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

In the Matters of: Nordic Maritime Pte. Ltd. and Morten Innhaug Respondents	Docket Number 17-BIS-0004 (consolidated)

FINAL DECISION AND ORDER

This matter is before me a second time to review the Administrative Law Judge's (ALJ) decision in this case. On March 11, 2020, I affirmed the ALJ's initial recommended decision and order's (Initial RDO) findings of liability, modified the denial order to a period of 15 years, and remanded to the ALJ for a reexamination of the civil monetary penalty (Remand Order).[1] The ALJ did so, resulting in a reinstatement of the original $31,425,760 civil monetary penalty by way of a July 15, 2020 Recommended Decision and Order (Penalty RDO).[2]

With the benefit of the Penalty RDO and additional briefing from the parties, this matter is ripe for decision. For the following reasons, I conclude that Nordic Maritime Pte. Ltd.'s (Nordic) and Morten Innhaug's (Innhaug and, collectively, Respondents) conduct—including the knowing export of highly controlled equipment to one of America's adversaries, coupled with

[1] *In the Matters of Nordic Maritime Pte. Ltd. & Morten Innhaug; Partial Remand and Final Decision and Order*, 85 Fed. Reg. 15,414 (Mar. 18, 2020).

[2] I received the certified copy of the record from the ALJ, including the original copy of the Penalty RDO, for my review on July 20, 2020.

The Penalty RDO is included as an addendum to this Final Decision and Order.

making false and misleading statements to the Bureau of Industry and Security (BIS) in the course of its investigation into the matter—warrants a significant sanction. As a result, I affirm the $31,425,760 civil monetary penalty in its entirety and determine that no suspension of the penalty is appropriate.

I. Background

This matter has a thorough procedural history, which is recounted in the Remand Order and in the Initial RDO. *See* 85 Fed. Reg. 15,415-16; *see also id.* at 15,421-28 (the Initial RDO). A brief recap to the extent necessary to understand the damages calculation will suffice.

BIS issued a charging letter to Respondent Nordic on April 28, 2017, alleging three violations of the Export Administration Regulations (EAR or Regulations):[3] (i) Nordic illegally reexported certain seismic survey equipment to Iran that was controlled by the EAR for national security and anti-terrorism reasons; (ii) Nordic acted knowingly in doing so; and (iii) Nordic made false and misleading statements to BIS during its investigation. The unlawful export occurred pursuant to a contract between Nordic and Mapna International FZE to conduct a seismic survey in Iranian territorial waters. *See* 85 Fed. Reg. 15,415 (citing the charging letter to Nordic). BIS also issued a charging letter to Innhaug, alleging he aided and abetted Nordic in violating the EAR.

[3] The EAR originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (the EAA), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (IEEPA), including during the time period of the violations at issue here. On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. § 4801, et seq. While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

The case proceeded to litigation, and the Respondents alerted the ALJ on the eve of trial that they would not participate. *See* 85 Fed. Reg. at 15,417. Following a hearing with testimony and exhibits, the ALJ agreed with BIS's arguments that the Respondents' conduct warranted a civil monetary penalty in the amount of $31,425,760. The ALJ concluded—and I affirmed in the Remand Order—that the operative transaction for penalty purposes was Nordic's contract with Mapna, which was then valued at €11.3 million. *See id.* at 15,418.[4] The ALJ then doubled the amount of the contract to arrive at the appropriate civil monetary penalty. *See id.*

The statute permits the imposition of a civil penalty of $307,922[5] or "an amount that is twice the amount of the transaction that is the basis of the violation with respect to the penalty imposed," whichever is greater. 50 U.S.C. § 1705(b). The penalty here was calculated by imposing a penalty of twice the value of the transaction, namely Nordic's contract for seismic services in Iranian territorial waters. In addition to the civil monetary penalty, the Initial RDO deemed waived Respondents' inability to pay argument, declined to suspend any of the civil monetary penalty, and imposed an indefinite denial order that would be lifted when Respondents paid the civil monetary penalty. *See* 85 Fed. Reg. at 15,422 and 15,427.

On initial review, I affirmed the ALJ's findings of liability, agreed that Respondents waived their inability to pay argument, and imposed a 15-year denial order against Respondents. *Id*. at 15,420-21. I also vacated and remanded the civil monetary penalty for reexamination, in particular considering whether the penalty was proportional to previous penalties imposed in BIS cases. *Id.*

[4] In the Initial RDO, the ALJ appropriately used the conversion date of when Nordic entered into its contract with Mapna. *See* 85 Fed. Reg. 15,417 n.6.

[5] The maximum civil penalty amount is subject to increase pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, 701 (2015). *See* 15 C.F.R. § 6.4(b)(4).

The ALJ acted quickly, ordered additional briefing focused on the penalty amount, and reaffirmed the $31,425,760 civil monetary penalty. The ALJ also determined that no suspension of the civil monetary penalty was warranted.

II. Review Under Section 766.22

A. Jurisdiction

The undersigned has jurisdiction under Section 766.22 of the EAR.[6] While this case was pending before the ALJ, the Export Control Reform Act of 2018 (ECRA) became law. *See* Public Law 115-232 (2018) (codified at 50 U.S.C. §§ 4801-4852). At the time of the offenses, however, the previous statutory scheme, the Export Administration Act of 1979, had lapsed and, as noted above, the EAR was kept in effect under the International Emergency Economic Powers Act (IEEPA). ECRA provided that the authority of the EAR and any judicial or administrative proceedings pending on the date of enactment would be unaffected. *See* 50 U.S.C. § 4826.

B. Penalties

1. Scope of Review

In the Remand Order, I made clear that "Respondents' conduct in this case was unquestionably serious, and it warrants a significant sanction." 85 Fed. Reg. at 15,418. After examining other cases in which the civil monetary penalties were small percentages of the total amount permitted under the relevant statute, I noted:

> Respondents' conduct was serious, and they should be punished. The ALJ was correct that any penalty "should be such that it dissuades future violations of this sort, and acts as a strong deterrent against this type of behavior." Viewed through this lens, *it may well be that the civil monetary penalty in case will be substantial. Perhaps it will remain unchanged*. But the record would benefit from further development on the issue of proportionality.

[6] Because the conduct at issue in this case took place in 2012 and 2013, those versions of the EAR govern the substantive aspects of the case. *See* 85 Fed. Reg. at 15,417 n.7.

Id. at 15,419 (emphasis added). In addition, the Remand Order explained "that penalties in litigated cases should be higher than settlement cases based on similar conduct. Indeed, the EAR guidelines on settlement gave the respondents notice that 'penalties for settlements reached after the initiation of litigation will usually be higher than those' that settle." *Id.* at 15,418 (citing 15 C.F.R. part 766, Supp. No. 1).[7]

The parties' positions on the appropriate penalty are diametrically opposed. BIS believes the penalty should be affirmed in its entirety.[8] Respondents believe no civil penalty is in order. If one is imposed, however, Respondents argue it should be suspended for a two-year period contingent on Respondents' compliance with the EAR and then expire.

The ALJ's Penalty RDO examines the civil monetary penalty under four general premises: (1) that he need not compare this case "to all previous BIS decisions ever issued" and that cases with "dissimilar fact patterns should not be considered in a proportionality evaluation," noting that exports of medical equipment "should have little effect where oil and gas survey services are at issue"; (2) the "aged nature of cases" should be discounted, essentially, because of the time value of money; (3) the effectiveness of previous sanctions and if penalties in the industry have not been enough historically to deter misconduct, a further sanction is warranted; and (4) "the possibility that a case is sui generis, unique among all cases" that "a recommended decision may trailblaze a path where no ALJ has gone before."

