

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

In the Matter of:

Berty Tyloo

with last known addresses of:

Rue du Pont Nerf 2
Morges, Switzerland

and

Rue du Centre, 2
1131 Tolochenaz
Morges, Switzerland

Respondent

ORDER RELATING TO
BERTY TYLOO

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Berty Tyloo, of Morges, Switzerland (“Tyloo”), of its intention to initiate an administrative proceeding against Tyloo pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),² through the issuance of a Proposed Charging Letter to Tyloo that alleges that Tyloo committed one violation of the Regulations. Specifically, the charge is:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2016). The charged violation occurred in 2013. The Regulations governing the violation at issue are found in the 2013 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2016 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. §§ 4601-4623 (Supp. III 2015). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 4, 2016 (81 Fed. Reg. 52,587 (Aug. 8, 2016)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq. (2012)).

Charge 1 15 C.F.R. § 764.2(g): Misrepresentation and Concealment of Facts in the Course of an Investigation

On or about June 14, 2013, Tyloo made false or misleading statements to BIS in the course of an investigation. Specifically, Tyloo was interviewed by two BIS supervisory special agents on or about June 14, 2013, in relation to an investigation of unlicensed exports and reexports to Syria of items subject to the Regulations and manufactured by Agilent Technologies, Inc. (“Agilent”), a U.S. company. As early as 2001, Tyloo was the area sales manager or distribution channel manager for the Middle East and Africa for Agilent products for European subsidiaries or affiliates of Agilent, including with regard to the sale and distribution of Agilent products to Syria through a Lebanese distributor or reseller, Technoline SAL (“Technoline”).³ In addition, upon information and belief, Tyloo had an ownership interest in Technoline from at least March 2003 until at least the spring of 2008, as demonstrated, inter alia, by correspondence between Tyloo and Technoline management or ownership during this time period in which Tyloo sought information regarding his “share” and “assets” and “profit” in or from Technoline.

During the June 2013 interview, Tyloo stated that he had “no idea” how Agilent products had ended up in Syria and that, as far as he knew, all such products had stayed in Lebanon. Similarly, when asked if Technoline had ever shipped U.S.-origin items to Syria, Tyloo stated, “No, not to my knowledge.” At the time he made these statements, Tyloo knew they were false or misleading and that, in fact, Technoline had sold and distributed Agilent items to Syria beginning in at least 2004. Between at least November 2004 and December 2010, Technoline served as a distributor/reseller of Agilent products to several countries in the Middle East region pursuant to an International Designated Reseller Program Agreement (“reseller agreement”) entered into annually with Agilent’s Swiss affiliates.⁴ Each of these reseller agreements explicitly stated that Technoline’s territory included Syria. Moreover, on or about January 1, 2010, Tyloo electronically signed the 2010 version of the reseller agreement on Agilent Switzerland’s behalf. Nonetheless, during the June 2013 interview, Tyloo falsely or misleadingly omitted any mention of Syria in describing the countries in Technoline’s territory under the reseller agreements.

³ From in or about November 1999, until in or about May 2011, Tyloo was employed first by Agilent Technologies Europe B.V. and then Agilent Technologies International SARL. Tyloo was based in Switzerland. Agilent was spun off in 1999 from Hewlett-Packard (“HP”). Tyloo was employed by HP from in or about April 1990, until in or about November 1999, at which time he was transferred to Agilent, within the international distributor operation at Agilent Technologies Europe B.V.

⁴ Between on or about November 1, 2004, and on or about December 31, 2007, Technoline acted as a distributor/reseller of Agilent products through reseller agreements it executed with Agilent Technologies Europe B.V. Technoline signed the 2008-2010 versions of the reseller agreement with Agilent Technologies International SARL. See also note 3, *supra*.

