

NOV 22 2005



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

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Mr. Kailash Muttreja  
MUTCO International  
Kelenbergweg 37 1101  
EX Amsterdam, Netherlands

Attn: *Kailsh Muttreja*  
*President*

Dear Mr. Muttreja:

The Bureau of Industry and Security, United States Department of Commerce ("BIS") has reason to believe that you, Kailash Muttreja, President of MUTCO International of the Netherlands, in your individual capacity ("Muttreja") violated the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act"),<sup>2</sup> on two occasions. Specifically, BIS charges that Muttreja committed the following violations:

**Charge 1 (15 C.F.R § 764.2(d) - Conspiracy to Export Toxins to North Korea without the required Department of Commerce License)**

Beginning in or about late 2000 and continuing into or about September 2002, Muttreja conspired and acted in concert with others, known and unknown, to export toxins from the United States to North Korea without the required Department of Commerce license. The goal of the conspiracy was to obtain toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under export control

---

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2005). The violations charged occurred in 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 through 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2005 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized 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 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 Fed. Reg. 45273, August 5, 2005), has continued the Regulations in effect under IEEPA.



classification number (“ECCN”) 1C351, on behalf of a North Korean end-user and to export those toxins to North Korea. In furtherance of the conspiracy, Muttreja ordered the toxins from a co-conspirator in the United States and agreed to complete the export to North Korea once the toxins were delivered to the Netherlands from the United States. Contrary to Section 742.2 of the Regulations, no Department of Commerce license was obtained for the export from the United States to North Korea. In doing so, Muttreja committed one violation of Section 764.2(d) of the Regulations.

**Charge 2 (15 C.F.R. §764.2(b) - Soliciting an Export of Toxins Without the Required Department of Commerce License)**

On or about July 2002, Muttreja solicited a violation of the Regulations by ordering toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under ECCN 1C351, from a co-conspirator in the United States and agreeing to complete the export of the toxins to North Korea. Contrary to Section 742.2 of the Regulations, no Department of Commerce license was obtained for the export from the United States to North Korea. In doing, Muttreja committed one violation of Section 764.2(b) of the Regulations.

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

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

Denial of export privileges; and/or

Exclusion from practice before BIS.

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

---

<sup>3</sup> See 15 C.F.R. §6.4(a)(2).

Kailash Muttreja  
Charging Letter  
Page 3

Muttreja is further notified that he is entitled to an agency hearing on the record if he files a written demand for one with his answer. (Regulations, Section 766.6). Muttreja is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent him. (Regulations, Sections 766.3(a) and 766.4).

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

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

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

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

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

James C. Pelletier is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. Mr. Pelletier may be contacted by telephone at (202) 482-5301.

Sincerely,



Michael D. Turner  
Director  
Office of Export Enforcement

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

In the Matter of: )

Kailash Muttreja )

MUTCO International )

Kelenberweg 37 1101 )

EX Amsterdam, Netherlands )

Respondent. )

Docket No: 05-BIS-21

RECOMMENDED DECISION AND ORDER

On November 22, 2005, the Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), issued a charging letter initiating this administrative enforcement proceeding against Kailash Muttreja ("Muttreja"). The Charging Letter alleged that Muttreja committed two violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2006)) (the "Regulations"),<sup>1</sup> issued under the Export Administration Act of 1979, as amended (50 U.S.C. App. §§ 2401-2420 (2000)) (the "Act").<sup>2</sup>

Specifically, the Charging Letter alleged that Muttreja conspired and acted in concert with others, known and unknown, to export toxins from the United States to North Korea

<sup>1</sup> The charged violations occurred in 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 through 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2006 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which was extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-06 (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 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 Fed. Reg. 45,273 (Aug. 5, 2005)), has continued the Regulations in effect under IEEPA.

without the required Department of Commerce license. BIS alleged that the goal of the conspiracy was to obtain toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under export control classification number ("ECCN") 1C351, on behalf of a North Korean end-user and to export those toxins to North Korea. BIS alleged that, in furtherance of the conspiracy, Muttreja ordered the toxins from a co-conspirator in the United States and agreed to complete the export to North Korea once the toxins were delivered to the Netherlands from the United States. BIS alleged that, contrary to Section 742.2 of the Regulations, no Department of Commerce license was obtained for the export from the United States to North Korea. (Charge 1).

The Charging Letter filed by BIS also alleged that, in or about July 2002, Muttreja solicited a violation of the Regulations by ordering toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under export control classification number ("ECCN") 1C351, from a co-conspirator in the United States and agreeing to complete the export of the toxins to North Korea. BIS also alleged that, contrary to Section 742.2 of the Regulations, no Department of Commerce license was obtained for the export from the United States to North Korea. (Charge 2).