---

[7] As noted in the Remand Order, the 2014 version of the Regulations guide the penalty analysis in this matter. 85 Fed. Reg. at 15,418 n.11.

[8] In its briefing, BIS argues that the statutory maximum is much higher than the ALJ's recommendation here. Citing 50 U.S.C. § 1705(a)-(b), BIS notes "the maximum civil monetary penalty allowed by IEEPA is the greater of $307,922 or twice the value of the transaction upon which the penalty is imposed, *for each violation of the Regulations*." Because Respondents were charged with three violations of the EAR, BIS asserts the total statutory maximum is $94,277,280; that is, doubling the value of the seismic contract for each of the three charges.

IEEPA provides that it is "unlawful for a person to violate . . . any license, order, *regulation*, or prohibition issued under this chapter," and permits "an amount that is *twice the amount of the transaction that is the basis of the violation* with respect to which the penalty is imposed." 50 U.S.C. § 1705(a)-(b) (emphases added).

Respectfully, the ALJ's narrow analysis was erroneous. The ALJ's single-footnote, summary dismissal of cases not in the oil and gas industry is unnecessarily restrictive. As an example, the ALJ distinguishes *In the Matter of Aiman Ammar*, 80 Fed. Reg. 57,572 (Sept. 24, 2015)—a case both parties believe to be in their favor, and the undersigned found instructive in the Remand Order, see 85 Fed. Reg. at 15,419—as providing "little guidance" because the violations in that case related to computer equipment export-controlled for National Security reasons to another embargoed country (Syria) "are so factually different from the violations at issue" here such that it "simply do[es] not compare and any sanction leveled against Aiman Ammar provides no guidance here." In addition, with respect to "aged" cases, where similar cases are identified, an appropriate point of analysis is the percentage of the penalty against the statutory maximum, not simply the dollar amount. Furthermore, the ALJ's industry-specific, historical-deterrence factor finds little support in the Penalty RDO, IEEPA, or the Regulations. If, instead, this case is sui generis in the ALJ's view, I respectfully disagree.

Respondents focus their arguments on the number of violations and average penalty per violation as being dispositive of the penalty issue. I disagree. Congress, in both IEEPA and now ECRA, made clear that the value of the transaction is the touchstone for determining the quantum of the penalty.[9] Although a significant number of violations can be an aggravating factor—potentially probative of senior-level involvement, for instance—the value of the transaction is of greater importance when assessing the proper amount for a penalty. By providing for a penalty scheme that authorized the greater of either $307,922 or double the amount of the transaction, Congress's intent to provide a genuine disincentive is clear.

[9] *See* 50 U.S.C. § 1705(b) (IEEPA and providing for a per violation penalty that is the greater of $307,922 (with adjustment for inflation) or twice the value of the transaction that is the basis for the violation) and 50 U.S.C. § 4819(c)(1)(A) (ECRA, same).

Respondents also argue that the "contract for seismic services cannot be the legal basis for a civil penalty under the EAR and any penalty must be based only on the value of the U.S. origin goods that were used to conduct the survey." The statute and Regulations belie that claim and permit the use of the transaction value; here, the transaction value is the value of the contract. The EAR provides that, where "[t]he quantity and/or value of the exports was high, such that a greater penalty may be necessary to serve as an adequate penalty for the violation or deterrence of future violations, or to make the penalty proportionate to those for otherwise comparable violations involving exports of lower quantity or value." 15 C.F.R. Part 766, Supp. No. 1 (2014).

The ALJ and BIS both point to the EAR's penalty provisions as they relate to criminal or other ancillary enforcement actions. The 2014 version of the EAR provides that "where a party is receiving substantial criminal penalties, BIS may find that sufficient deterrence may be achieved by lesser administrative sanctions than would be appropriate in the absence of criminal penalties." 15 C.F.R. Part 766, Supp. No. 1 (2014). But the converse is also true, and "BIS might seek greater administrative sanctions in an otherwise similar case where a party is not subjected to criminal penalties." *Id.*

BIS's brief on review properly frames the lens through which the penalty should be assessed:

> (1) the destination involved – Iran, (2) the sensitivity of the items – which are both National Security ("NS") and Anti-Terrorism ("AT") controlled,[10] (3) the knowledge and awareness of senior-level management, including Respondent Innhaug – the company's Chairman, and (4) blatantly false statements in a formal submission to BIS in an attempt to cover up their actions.

[10] National Security controls are imposed on items "that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States." 15 C.F.R. § 742.4 (2019).

BIS's framework tracks the EAR. *See* 15 C.F.R. Part 766, Supp. 1 (2014). This formulation was also endorsed by Congress in ECRA's penalty scheme, and although this case is proceeding under IEEPA authority, Congress's recent guidance is instructive.[11]

2. Amount of the Penalty

Both parties and the ALJ point to BIS's settlement with Weatherford International as providing guidance. In that matter, the company and a number of its affiliates settled more than 170 violations related to exports of oil field equipment to Iran and other embargoed destinations. *In the Matter of Weatherford Int'l* (Settlement Order dated Dec. 23, 2013). The oil field equipment at issue there was designated as EAR99[12] under the Regulations, as compared to the National Security- and Anti-Terrorism-level controls with respect to Respondents' actions. The value of the equipment in that case was approximately $50,136,255, and the company paid a civil monetary penalty of $50 million. The company also paid a $50 million penalty to the Department of Justice to resolve the company's criminal liability. BIS did not require a denial order in *Weatherford*. In its settlement with BIS, there was no mention of senior-level management involvement or false statements, as in this case. So, accounting for the BIS and criminal resolution, Weatherford paid approximately twice the value of the items in a case that

---

Anti-terrorism controls to Iran "are additional to the nearly comprehensive embargo administered by the Treasury Department's Office of Foreign Assets Control." And "[l]icenses to export covered items to Iran are almost always denied." ERIC L. HIRSCHHORN, THE EXPORT CONTROL AND EMBARGO HANDBOOK 61 (3d ed. 2010) (footnote omitted); *see also* 15 C.F.R. § 742.8 (2019) (Anti-terrorism controls to Iran).

[11] Generally aligning with BIS's formulation, ECRA includes a "Standards for levels of civil penalty." 50 U.S.C. § 4819(c)(3). That subparagraph provides:

> The Secretary may by regulation provide standards for establishing levels of civil penalty under this subsection based upon factors such as the seriousness of the violation, the culpability of the violator, and such mitigating factors as the violator's record of cooperation with the Government in disclosing the violation.

Id.

[12] EAR99 is a designation for items subject to the EAR but not listed on the CCL. *See* 15 C.F.R. §§ 734.3(c) and 772.1.

was settled and where, unlike here, there was no effort to mislead BIS in the course of its investigation.

The resolution of *In the Matter of Aiman Ammar*, 80 Fed. Reg. 57,572 (Sept. 24, 2015), is also instructive. That case, also a settlement, assessed a $7,000,000 civil monetary penalty, but with all but $250,000 suspended, and denial orders ranging from four to seven years. The equipment in *Ammar* was approximately $3.6 million worth of computer equipment and software, "nearly all" of which was controlled for National Security and Anti-Terrorism reasons. *Id.* at 57,573. The shipments were to Syria, an embargoed country. *See id.* That case did not have the false statements charge present in this case.