Tyloo's role as the area sales manager or distribution channel manager for Agilent products in the Middle East provided Tyloo access to information about Technoline's sale and distribution of Agilent products to Syria. Upon information and belief, his ownership stake in Technoline also provided him with access to such information. In addition, consistent with the longstanding reseller arrangement described above, on various occasions Tyloo acknowledged Technoline's Syria business involving Agilent products. For example, in a November 14, 2004 message captioned "Agilent sales in Technoline," Tyloo informed two Technoline officials that he "kept on Syria" in a "contract" for Fiscal Year 2005 between Technoline and Agilent, noting further that even if the Agilent contract administrator removed the reference, "THIS SHOULD NOT STOP US SELLING THERE (capitalization in the original)."⁵ On or about March 31, 2009, Tyloo thanked Technoline's area sales manager for his "continuous support and all the orders that you [and] your team delivers every month," citing "your tough territories like Lebanon, Syria, Iraq..." Additionally, on or about November 23, 2009, Technoline's area sales manager provided Tyloo with business plans for several countries in the Middle East, including Syria, and noted in the accompanying message that the "main focus" for 2010 would include "Pharma[ceuticals] in Syria" and "Mid Range products in Academia (Syria and Iraq)." (Parenthetical in original). Tyloo requested these business plans in preparation for his upcoming performance evaluations at Agilent Switzerland. Similarly, in December 2010, Tyloo gave a presentation at a meeting in Spain involving multiple Agilent European affiliates, in which he highlighted sales of Agilent products to Syria.

As alleged herein, Tyloo made false or misleading statements to BIS in the course of an investigation, in violation of Section 764.2(g) of the Regulations. Tyloo did so even though he acknowledged during the June 2013 interview that providing false or misleading information to the BIS agents was unlawful.

⁵ In May 2004, six months prior to Tyloo's November 14, 2004 message, the U.S. Government implemented restrictions on the export and reexport to Syria of U.S.-origin items (with the exception of food and certain medicines). General Order No. 2 of May 14, 2004, Supp. No. 1 to part 736 to the Regulations, was issued pursuant to the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, enacted on December 12, 2003, and Executive Order 13338 of May 11, 2004. In December 2011, the controls on exports and reexports to Syria were moved from General Order No. 2 to Section 746.9 of the Regulations. The licensing requirements continued unchanged. *See* 76 Fed. Reg. 77,115 (Dec. 12, 2011). During the June 2013 interview, Tyloo admitted that he had received regular training on U.S. export controls from Agilent's legal department during his tenure with the Agilent subsidiaries or affiliates, including regarding embargoed and sanctioned destinations, and that he knew that U.S.-origin items could not be shipped to, inter alia, Syria. Tyloo also stated that he had received annual export controls training while he was employed by HP.

WHEREAS, BIS and Tyloo have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, for a period of three (3) years from the date of this Order, Berty Tyloo, with last known addresses of Rue du Pont Nerf 2, Morges, Switzerland, and Rue du Centre, 2, 1131 Tolochenaz, Morges, Switzerland, 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 Regulations, or in any other activity subject to the Regulations, including, but not limited to:

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

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

SECOND, 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 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 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, 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, Tyloo shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or this Order. The foregoing does not affect Tyloo's testimonial obligations in any proceeding; nor does it affect his right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

FIFTH, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

SIXTH, this Order shall be served on Tyloo, and shall be published in the *Federal Register*.

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


Richard R. Majajskas
Acting Assistant Secretary for Export
Enforcement

Issued this 10th day of January, 2017.