Section 766.3(b)(1) of the Regulations provides that notice of the issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address. In accordance with the Regulations, on November 22, 2005, BIS mailed the notice of issuance of a charging letter by registered mail to Muttreja at his last known address: MUTCO International, Kelenberweg 37 1101, EX Amsterdam, Netherlands. BIS has submitted evidence that establishes that this Charging Letter

was served in accordance with Section 766.3 of the Regulations and that BIS received the signed return receipt on January 18, 2006.

Section 766.6(a) of the Regulations provides, in pertinent part, that “[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter” initiating the administrative enforcement proceeding. To date, Muttreja has not filed an answer to the Charging Letter.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, the undersigned finds the facts to be as alleged in the Charging Letter, and hereby determines that those facts establish that Muttreja committed one violation of Section 764.2(d), and one violation of Section 764.2(c) of the Regulations.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (i) a monetary penalty, (ii) suspension from practice before the Bureau of Industry and Security, and (iii) a denial of export privileges under the Regulations. See 15 C.F.R. § 764.3 (2006). Because Muttreja solicited the export of toxins, items controlled by BIS for Anti-Terrorism reasons for export to North Korea, BIS requests that the undersigned recommends to the Under Secretary of Commerce for Industry and Security<sup>3</sup> that Muttreja’s export privileges be denied for six years.

BIS has suggested these sanctions because Muttreja’s role in conspiring to export toxins to North Korea, as well as his role in ordering toxins for export to North Korea, represents a significant potential harm to the essential national interests protected by U.S. export controls.<sup>4</sup>

---

<sup>3</sup> Pursuant to Section 13(c)(1) of the Export Administration Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary’s action is the final decision for the U.S. Commerce Department.

<sup>4</sup> See 15 C.F.R. Section 766.1, Supp. No. 1, III, A. (Stating that a denial order may be considered even in matters involving simple negligence or carelessness, if the violation(s) involves “harm to the national security or other

BIS has noted that the items involved in the attempted export in this case involved Aflatoxins (M1, P1, Q1) and Staphylococcal Enterotoxins (A and B). These items are controlled by BIS for Anti-Terrorism reasons. BIS asserted that Muttreja's role in conspiring and soliciting the export of these items for delivery to North Korea—a country that the United States Government designated as a state sponsor of international terrorism—represents significant harm to the national interests protected by U.S. export controls.<sup>5</sup> Furthermore, BIS believes that the imposition of a six-year denial order is appropriate in this case since BIS may face difficulties in collecting a monetary penalty, as Muttreja is not located in the United States. Finally, BIS believes that the recommended denial order is particularly appropriate in this case, since Muttreja has failed to respond to the Charging Letter filed by BIS. In light of these circumstances, BIS believes that the denial of Muttreja's export privileges for six years is an appropriate sanction.

On this basis, the undersigned concurs with BIS and recommends that the Under Secretary enter an Order denying Muttreja's export privileges for a period of six years. Such a denial order is consistent with penalties imposed in past cases under the Regulations involving shipments to countries designated as "Terrorist Supporting Countries."<sup>6</sup> See In the Matter of Petrom GmbH International Trade, 70 Fed. Reg. 32,743 (June 6, 2005) (affirming the recommendations of the Administrative Law Judge that a twenty year denial order and a civil monetary sanction of \$143,000 were appropriate where knowing violations involved a shipment of EAR99 items to Iran); In the Matters of Yaudat Mustafa Talyi a.k.a. Yaudat Mustafa a.k.a. Joseph Talyi, 69 Fed. Reg. 77,177 (Dec. 27, 2004) (affirming the ALJ's recommendations that a

---

essential interests protected by the export control system," if the violations are of such a nature and extent that a monetary fine alone represents an insufficient penalty . . . .) (emphasis added).

<sup>5</sup> See *id.* ("Destination Involved: BIS is more likely to seek a greater monetary penalty and/or denial of export privileges . . . in cases involving: (1) exports or reexports to countries subject to anti-terrorism controls . . . .") (emphasis in original).