In the Matter of Yantai Jereh Oilfield Services Group Co., Ltd. (Settlement Order dated Dec. 10, 2018), also involved the knowing export of oil and gas equipment to Iran. The equipment was designated as EAR99 and had a value of approximately $381,881. The conduct there was led by lower-level personnel—a sales executive and a business manager—than present in this case. In settling the matter, the respondent paid BIS a civil monetary penalty of $600,000 (the penalty paid to BIS only amounts to a multiple of 1.57), in addition to $2,774,972 to the Office of Foreign Assets Control. BIS also imposed a five-year suspended denial order. Both the ALJ and BIS correctly note that, in *Jereh*, the respondent took additional measures to account for its violations including terminating the individuals involved in the conduct, obtaining a review by outside counsel of its trade compliance program, and establishing an office to run its trade compliance program, among other things. None of those remedial measures is present here.

BIS also relies on *In the Matters of National Oilwell Varco & Dreco Energy Services Ltd.* (Settlement Order dated Nov. 8, 2016), as a relevant case. As part of a global resolution in that case, the respondents settled 22 charges, including one knowledge charge, of EAR99 oilfield equipment to Iran and one item to Oman controlled for Nuclear Non-Proliferation reasons. The total value of the

items was just under $2.4 million, and the respondents paid BIS a $2.5 million penalty.[13] In settling the case, BIS did not require a denial order. There was one charge of a knowing violation, but unlike this case, there was no evidence in that settlement agreement of upper-management involvement and no false statements to BIS.

Having considered a number of settled cases, I turn to a litigated case, and it tells a similar story. In *In the Matter of Trilogy Int'l*, 83 Fed. Reg. 9259 (Mar. 5, 2018), Under Secretary Ricardel reviewed three charges each against the company and its president. The items were valued at $76,035, controlled for National Security reasons, and were exported to Russia, a non-embargoed country. Under Secretary Ricardel imposed a total civil monetary penalty of $200,000, half against each respondent, as well as a 10-year denial order. *Id.* at 9262. The similarities in *Trilogy* are useful for comparison to this case: items controlled for National Security reasons, but to a less-restrictive destination; involvement of upper-management of the company; and the matter was litigated rather than settled. This case, however, has additional aggravating factors not present in *Trilogy*: the items here were exported to an embargoed destination; the charges here included a knowledge charge; and, critically, Respondents' false and misleading statements to BIS in the course of the investigation.

The cases above, in particular *Trilogy*, support a substantial civil monetary penalty coupled with a lengthy denial order. Put simply, Respondents' conduct in this case was far more

[13] I agree with the ALJ that this settlement is somewhat confusing. National Oilwell Varco paid a total of $25 million by way of a non-prosecution agreement with the Department of Justice for several trade-related offenses. The BIS Settlement Order also indicates a separate settlement agreement with the Office of Foreign Assets Control at the U.S. Department of the Treasury. It is unclear from the public record how closely related the conduct is to the conduct for the BIS-only portion of the settlement. In any event, the BIS-only penalty is significant, and when paired with a $25 million trade-related global resolution, it is clear that the respondents in that case were punished severely. As discussed above, there is no related criminal action here, and the EAR permits me to take that into account. *See* 15 C.F.R. Part 766, Supp. No. 1 (2014).

harmful to the national security interests of the United States than in *Trilogy*, in particular the significant penalty (relative to the value of the transaction at issue) and a lengthy denial order.

As the ALJ described in the Initial RDO and Penalty RDO, Respondents' knowing reexport of oil survey equipment to Iran is something the U.S. Government should punish harshly. Moreover, Respondents' false statements to BIS in the course of its investigation likewise deserves a significant sanction. Were it otherwise, federal law enforcement would be irreparably hampered.

In the Remand Order, I listed a number of cases settled with proportionally lower penalties to help guide the ALJ on remand. *See* 85 Fed. Reg. at 15,419. But, as was clear from the Remand Order, those cases were just that: negotiated resolutions between the parties where respondents admitted their liability and enabled BIS to free up resources to pursue other matters. *See* 15 C.F.R. Part 766 Supp. No. 1 (2014).[14] Here, by contrast, Respondents put BIS to the burden of litigation and Respondents participated in litigation only to a point. After Respondents disclaimed further participation on the eve of the hearing, BIS was required to put on several witnesses to explain Respondents' conduct. The ALJ then wrote a lengthy RDO finding Respondents liable, which has now come before the undersigned twice. "Because the effective implementation of the U.S. export control system depends on the efficient use of BIS resources, BIS has an interest in encouraging early settlement and may take this interest into account in determining settlement terms." *Id.* The converse holds true, as well.

The cases discussed in the Remand RDO lack the combined degree of aggravating factors present in this case, including lying to BIS. Even the litigated cases cited in the Remand Order

[14] The EAR provides: "[E]arly settlement—for example, before a charging letter has been served—has the benefit of freeing resources for BIS to deploy in other matters. In contrast, for example, the BIS resources saved by settlement on the eve of an adversary hearing under § 766.13 are fewer, insofar as BIS has already expended significant resources on discovery, motions practice, and trial preparation." 15 C.F.R. Part 766, Supp. No. 1 (2014).

had significantly less aggravating conduct than in this case. *See* 85 Fed. Reg. at 15,418-19. In addition, the more recent cases demonstrate BIS's commitment to vindicating the national interest in a robust system of export-control compliance.

Respondents contend that to affirm the civil monetary penalty would be unconstitutional. Citing the Eighth Amendment to the U.S. Constitution and *United States v. Bajakajian*, 524 U.S. 321 (1998), Respondents claim that affirming the civil monetary penalty, coupled with the 15-year denial order, would be an excessive fine. The Court in *Bajakajian* recognized a broad deference to the legislature to set punishments. *Id.* at 336. Congress has spoken clearly in IEEPA and later in ECRA that the appropriate maximum civil penalty is the *greater of* $307,922 (at current inflation) or twice the value of the transaction.[15] With respect to proportionality, the *Bajakajian* Court held that a penalty violates the Excessive Fines Clause of the Eighth Amendment "if it is grossly disproportional to the gravity of the offense that it is designed to punish." *Id.* at 332.[16] As evidenced in the settled and litigated cases discussed above, cases of this nature—involving shipments to an embargoed country, of sensitive National Security-controlled items, with knowledge and involvement of company leadership, and then lying to law enforcement about it—warrant high penalties, including the imposition of up to the maximum penalty. The fact that the monetary penalty is high and that the penalty includes an active denial order period does not mean that the penalty is grossly disproportionate given the factors at play in this case.

[15] *See* note 9, *supra*.

[16] *See also Newell Recycling Co. v. United States Envt'l Prot. Agency*, 231 F.3d 204, 210 (5th Cir. 2000) ("No matter how excessive (in lay terms) an administrative fine may appear, if the fine does not exceed the limits prescribed by the statute authorizing it, the fine does not violate the Eighth Amendment."); *Collins v. SEC*, 736 F.3d 521 (D.C. Cir. 2013) (upholding a civil penalty that is more than 100 times the amount of the ordered disgorgement, even where other SEC cases provided a penalty closer to the amount of the disgorgement)

Against the backdrop of the cases and legal framework discussed above, Respondents' knowing export of sensitive oilfield survey equipment to an American adversary, led by the company's chairman, and then lying to BIS about it, warrants a civil monetary penalty of twice the value of the underlying transaction.