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

In the Matter of:

Berty Tyloo

with last known addresses of:

Rue du Pont Nerf 2
Morges, Switzerland

and

Rue du Centre, 2
1131 Tolochenaz
Morges, Switzerland

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Berty Tyloo, of Morges, Switzerland ("Tyloo"), and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively, the "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (the "Act").²

WHEREAS, BIS has notified Tyloo of its intention to initiate an administrative proceeding against Tyloo, pursuant to the Act and the Regulations;

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WHEREAS, BIS has issued a Proposed Charging Letter to Tyloo that alleges that Tyloo committed one violation of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(g): Misrepresentation and Concealment of Facts in the Course of an Investigation

On or about June 14, 2013, Tyloo made false or misleading statements to BIS in the course of an investigation. Specifically, Tyloo was interviewed by two BIS supervisory special agents on or about June 14, 2013, in relation to an investigation of unlicensed exports and reexports to Syria of items subject to the Regulations and manufactured by Agilent Technologies, Inc. ("Agilent"), a U.S. company. As early as 2001, Tyloo was the area sales manager or distribution channel manager for the Middle East and Africa for Agilent products for European subsidiaries or affiliates of Agilent, including with regard to the sale and distribution of Agilent products to Syria through a Lebanese distributor or reseller, Technoline SAL ("Technoline").³ In addition, upon information and belief, Tyloo had an ownership interest in Technoline from at least March 2003 until at least the spring of 2008, as demonstrated, inter alia, by correspondence between Tyloo and Technoline management or ownership during this time period in which Tyloo sought information regarding his "share" and "assets" and "profit" in or from Technoline.

During the June 2013 interview, Tyloo stated that he had "no idea" how Agilent products had ended up in Syria and that, as far as he knew, all such products had stayed in Lebanon. Similarly, when asked if Technoline had ever shipped U.S.-origin items to Syria, Tyloo stated, "No, not to my knowledge." At the time he made these statements, Tyloo knew they were false or misleading and that, in fact, Technoline had sold and distributed Agilent items to Syria beginning in at least 2004. Between at least November 2004 and December 2010, Technoline served as a distributor/reseller of Agilent products to several countries in the Middle East region pursuant to an International Designated Reseller Program Agreement ("reseller agreement") entered into annually with Agilent's Swiss affiliates.⁴ Each of these reseller agreements explicitly stated that Technoline's territory included Syria. Moreover, on or about January 1, 2010, Tyloo electronically signed the 2010 version of the reseller agreement on Agilent Switzerland's behalf. Nonetheless, during the June 2013 interview, Tyloo falsely or misleadingly omitted any

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As alleged herein, Tyloo made false or misleading statements to BIS in the course of an investigation, in violation of Section 764.2(g) of the Regulations. Tyloo did so even though he acknowledged during the June 2013 interview that providing false or misleading information to the BIS agents was unlawful.

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WHEREAS, Tyloo has reviewed the Proposed Charging Letter and is aware of the allegations made against him and the administrative sanctions that could be imposed against him if the allegations are found to be true;

WHEREAS, Tyloo fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Tyloo enters into this Agreement voluntarily and with full knowledge of his rights, after having consulted with counsel;

WHEREAS, Tyloo states that no promises or representations have been made to him other than the agreements and considerations herein expressed;

WHEREAS, Tyloo neither admits nor denies the allegations contained in the Proposed Charging Letter; and

WHEREAS, Tyloo agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over Tyloo, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanction shall be imposed against Tyloo in complete settlement of the alleged violation of the Regulations specifically detailed in the Proposed Charging Letter:

a. For a period of three (3) years from the date of the Order, Berty Tyloo, with last known addresses of Rue du Pont Nerf 2, Morges, Switzerland, and Rue du Centre, 2, 1131 Tolochenaz, Morges, Switzerland, 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 Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- i. Applying for, obtaining, or using any license, license exception, or export control document;
- ii. 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
- iii. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, Tyloo hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if issued), including, without limitation, any right to: (a) receive an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant

to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued.

4. Tyloo shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Tyloo's testimonial obligations in any proceeding, nor does it affect his right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. Upon issuance of the Order, BIS will not initiate any further administrative proceeding against Tyloo in connection with the violation of the Act or the Regulations specifically detailed in the Proposed Charging Letter.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.


8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which

will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. If the Order issues, BIS will make the Proposed Charging Letter, this Agreement, and the Order available to the public.

