two companies (Zond-R, Inc.; Telecom Multipliers, Inc.) involved in the scheme to violate the IEEPA. (Resp. to Mot. for Summ. Dec., Ex. 1). Respondent's argument here is merely a denial of the Charge and does not give rise to a genuine issue of material fact. *Sanders,* 634 F.Supp. at 476. Contrary to Respondent's bald assertion, the document does not state Respondent's father takes all responsibility for the scheme, it only affirms Respondent's father owns companies involved in the scheme. Further, Respondent is estopped from arguing now that his father actually owned those companies, because Respondent admitted in the June 11, 2015 plea hearing in Criminal Case No. 2:15–CR–00300–WJM–1 he owned Zond-R, Inc. and Telecom Multipliers, Inc. (Mot. for Summ. Dec., Ex. 4 at p. 17).

b. Respondent Argues BIS Did Not Prove Items Were U.S.-Origin

Second, Respondent argues ''BIS did not provide ANY evidence that these parts were U.S.-Origin.'' (Resp. to Mot. for Summ. Dec., p. 1). This argument lacks merit because one element of the crime to which Respondent pled guilty was the fact that he, along with his co-conspirators, illegally exported U.S.-origin electronics to Russian organizations. (Mot. for Summ. Dec., Ex. 4 at pp. 20–24).

c. Respondent Contends BIS Misstated the Monetary Value of the Exports

Finally, Respondent argues the cost of the electronic components he conspired to export was $734.58, not $46,669.71. Respondent is referring to the November 20, 2013 and April 23, 2014 export transactions mentioned by BIS in the Charging Letter, which were among the overt acts Respondent admitted to in the criminal case. (Mot. for Summ. Dec., Ex. 1 at pp. 2–3). The Charging Letter does contain some errors in the amount of the transactions; the invoices attached to BIS's Motion for Summary Decision show the amounts were listed in rubles, not dollars. (Mot. for Summ. Dec., Exs. 11, 12).

However, the specific value of the exports is not a material fact. A fact is material if it ''might affect the outcome of the suit under the governing law.'' *Anderson,* 477 U.S. at 248. The pertinent elements of the criminal charge against Respondent in the U.S. District Court and the administrative charge against Respondent in this proceeding are (1) Respondent conspired with others (2) to export U.S. electronic components (3) to Russian organizations on BIS's ''Entity List'' (4) without the licenses required by the EAR. *See* 18 U.S.C. 371; 50 U.S.C. 1705; 15 CFR 744.16. The cost of the items is immaterial in regard to finding a violation proven. While the EAR provides a limited licensing exception for certain exports under a certain monetary value, this exception does not apply to items exported to Russia or items exported to entities on the Entity List. *See* 15 CFR 740.3; Suppl. No. 1 to Part 740.[16] [17]

D. Conclusion—BIS Is Entitled to a Decision as a Matter of Law

BIS met its burden of production as to Charge 1, conspiracy to violate the EAR under 15 CFR 764.2(d), with evidence that Respondent pled guilty a related federal criminal charge. The facts underlying the criminal charge being identical to the facts underlying the instant administrative charge, Respondent is estopped from denying them. Respondent filed a late response to the Motion for Summary Decision but failed to identify any triable issues of fact. Considering BIS' evidence as a whole, BIS met its ultimate burden of persuasion, showing by a preponderance of the evidence that no genuine issue of material fact exists and BIS is entitled, as a matter of law, to a decision in its favor as to Charge 1.

IV. Recommended Ultimate Findings of Fact and Conclusions of Law

1. Respondent and the subject matter of this proceeding are properly within the jurisdiction of the BIS pursuant to the Export Control Reform Act of 2018 and the Export Administration Regulations (EAR). 50 U.S.C. 4826; 15 CFR parts 730–774.

2. The facts underlying the federal criminal charge to which Respondent pled guilty are identical to the facts set forth in the Charging Letter. (Mot. for Summ. Dec., Exs. 1–5).

3. Respondent is estopped from denying or re-litigating the facts set forth in the Charging Letter. *Smith* v. *S.E.C.,* 129 F.3d 356, 362 (6th Cir. 1997); *S.E.C.* v. *Bilzerian,* 29 F.3d 689, 693–694 (D.C. Cir. 1994).

4. Between January 2008 through June 2014, Respondent violated 15 CFR 764.2(d) by conspiring with others to violate the EAR by exporting regulated items to Russian end-users on BIS' Entity List without the required licenses.