3. Suspension of the Penalty

Respondents seek a suspension of the civil monetary penalty for two years so long as they remain compliant with the EAR.[17] Respondents claimed in their briefing that BIS suspends civil monetary penalties 43% of the time since 2009. *See* 85 Fed. Reg. 15,419. As in the Remand Order, I need not determine whether that is true. The fact remains that, even under Respondents' argument, suspending a civil monetary penalty is not the norm, and I decline to do so here.

The EAR permits the suspension of all or part of a civil monetary penalty. 15 C.F.R. § 764.3 (2014).[18] Unfortunately, the EAR provides limited guidance on the factors one should use to determine whether suspension is appropriate. Among the considerations are "whether the party has demonstrated a limited ability to pay"—an argument I previously deemed the Respondents waived, *see* 85 Fed. Reg. 15,417 n.5—and "whether, in light of all the circumstances, such suspension or deferral is necessary to make the impact of the penalty

[17] I left this possibility open in the Remand RDO. *See* 85 Fed. Reg. 15,419 ("Because I am vacating and remanding the civil monetary penalty, I need not decide at this point whether the suspension of any portion is appropriate. It may well not be, as the ALJ concluded in the [Initial] RDO, but I will leave that issue open for the ALJ to consider on remand.").

[18] The 2014 version of the provision provides, in full: "The payment of any civil penalty may be deferred or suspended in whole or in part during any probation period that may be imposed. Such deferral or suspension shall not bar the collection of the penalty if the conditions of the deferral, suspension, or probation are not fulfilled." 15 C.F.R. § 764.3 (2014).

consistent with the impact of BIS penalties on other parties who committed similar violations." 15 C.F.R. Part 766, Supp. No. 1.

In support of their suspension argument, the only case Respondents cite is *Aiman Ammar*, in which BIS settled with the respondents for $7 million with all but $250,000 suspended. But that suspension arose in the context of a settlement, a fact not present here. As discussed in the Remand Order, many of the suspended penalties occurred in cases that were settled, an indication that those respondents accepted responsibility for their conduct. *See* 85 Fed. Reg. 15,419 (collecting cases).

Several facts lead me to conclude that suspending the civil monetary penalty would be inappropriate. As is clear from the facts of this case, Respondents' conduct was serious: providing high-level export-controlled equipment to benefit one of America's adversaries; done at the behest of the head of the company; and then lying to BIS about that conduct. Indeed, even at this stage of the proceedings, Respondents do not appear to have taken sufficient responsibility for their conduct. In their briefing before the undersigned that led to the Remand Order, Respondents claim that Nordic made a submission to BIS in the course of the investigation, and it "contained incorrect information at the specific request of one of the [BIS Office of Export Enforcement] agents involved in the investigation."

In short, Respondents offer little to support their request for a suspension of the civil monetary penalty other than the penalty is sizeable and that Nordic is in "dire financial condition." Notwithstanding that Respondents waived this inability to pay argument, *see* 85 Fed. Reg. 15,417 n.5, even if I were to consider it, I have determined a suspension is inappropriate. An examination of cases in which a civil monetary penalty was suspended shows that they were

most often done in the settlement context. Indeed, the totality of factors in this case confirms that a suspension of the civil monetary penalty is unwarranted.

* * *

Accordingly, based on my review of the Initial RDO, the Penalty RDO, the parties' briefs relating to the civil monetary penalty, and entire record, I affirm the civil monetary penalty in the amount of $31,425,760 jointly and severally against each Respondent. In addition, I determine that no suspension of the civil monetary penalty is warranted.

Accordingly, it is therefore ordered:

First, a civil penalty of $31,425,760 shall be assessed jointly and severally against each Respondent, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

Second, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701–3720E (2000)), the civil penalties owed under this Order accrue interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, the party that fails to make payment will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and administrative charge.

Third, this Order shall be served on Respondents Nordic Maritime Pte. Ltd. and Morten Innhaug and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Penalty Recommended Decision and Order shall be published in the **Federal Register**.

The findings of liability and the denial order, which constitute final agency action in this matter, are effective immediately.

Issued this 19th day of August, 2020.

CORDELL HULL

Digitally signed by CORDELL HULL
Date: 2020.08.19 17:47:34 -04'00'

Cordell A. Hull
Acting Under Secretary of Commerce for
Industry and Security

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

IN THE MATTERS OF:	Docket No.
Nordic Maritime Pte. Ltd.,	17-BIS-0004
and	
Morten Innhaug,	
Respondents.	

RECOMMENDED PENALTY ORDER ON REMAND

On March 11, 2020, the Acting Under Secretary of Commerce for Industry and Security issued a Partial Remand and Final Denial Order (Remand). In the Remand, the Under Secretary affirmed in part, modified in part, and vacated in part the undersigned Administrative Law Judge's (ALJ) Recommended Decision and Order (RDO) issued on February 7, 2020. Specifically, the Under Secretary affirmed the findings of liability, and agreed Respondents committed the violations alleged in the charging letters. The Under Secretary modified the denial order to a period of 15 years and vacated the $31,425,760.00 penalty recommended against Respondents. In the Under Secretary's view, the record did not support the penalty, and the penalty did not appear to be proportional to sanctions imposed in similar, previous cases. Remand Order at 15.

Thereafter, the undersigned instructed the parties to brief the proportionality issue. Both parties timely field briefs and this matter is ripe for a recommended decision on remand.

Preliminary Issue

Upon review of the parties' post-Remand submissions, the undersigned notes both parties made arguments beyond the scope of the undersigned's briefing order. The court's briefing order was perfectly clear "[T]he parties shall brief the penalty issue remanded to the undersigned, **but only regarding proportionality with previous [Bureau of Industry and Security's] BIS' decisions**." Brief Scheduling Order after Partial Remand at 2 (emphasis added). Accordingly, the undersigned will only consider the parties' arguments addressing proportionality.

Proportionality

As set forth in the Remand, the Under Secretary affirmed the RDO's analysis concerning the aggravating and mitigating factors in 15 C.F.R. Part 766, Supp. No. 1. Therefore, the undersigned will not repeat that analysis here; it is the law of the case. *Sim v. Republic of Hungary*, --F.Supp.3d-- 2020 WL 1170485 (D.D.C. 2020) (discussing law of the case doctrine).[1] Instead, the undersigned will review previous BIS decisions and recommend a sanction proportional to those previously imposed by BIS, as instructed in the Remand.

First, the undersigned notes that other than the well-reasoned explanation provided by the Under Secretary's Remand, there is little BIS guidance on exactly how an ALJ should analyze proportionality. The obvious first step is to compare prior decisions to the case at bar. But it goes without saying that an ALJ need not compare the

[1] *LaShawn A. v. Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996) ("When there are multiple appeals taken in the course of a single piece of litigation, law-of-the-case doctrine holds that decisions rendered on the first appeal should not be revisited on later trips to the appellate court."); id. at 1395 n.7 ("If a party fails to raise a point he could have raised in the first appeal, the 'waiver variant' of the law-of-the-case doctrine generally precludes the court from considering the point in the next appeal of the same case.").

instant case to all previous BIS decisions ever issued. For example, cases with dissimilar fact patterns should not be considered in a proportionality evaluation, i.e., cases involving the sale of medical goods should have little effect on a case where oil and gas survey services are at issue. Thus, the first factor when considering proportionality is how closely the proffered cases' facts mirror the case in question.