10. Each signatory affirms that he/she has authority to enter into this Settlement Agreement and to bind his/her respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND
SECURITY
U.S. DEPARTMENT OF COMMERCE



Douglas R. Hassebrock
Director of Export Enforcement

BERTY TYLOO




Berty Tyloo

Date: ~~December~~ th 6, 2016
JAN

Date: December th 30, 2016

Reviewed and approved by:



Lindsay Bourne, Esq.
Sidley Austin LLP
Counsel for Berty Tyloo

Date: ~~December~~ _____, 2016
January 5, 2017

PROPOSED CHARGING LETTER

BY FEDERAL EXPRESS - RETURN RECEIPT REQUESTED

Berty Tyloo
Rue du Pont Nerf 2
Morges, Switzerland

Rue du Centre, 2
1131 Tolochenaz
Switzerland

Dear Mr. Tyloo:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that you, Berty Tyloo ("Tyloo"), have violated the Export Administration Regulations (the "Regulations").¹ Specifically, BIS charges that Tyloo committed the following violation:

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Since August 21, 2001, the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (available at <http://uscode.house.gov>) (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 7, 2015 (80 Fed. Reg. 48,233 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.* (2012)).

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Tyloo’s role as the area sales manager or distribution channel manager for Agilent products in the Middle East provided Tyloo access to information about Technoline’s sale and distribution of Agilent products to Syria. Upon information and belief, his ownership stake in Technoline also provided him with access to such information. In addition, consistent with the longstanding reseller arrangement described above, on various occasions Tyloo acknowledged Technoline’s Syria business involving Agilent products. For example, in a November 14, 2004 message captioned “Agilent sales in Technoline,” Tyloo informed two Technoline officials that he “kept on Syria” in a “contract” for Fiscal Year 2005 between Technoline and Agilent, noting further that even if the Agilent contract administrator removed the reference, “THIS SHOULD NOT STOP US SELLING THERE (capitalization in the original).”⁴ On or about March 31, 2009,

from in or about April 1990, until in or about November 1999, at which time he was transferred to Agilent, within the international distributor operation at Agilent Technologies Europe B.V.

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As alleged herein, Tyloo made false or misleading statements to BIS in the course of an investigation, in violation of Section 764.2(g) of the Regulations. Tyloo did so even though he acknowledged during the June 2013 interview that providing false or misleading information to the BIS agents was unlawful.

* * * * *

Accordingly, Tyloo 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 and any other liability sanction or penalty available under law, including, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation⁵ or twice the value of the transaction that is the basis of the violation;⁶
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

If Tyloo 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. *See* 15 C.F.R. §§ 766.6 and 766.7. If Tyloo defaults, the Administrative Law Judge may find the charges alleged in this

U.S. export controls from Agilent's legal department during his tenure with the Agilent subsidiaries or affiliates, including regarding embargoed and sanctioned destinations, and that he knew that U.S.-origin items could not be shipped to, *inter alia*, Syria. Tyloo also stated that he had received annual export controls training while he was employed by HP.

⁵ This amount is subject to increase pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015.

⁶ *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

Berty Tyloo
Proposed Charging Letter
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letter are true without a hearing or further notice to Tyloo. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Tyloo 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. *See* 15 C.F.R. § 766.6. Tyloo is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent him. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Tyloo have a proposal to settle this case, Tyloo or his representative should transmit it to the attorney representing BIS named below.

Tyloo is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Tyloo may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Tyloo'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 Tyloo's answer must be served on BIS at the following address:

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

Parvin R. Huda and Brian Volsky are the attorneys representing BIS in this case; any communications that Tyloo may wish to have concerning this matter should occur through them. Ms. Huda and Mr. Volsky may be contacted by telephone at (202) 482-5301.

Sincerely,

Douglas R. Hassebrock
Director

Berty Tyloo
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Office of Export Enforcement