V. Sanction

Section 764.3 of the EAR establishes the sanctions BIS may seek for the violations charged in this proceeding. The sanctions are: (1) A monetary penalty, (2) denial of export privileges under the regulations, and (3) exclusion of practice before the Department of Commerce. BIS has not moved for any particular sanction to be imposed. Accordingly, sanctions will be addressed following an opportunity for the parties to be heard on the issue. In keeping with the October 18, 2019 Scheduling Order, this matter shall proceed on the record. The parties shall submit final written briefs stating their positions as to an appropriate sanction on or before May 29, 2020. There will not be any reply briefs.

Wherefore,

Order

It is hereby ordered, BIS's Motion for Summary Decision is GRANTED IN PART. Charge 1, brought pursuant to 15 CFR 764.2(d), is found PROVEN.

It is further ordered, the parties shall submit written briefs stating their positions as to an appropriate sanction on or before May 29, 2020.

[Signature of Michael J. Devine]
Hon. Michael J. Devine
Administrative Law Judge

Done and dated April 21, 2020
Baltimore, Maryland

Attachment B

15 CFR 766.22—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.

[16] 15 CFR 740.3(b): ''This License Exception is available for all destinations in Country Group B (see Supplement No. 1 to part 740), provided that the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the LVS paragraph for that entry.

[17] Country Group B does not include Russia or entities listed in the Entity List.

(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 § 766.20 of this part.

(e) [Reserved by 75 FR 33683].

[FR Doc. 2021–05022 Filed 3–10–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–121]

Difluoromethane (R–32) From the People's Republic of China: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing the antidumping duty (AD) order on difluoromethane (R–32) from the People's Republic of China (China).

DATES: Applicable March 11, 2021.

FOR FURTHER INFORMATION CONTACT: William Miller or Joshua Tucker, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3906 or (202) 482–2044, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on January 19, 2021, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation of R–32 from China.[1]

On March 2, 2021, the ITC notified Commerce of its final affirmative determination that an industry in the United States is materially injured by reason of imports of R–32 from China, within the meaning of section 735(b)(1)(A)(i) of the Act.[2]

Scope of the Order

The product covered by this order is R–32 from China. For a complete description of the scope of the order, *see* Appendix I to this notice.

Antidumping Duty Order

On March 2, 2021, in accordance with sections 735(b)(i)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured by reason of imports of R–32 from China.[3] Therefore, in accordance with section 735(c)(2) of the Act, we are issuing this order. Because the ITC determined that imports of R–32 from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China which are entered, or withdrawn from warehouse, for consumption are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the subject merchandise, for all relevant entries of R–32 from China. Antidumping duties will be assessed on unliquidated entries of R–32 from China entered, or withdrawn from warehouse, for consumption on or after August 27, 2020, the date of publication of the *Preliminary Determination*.[4]

Continuation of Suspension of Liquidation

In accordance with section 736 of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of R–32 from China, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's final determination in the **Federal Register**. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits for estimated antidumping duties equal to the cash deposit rates for each producer and exporter combination listed below. Accordingly, effective on the date of publication in the **Federal Register** of the ITC's final determination, CBP will require, at the same time as importers would normally deposit estimated duties on the subject merchandise, a cash deposit equal to the rates listed below:[5]

Producer	Exporter	Estimated weighted-average dumping margin (percent)
Taizhou Qingsong Refrigerant New Material Co., Ltd	Taizhou Qingsong Refrigerant New Material Co., Ltd	161.49
Zibo Feiyuan Chemical Co., Ltd	Zibo Feiyuan Chemical Co., Ltd	221.06
Zibo Feiyuan Chemical Co., Ltd	T.T. International Co., Ltd	221.06
Producers Supplying the Non-Individually- Examined Exporters Receiving Separate Rates (*see* Appendix II).	Non-Individually Examined Exporters Receiving Separate Rates (*see* Appendix II).	196.19
China-Wide Entity		221.06

[1] *See Difluoromethane (R–32) From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 5136 (January 19, 2021).

[2] *See* ITC's Letter, Final Determination Notification, dated March 2, 2021.

[3] *Id.*

[4] *See Difluoromethane (R–32) from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 85 FR 52950 (August 27, 2020) (*Preliminary Determination*).

[5] *See* section 736(a)(3) of the Act.