Common sense also dictates the undersigned consider the aged nature of a previous case and its temporal proximity to the case at bar. Within this same consideration, the ALJ should also consider any changes in BIS regulations and/or congressional enactments controlling BIS operations. For example, a $20,000.00 sanction imposed by BIS in 1995 may not be equal to a $20,000.00 sanction imposed today simply because of inflation and/or a congressional intent to ratchet up penalties.

An ALJ should also consider the effectiveness of previous sanctions. For example, if BIS imposed a $35,000.00 penalty for a violation, but that sanction does not sufficiently deter similar conduct in the industry, an ALJ would be right to recommend the Under Secretary ratchet up the penalty to adjust for the lack of deterrent effect in the regulated community.

Lastly, the undersigned notes that there is the possibility that a case is sui generis, unique among all cases, and that its facts are so different than those preexisting in the body of BIS case law addressing the issue, that a recommended decision may trailblaze a path where no ALJ has gone before. Admittedly, these cases would be rare, but an ALJ should be prepared to levy an appropriate sanction unlike any previously imposed when necessary, particularly where a respondent's conduct poses a grave threat to the United States.

With this non-exclusive list of considerations in mind, the undersigned turns to: 1. the cases cited in the Remand; 2. BIS' citation of cases; and 3. Respondents' arguments addressing the proportionality issue. I address each in turn.

Cases Cited in the Under Secretary's Remand

A review of most of the cases cited by the Under Secretary shows that while many involved intentional violations, like the case at bar, the similarities end there. For example, *In the Matter of Ali Asghar Manzarpour*, BIS sought to punish the export of a single-engine aircraft to Iran. 73 Fed. Reg. 12,073 (Mar. 6, 2008). Similarly, *In the Matter of Teepad Electronic General Trading* and *In the matter of Swiss Telecom* involved the export of telecommunication devices to Iran and the latter included an export of technical information violation. 71 Fed. Reg. 34,596 (June 15, 2006); 71 Fed. Reg. 32,920 (June 7, 2006).[2] Clearly, none of these cases includes facts even remotely

[2] For similar reasons, the undersigned finds the following cases insufficiently similar to provide any instruction on proportionality of an appropriate sanction in this case:

> *In the Matter of Jabal Damavand General Trading Company,* 67 Fed. Reg. 32,009 (May 13, 2002) involving equipment used in ferrography "an analytical method of assessing machine health by quantifying and examining ferrous wear particles suspended in the lubricant or hydraulic fluid." *Termination for Default*, 2005-JAN ARMLAW 94 (2005).
>
> *In the Matter of Arian Transportvermittlungs GmbH*, 69 Fed. Reg. 28,120 (May 18, 2004) involving reexporting of computers and encryption software.
>
> *In the Matter of Aiman Ammar*, 80 Fed. Reg. 57,572 (September 24, 2015) involving a conspiracy to export and reexport computer equipment and software designed for use in monitoring and controlling web traffic and of other associated equipment.
>
> *In the Matter of Yavuz Cizmeci*, 80 Fed. Reg. 18,194 (April 3, 2015) involving a transaction of a Boeing 747.
>
> *In the Matter of Manoj Bhayana*, 76 Fed. Reg. 18,716 (April 5, 2011) involving the prohibited sale of graphite rods and pipes.
>
> *In the matter of William Kovacs*, 72 Fed. Reg. 8,967 (February 28, 2007) involving illegal export of an industrial furnace to China.
>
> *In the matter of Saeid Yahya Charkhian*, 82 Fed. Reg. 61,540 (December 28, 2017) illegal exports including masking wax, lithium batteries, and zirconia crucibles.

similar to Respondents' conduct here; they simply do not even begin to have the long lasting ramifications as do the violations in this case.

At the risk of repeating the RDO's analysis, the undersigned again highlights that not only are Respondents' actions intentional, but the blatant violations resulted in the use of U.S. equipment to survey the Forouz B natural gas field—a vast natural resource controlled by Iran, a fierce American adversary. It goes without saying; these oil and gas surveys pave the way for Iran, through companies like MAPNA, to develop natural resources and in turn help fund antagonistic entities (including terrorists) intent on harming the U.S., her allies, and interests. Thus, this is not a case where mere equipment changed hands to Iran or Iranian entities, nor simply equipment that might be used in antagonistic ways. This is a case where American equipment was used to develop an enemies' money making abilities through surveying a natural gas field. The monetary penalty should reflect that specific conduct and long lasting effects which could span decades. Again, Respondents did not simply procure equipment, they secured a charter party and helped effect the survey equipment's use to Iran's benefit.

Unlike most of the cases cited in the Remand, *In the Matter of Adbulamir*

In the Matter of Berty Tyloo, 82 Fed. Reg. 4,842 (January 17, 2017) involving misrepresentation and concealment of facts in the course of an investigation related to unlicensed exports and reexports of goods to Syria.

In the Matter of Eric Baird, 83 Fed. Reg. 65,340 (December 20, 2018) involving felony smuggling and 166 violations of the EAR, with no knowledge charges, and none related to gas/oil exploration.

In the matter of Access USA Shipping, LLC, Order dated February 9, 2017, involving illegally shipped rifle scopes, night vision lenses, weapons parts and EAR99 items.

In the Matter of Petrom GmbH International Trade, 70 Fed. Reg. 32,743 (June 6, 2005) involving export of check valves, regulatory valves, test kits, electrical equipment, ship tire curing bladders, and other spare parts, all of which were classified as EAR99 items under the Regulations.

Mahdi, is factually akin to this matter--it involved a conspiracy to export "oil field equipment" from the United States to Iraq and Iran. 68 Fed. Reg. 57,406 (Oct. 3, 2003).[3] There, BIS imposed a penalty denying respondent's export privileges for 20 years, but did not impose a monetary sanction.

At first blush, *Mahdi* seems to support the argument that a 20-year denial order without monetary penalty would be fitting in this case; the facts are similar, at least to the extent the oil field equipment could be analogized to the survey equipment here and both being used by notorious U.S. enemies to develop lucrative natural resources. On the other hand, a closer look guides the undersigned in the opposite direction. A review of *Mahdi* shows the respondent did not simply receive a 20-year denial order, he also spent 51 months incarcerated in an American prison.

Obviously, the fairest way to make Respondents' penalty in this case proportional to *Mahdi* would be to incarcerate Respondent-Innhaug for 51 months, perhaps more since the Remand order only issued a 15 year denial order. However, as all parties know, this is a civil proceeding, and the power to incarcerate EAR violators is beyond the undersigned's authority. But the question remains: how then should the undersigned consider *Mahdi*'s precedential value in a proportionality analysis here? The answer lies in a careful perusal of 15 C.F.R. Supplemental 1 Part 766 (2012), which makes specific accounting for related criminal convictions by providing:

> Where an administrative enforcement matter under the EAR involves conduct giving rise to related criminal or civil charges, BIS may take into account the related violations, and their resolution, in determining what administrative sanctions are appropriate under part 766. . . . In appropriate cases where a party is receiving substantial criminal penalties, BIS may find that sufficient deterrence may be achieved by lesser administrative

[3] The undersigned observes the decision uses both "oil filed equipment" and "oil field equipment" and believes the former to be a mere typo.