<sup>6</sup> BIS's list of Terrorist Supporting Countries is set forth in 15 C.F.R. Part 740, Supp. No. 1, Country Group E:1.

twenty year denial order and maximum civil penalty of \$11,000 per violation were appropriate where an individual exported oil field parts to Libya without authorization, in violation of a BIS order temporarily denying his export privileges and with knowledge that a violation would occur; and solicited a violation of the Regulations by ordering oil field parts from a U.S. manufacturer without authorization and with knowledge that a violation would occur); In the Matter of Arian Transportvermittlungs, GmbH, 69 Fed. Reg. 28,120 (May 18, 2004) (affirming the recommendation of the Administrative Law Judge that a ten year denial order was appropriate where knowing violations involved a shipment of a controlled item to Iran); In the Matter of Jabal Damavand General Trading Company, 67 Fed. Reg. 32,009 (May 13, 2002) (affirming the recommendation of the Administrative Law Judge that a ten year denial order was appropriate where knowing violations involved shipments of EAR99 items to Iran); In the Matter of Abdulmir Mahdi, 68 Fed. Reg. 57,406 (Oct. 3, 2003) (affirming the recommendation of the Administrative Law Judge that a twenty year denial order was appropriate where knowing violations involved shipments of EAR99 items to Iran as a part of a conspiracy to ship such items through Canada to Iran).

A six year denial of Muttreja's export privileges is warranted because Muttreja's violations, like those of the respondents in the above-cited case, involved exports made to Terrorist Supporting Countries in violation of U.S. export control laws.

The terms of the denial of export privileges against Muttreja should be consistent with the standard language used by BIS in such orders. The language is:

**[REDACTED SECTION]**

**[REDACTED SECTION]**

**[REDACTED SECTION]**

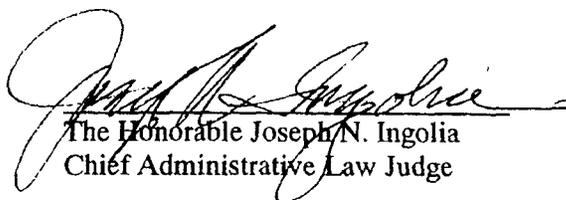
[REDACTED SECTION]

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

Accordingly, the undersigned refers 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 Section 766.7 of the Regulations.

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

Dated: 5/24/06

  
The Honorable Joseph N. Ingolia  
Chief Administrative Law Judge

UNITED STATES DEPARTMENT OF COMMERCE  
UNDER SECRETARY FOR INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

\_\_\_\_\_  
In the Matter of: )  
 )  
Kailash Muttreja )  
MUTCO International )  
Kelenberweg 37 1101 )  
EX Amsterdam, Netherlands )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No: 05-BIS-21

DECISION AND ORDER

In a charging letter filed on November 22, 2005, the Bureau of Industry and Security ("BIS") alleged that Respondent, Kailash Muttreja ("Muttreja"), committed two violations of the Export Administration Regulations ("Regulations")<sup>1</sup>, issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the "Act").<sup>2</sup>

BIS alleged that Muttreja conspired to obtain toxins, including Aflatoxin (M1, P1, Q1) and Staphylococcal Enterotoxin (A and B), items subject to the Regulations and classified under export control classification number ("ECCN") 1C351, on behalf of a North Korean end-user and to export those toxins to North Korea. The charging letter also alleged that Muttreja solicited a

---

<sup>1</sup> The Regulations are currently codified at 15 C.F.R. Parts 730-774 (2006). The charged violations occurred in 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 through 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2006 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized 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 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2005 (70 Fed. Reg. 45,273 (August 5, 2005)), has continued the Regulations in effect under IEEPA.

violation of the Regulations by ordering the above-mentioned toxins from a U.S. company and by agreeing to complete the shipment of the toxins from the Netherlands to North Korea.

In accordance with Section 766.3(b)(1) of the Regulations, on November 22, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to Muttreja at his last known address. BIS has established that this charging letter was served in accordance with Section 766.3 of the Regulations and that BIS received the signed mail return receipt on January 18, 2006. To date, Muttreja 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 April 20, 2006. This Motion for Default Order recommended that Muttreja be denied export privileges under the Regulations for a period of six 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 held Muttreja in default.

On May 24, 2006, based on the record before him, the ALJ issued a Recommended Decision and Order in which he found that Muttreja committed one violation of Section 764.2(d) and one violation of Section 764.2(c) of the Regulations. The ALJ recommended the penalty of denial of Muttreja's export privileges for six 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 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 six years from the date this Order is published in the Federal Register, Kailash Muttreja, MUTCO International, Kelenberweg 37 1101, EX Amsterdam, Netherlands, and when acting for or on his behalf, his representatives, agents, assigns, or employees ("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. Benefiting 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

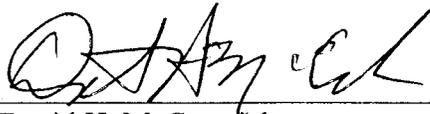
related services may also be made subject to the provisions of this Order.

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 upon publication in the Federal Register.

Dated: 6.09.06



David H. McCormick  
Under Secretary of Commerce  
for Industry and Security