> sanctions than would be appropriate in the absence of criminal penalties. Conversely, BIS might seek greater administrative sanctions in an otherwise similar case where a party is not subjected to criminal penalties.

Applying this provision here, the undersigned notes the record concerning Respondents is devoid of any facts relating to criminal incarceration and/or sentencing. Accordingly, to make Respondents' sanction proportional to *Mahdi*, the undersigned is inclined to again recommend a hefty monetary penalty equivalent to approximately 51 months' incarceration.

Having reviewed the decisions in the Remand, the undersigned turns to the arguments advanced by BIS.

BIS' Arguments

In its post-Remand briefing, BIS argues, "Few, if any, administrative enforcement cases involve the combined degree of willfulness and the breadth of other aggravating factors . . . ." BIS Post-Remand Brief at 10. In other words, BIS argues this case is uniquely egregious given its involvement with: Iran; the sensitivity of the survey equipment; the awareness of senior level management; the sensitivity of the items, both of which are controlled for national security and anti-terrorism reasons; and the blatant false statements made by Respondent-Innhaug in an attempt to cover up Respondents' violations. *Id.* BIS asserts these reasons, as compared to relevant precedent, merit a high-end penalty.

In support of its argument, BIS first cites *In the Matter of Yantai Jereh Oilfield Services Group Co., LTD*, a case resulting in the respondents paying over 3 million dollars prior to litigation, which related to "much less sensitive oil and gas field

equipment . . . ."[4] *Id.* A close review of that settlement shows the respondent there agreed to do more than just pay a fine, but in addition agreed to: terminate three individuals responsible for the violations; hire and/or engage outside counsel and personnel; hold training sessions; and implement various training and compliance procedures to prevent future violations. Accordingly, a closer review of *Yantai Jereh* shows it stands in stark contrast with the case at hand. There, the respondents expressed a willingness to come into compliance with their exporting obligations, and exhibited a cooperative attitude in preventing future violations. Ultimately, this cooperative attitude combined with the willingness to pay over 3 million in penalties renders *Yantai Jereh* a perfect decision when considering an appropriate settlement, but is difficult to apply to the case sub judice, where Respondents self-reported a violation to BIS, lied in the self-reporting document, and then proceeded to litigation.

For similar reasons, *In the Matters of National Oilwell Varco and Dreco Energy Services Ltd.*, (*NOV*) is also of limited value. That case also involved oil and gas equipment and reflects a settlement where the respondents agreed to pay over 2.5 million dollars in penalties.[5] BIS notes that the items at issue there were valued at 2.3 million dollars, and respondents agreed to joint and several liability for 2.5 million.

Unfortunately, *NOV* provides little precedential guidance. First, that settlement agreement appears to be somewhat confusing. The beginning of the document notes the parties agreed to settle the potential civil liability for approximately 5.9 million dollars. In the body of the settlement description, BIS notes the statutory maximum penalty was approximately 37 million dollars and the "base penalty amount" was

[4] https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20181212_jereh_settlement.pdf
[5] https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20161114_varco.pdf

approximately 8.5 million. But at the end of that same document, the description reads as follows: "NOV's $5,976,028 settlement with OFAC will be deemed satisfied by its payment of $25,000,000 as specifically set forth in the NPA arising out of the same pattern of conduct." Ultimately, the undersigned can make *nec caput nec pedes* on how BIS reached its calculations and is unable to draw instruction from that case.

BIS also cites to *In the Matter of Weatherford International Ltd. et al.*, ("*Weatherford*" Settlement Order dated December 23, 2013). There, respondents agreed to pay BIS a 50 million dollar penalty to resolve allegations of knowingly exporting EAR99 oil field equipment to Iran, Syria, and Cuba and the unlicensed reexport of items controlled for Non-Proliferation purposes to Venezuela and Mexico. There, the value of the equipment was also approximately 50 million dollars. Again, however, there was a collateral action where Weatherford also received a 48 million dollar penalty pursuant to a deferred prosecution, with an additional 2 million in criminal fines. Curiously, the total amount the respondents ended up paying was approximately double the amount of the transaction involved in the violations. It bears repeating, BIS may consider collateral criminal prosecutions and adjust civil penalties where appropriate and in the absence of those proceedings may seek higher sanctions. Accordingly, this case could be read as supporting a similar sanction here, i.e., double the amount of the transaction involved.

In this same line of cases, BIS also cites to *Schlumberger Oilfield Holdings*, where a defendant pled guilty to a conspiracy to violate the International Emergency Economic Powers Act (IEEPA) for its willful provision of oilfield services and equipment to customers in Iran and Sudan.[6] Ultimately, the defendant agreed to a 77.5

[6] https://www.justice.gov/opa/pr/schlumberger-oilfield-holdings-ltd-agrees-plead-guilty-and-pay-over-2327-million-violating-us

million criminal forfeiture and a 155 million criminal fine—twice the value of the underlying violation. Persuasively, BIS notes the then-Under Secretary's unrelenting commitment to aggressively prosecute violations involving embargoed destinations. BIS Post-Remand Brief at 12.[7] However, the undersigned does note the conduct in that case spanned approximately 6 years and involved sustaining Iranian and Sudanese oilfield operations. To this end, *Schlumberger* could be characterized as one of the most egregious violations ever recorded in the export industry, even more so than the incident in this case.

Finally, BIS argues many of the decisions cited in the Remand's proportionality discussion address pre-2008 violations. In BIS' view, those cases are of little value because they were decided under a substantially different penalty regime. BIS argues that when Congress enacted the IEEPA Enhancement Act in 2007, it did so to intensify the sanctions imposed on export violators by increasing the civil penalty cap from $50,000 per violation to $250,000, or twice the amount of the transaction at issue, whichever is greater. In BIS' view, cases prosecuted before these changes usually did not include monetary sanctions because the deterrent effect of the lower monetary amounts were not as effective as other sanctions.

The undersigned agrees the IEEPA Enhancement Act demonstrates congressional intent to impose higher penalties in export violation cases and the like. Thus, I agree that cases before 2008 do not express Congress' most recent penalty preferences and are of limited value when determining an appropriate monetary sanction in this case.

[7] BIS cites to other decisions too factually dissimilar to the case at hand, and therefore, the undersigned does not address the proportional value those decisions have here.

Respondents' Proportionality Argument

Like the Remand and BIS' brief, Respondents cite to several BIS decisions in support of its position that the recommended sanction is disproportionate with other BIS decisions. Respondents first argues *Aiman Ammar, et al.*, 80 Fed. Reg. 57,572 (September 24, 2015) where BIS assessed the respondent with a 7 million dollar penalty and denial orders of 4 to 7 years[8]. A review of *Aiman Ammar* shows that case involved the illegal reexport of computer equipment and software designed for use in monitoring and controlling web traffic and of other associated equipment. As noted above, the undersigned can draw little guidance from these types of violations because they are so factually different from the violations at issue. While the illicit sale of the equipment in *Aiman Ammar* certainly could be used against American interests, the undersigned finds that conduct pales in comparison to Respondents' conduct here, surveying a rich natural resource which could fund Iranian interests, and possible terrorist activity, in untold amounts. The cases simply do not compare and any sanction levied against Aiman Ammar provides no guidance here.

Respondents next cite to *In the Matter of Yavuz Cizmeci*, 80 Fed. Reg. 18,194 (April 3, 2015). Having already distinguished that case above, the undersigned need not revisit that analysis here.

Respondents next cite *United Medical Instruments, Inc*. which involved exports of medical devices to Iran. In that case, BIS settled with the export violator,

[8] Respondents also cite to *In the Matters of Nordic Maritime, et al.*, Partial Remand and Final Denial Order (Mar. 18, 2020) and *United States v. Bajakajian*, 524 U.S. 321, 328 (1998). The Under Secretary's Remand is discussed toughly above, and I need not revisit it here. The undersigned does not address *Bajakajian* given Respondent relies on it to make a constitutional argument beyond the scope of the briefing order. .

suspended and waived a $500,000 civil penalty with a 2-year denial period. However, BIS suspended both the monetary penalty and the 2-year probationary period contingent upon the respondent complying with the settlement agreement.[9] The undersigned draws little guidance from this case. Illicitly exporting/reexporting medical equipment is a far cry from assisting Iran in developing its natural resources, which generate revenue. Moreover, this case advanced to litigation and is not being disposed of by a settlement agreement. Accordingly, Respondents' argument that this case should somehow guide the undersigned to a lesser sanction here is unpersuasive.

For similar reasons, Respondents' reliance on *Chemical Partners Europe S.A.*, where BIS entered into a settlement for the illegal export of "coatings, pigments and paints" is unpersuasive.[10] Likewise, Respondents' citation to *Millitech, Inc.*, where BIS entered into a settlement for the illegal export of items to Russia and China are simply too dissimilar to provide guidance here.[11] Those cases cannot compare to what Respondents did—help Iran develop access to its oil and gas reservoirs.

CONCLUSION

Upon review of the file, the Remand's affirmance of the aggravating and mitigating factors, and after comparing this case to prior BIS decisions, the undersigned, without reservation, again recommends the Under Secretary impose a lofty monetary penalty. Respondents' conduct in this case cannot be understated. At the risk of replowing the same ground, the undersigned again reiterates that Respondents' export violations could foster efforts to harm America, her citizens and allies. As poignantly

[9] https://efoia.bis.doc.gov/index.php/documents/export-violations/export-violations-2013/887-e2346/file
[10] https://efoia.bis.doc.gov/index.php/documents/export-violations/export-violations-2016/1049-e2452/file
[11] https://efoia.bis.doc.gov/index.php/documents/export-violations/export-violations-2017/1135-e2520/file

described by the late Honorable Peter Fitzpatrick addressing similar conduct, American officials need to always be mindful that:

> There is an on-going war against terrorism. The events of September 11, 2001 reveal that international terrorism is a real threat to the national security of the United States. **To limit and curtail the financial support of terrorism the United States established an embargo against Iran**. The Respondents circumvention of the embargo by exporting goods destined for Iran . . . cannot be tolerated. The facts show that in order to achieve their objective Respondents made false statements, or caused false statements to be made.

Abdulamir Mahdi, 2003 WL 22257992 (emphasis added).

Judge Fitzpatrick's observations ring ever true in this case. Considering Respondents' actions, which no doubt promoted Iran's financial interests, the undersigned, without hesitation, recommends the highest penalty permitted by Congress. If the Under Secretary adopts this decision, there will be absolutely no doubt in this export industry, where you break American export law by illicitly helping Iran develop its natural resources, you help fund terrorism and you will pay the gravest of prices. Accordingly, the undersigned recommends that the Acting Under Secretary of Commerce impose a sanction in this case at the highest possible amount, i.e., two times the value of the transaction at issue, i.e., $31,425,760.00.

SO ORDERED.

Done and dated July 15, 2020, at
Galveston, Texas

DEAN C. METRY
ADMINISTRATIVE LAW JUDGE
UNITED STATES COAST GUARD

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

CHARGING LETTER

APR 28 2017

VIA FEDERAL EXPRESS

Morten Innhaug
16 Keppel Bay Drive
#04-20 Caribbean at Keppel Bay
Singapore 098643

Dear Mr. Innhaug,

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that you, Morten Innhaug, of Singapore ("Innhaug"), have violated the Export Administration Regulations (the "EAR" or "Regulations").[1] Specifically, BIS alleges that you committed the following violation:

Charge 1 15 C.F.R. § 764.2(b) – Causing, Aiding, and Abetting Unlicensed Reexports of Maritime Surveying Equipment to Iran

1. Between on or about May 1, 2012, and on or about April 4, 2013, Innhaug engaged in conduct prohibited by the Regulations by causing, aiding, abetting, counseling, commanding, inducing and/or permitting the unlawful reexport of U.S.-origin maritime surveying equipment to Iran by Nordic Maritime Pte Ltd., of Singapore ("Nordic Maritime").

2. At all pertinent times hereto, Innhaug was the Chairman and majority shareholder of Nordic Maritime, and directed and/or controlled its activities.

3. Between on or about May 1, 2012, and on or about April 4, 2013, Nordic Maritime engaged in conduct prohibited by the Regulations when it reexported to Iran items subject to the Regulations without the required U.S. Government authorization, in violation of Section 764.2(a) of the Regulations.

---

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2016). The violation alleged occurred in 2012-2013. The Regulations governing the violation at issue are found in the 2012-2013 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2012-2013). The 2016 Regulations currently govern the procedural aspects of this case.

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 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)).

4. Pursuant to Sections 742.4, 742.8, and 746.7 of the Regulations, the items—U.S.-origin maritime surveying equipment, including specifically compass birds and streamer sections, classified under Export Control Classification Number ("ECCN") 6A001 and controlled for National Security and Anti-Terrorism reasons—could not lawfully be exported or reexported to Iran without a BIS license. Section 746.7 of the Regulations also prohibited the export or reexport of any item subject to the Regulations if the transaction was prohibited by the ITSR. At all times pertinent hereto, the ITSR prohibited, inter alia, the unauthorized reexportation or supply, either directly or indirectly, of the items to Iran. *See* 31 C.F.R. §§ 560.203-.205.

5. In order to avoid duplication regarding transactions involving items subject to both the Regulations and the ITSR, Section 746.7 of the Regulations provided that authorization did not need to be obtained from both BIS and OFAC, but instead that authorization by OFAC under the ITSR was considered authorization for purposes of the Regulations.

6. However, Nordic Maritime reexported the items to the Forouz B natural gas field in Iran without seeking or obtaining authorization from BIS, or from OFAC, in connection with the items. Nordic Maritime used the items to conduct a seismic survey of the Forouz B gas field and did so effectively on behalf of or for the benefit of the Iranian Government.

7. As subsequently admitted by Nordic Maritime in a written submission to BIS dated April 15, 2014, Nordic Maritime operated a vessel (the M/V Orient Explorer) that it had leased from a "Russian State owned company Seismic Geophysical Company" and had "certain U.S.-origin seismic surveying equipment onboard (streamer sections and compass birds subject to the EAR and classified under ECCN 6A001) that were owned by" Company A. (Parenthetical in original). Moreover, Nordic Maritime conducted the "seismic survey in Iranian waters . . . under a contract that Nordic entered into with Mapna International FZE, a company based in Dubai, UAE." Furthermore, although feigning ignorance at the time the contract was entered, Nordic Maritime admitted in its April 15, 2014 submission that "Mapna International has significant ties to Iran" and that "the work for which Mapna International was contracting was in furtherance of Mapna Group's contract with the National Iranian Offshore Oil Company to [] explore the Forouz B natural gas field."

8. On or about April 11, 2012, prior to Nordic Maritime's reexport of the items to Iran, Innhaug received a cease and desist letter sent to his attention from counsel to the company (hereinafter, "Company A") that at the time held a BIS reexport license for the items. That letter indicated Company A's understanding, which was accurate, that the M/V Orient Explorer was en route with the items on board and would be deployed in Iranian waters after making a port of call in Dubai, United Arab Emirates. The letter warned that Nordic Maritime's use of the items in Iranian waters would violate U.S. law and would be "in direct breach of the terms of Re-Export License issued by the US Department of Commerce (Bureau of Industry and Security) in relation to use of the Equipment." (Parenthetical in original).

9. As alleged above, Nordic Maritime reexported the items to and used them in Iran's Forouz B natural gas field beginning on or about May 1, 2012, in violation of the Regulations. In no later than June 2012, while conducting the seismic survey, Nordic Maritime obtained a copy of the license from Company A. The license by its terms did not authorize use of the items in Iranian waters or other reexport of the items to Iran by any person or entity, and specifically provided that "no transfer, resale, or re-export of the controlled equipment is authorized without prior [U.S. Government] approval." Nonetheless, Nordic Maritime continued to conduct the survey in violation of the Regulations until at least on or about April 4, 2013.

10. As Nordic Maritime's chairman and majority owner, Innhaug directed and/or controlled Nordic Maritime. In addition, he also had received actual notice providing him with personal knowledge that Nordic Maritime was about to engage, and then was engaging on an ongoing or continuing basis, in conduct in violation of the Regulations. Through his actions and/or failure to act, Innhaug caused, aided, abetted, counseled, commanded, induced and/or permitted Nordic Maritime's unlawful reexport of the items to Iran and their use in Iranian waters without the required U.S. Government authorization.

11. In so doing, Innhaug violated Section 764.2(b) of the Regulations.

* * * * *

Accordingly, Innhaug 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, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of $289,238 per violation,[2] or twice the value of the transaction that is the basis of the violation;[3]
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

If Innhaug 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. §§

---

[2] *See* 15 C.F.R. § 6.4(b)(4). 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.

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

766.6 and 766.7. If Innhaug defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Innhaug. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Innhaug 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. Innhaug 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 Innhaug have a proposal to settle this case, Innhaug should transmit it to the attorneys representing BIS named below.

Innhaug is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Innhaug 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, Innhaug'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 Innhaug's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Brian Volsky
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

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

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement

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

CHARGING LETTER

APR 28 2017

VIA FEDERAL EXPRESS

Nordic Maritime Pte. Ltd.
3 HarbourFront Place
#04-03 HarbourFront Tower 2
Singapore 099254

Attention: Morten Innhaug
Chief Executive Officer

Dear Mr. Innhaug,

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Nordic Maritime Pte. Ltd., of Singapore ("Nordic Maritime"), has violated the Export Administration Regulations (the "EAR" or "Regulations").[1] Specifically, BIS alleges that Nordic Maritime committed the following violations:

Charge 1 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation

1. Between on or about May 1, 2012, and on or about April 4, 2013, Nordic Maritime transported and used items exported from the United States and subject to the Regulations with knowledge that a violation of the Regulations had occurred or was about or intended to occur in connection with the items.

2. Nordic Maritime transported to and used in Iranian waters U.S.-origin maritime surveying equipment, including specifically compass birds and streamer sections, classified under Export Control Classification Number ("ECCN") 6A001 and controlled for National Security and Anti-Terrorism reasons (hereinafter, "the items"). The items also were subject to the Iranian Transactions and Sanctions Regulations ("ITSR"), 31

---

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2016). The violations alleged occurred in 2012-2014. The Regulations governing the violations at issue are found in the 2012-2014 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2012-2014). The 2016 Regulations currently govern the procedural aspects of this case.

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 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)).

C.F.R. Part 560, administered by the Department of the Treasury's Office of Foreign Assets Control ("OFAC").[2] Nordic Maritime used the items to conduct a seismic survey of Iran's off-shore Forouz B natural gas field.

3. The United States has had a long-standing and widely known embargo against Iran.

4. At all times pertinent hereto, Sections 742.4, 742.8, and 746.7 of the Regulations imposed a BIS license requirement for the export or reexport of the items to Iran. In addition, Section 746.7 of the Regulations also prohibited the export or reexport of any item subject to the Regulations if the transaction was prohibited by the ITSR. At all times pertinent hereto, the ITSR prohibited, *inter alia*, the unauthorized reexportation or supply, either directly or indirectly, of the items to Iran. See 31 C.F.R. §§ 560.204-205.

5. In order to avoid duplication regarding transactions involving items subject to both the Regulations and the ITSR, Section 746.7 of the Regulations provided that authorization did not need to be obtained from both BIS and OFAC, but instead that authorization by OFAC under the ITSR was considered authorization for purposes of the Regulations as well.

6. However, Nordic Maritime did not seek or obtain authorization from BIS, or from OFAC, in connection with the items.

7. Nordic Maritime knew at all times pertinent hereto, including as subsequently admitted in a written submission to BIS dated April 15, 2014, that the items were of U.S.-origin and that it was aware of the U.S. embargo against Iran and related U.S. export controls, including through its own licensing history of BIS license requirements concerning similar items classified under ECCN 6A001 of the Regulations.[3]

8. In addition, on or about April 11, 2012, Nordic Maritime was warned, via a letter to its Chairman, Morten Innhaug, that its use of the items in Iranian waters would violate U.S. law and would be "in direct breach of the terms of Re-Export License issued by the US Department of Commerce (Bureau of Industry and Security) in relation to use of the Equipment." (Parenthetical in original). Nordic Maritime received this warning letter from counsel to the company that at the time held a BIS reexport license for the items

---

[2] The ITSR were formerly known as the Iranian Transaction Regulations or "ITR." On October 22, 2012, OFAC renamed and reissued the Iranian Transactions Regulations as the Iranian Transactions and Sanctions Regulations. *See* 77 Fed. Reg. 64,664 (Oct. 22, 2012). 31 C.F.R. part 560 remained the same in pertinent part at all times relevant hereto.

[3] Under the Regulations, "[k]nowledge of a circumstance (the term may be a variant, such as "know," "reason to know," or "reason to believe") includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts." *See* 15 C.F.R. § 772.1 (at definition of "Knowledge").

(hereinafter, "Company A") that had issued in July 2011.

9. Moreover, Nordic Maritime obtained a copy of the reexport license held by Company A no later than on or about June 29, 2012. The license by its terms did not authorize use of the items in Iranian waters or other reexport of the items to Iran by any person or entity, and specifically provided that "no transfer, resale, or re-export of the controlled equipment is authorized without prior [U.S. Government] approval."

10. Notwithstanding the foregoing, Nordic Maritime transported the items to and used them in Iran's Forouz B natural gas field between on or about May 1, 2012, and on or about at least April 4, 2013, without the required U.S. Government authorization.

11. As it subsequently admitted in its April 15, 2014 written submission to BIS, Nordic Maritime used the items on a vessel that it had leased from a "Russian State owned company Seismic Geophysical Company" and "that had certain U.S.-origin seismic surveying equipment onboard (streamer sections and compass birds subject to the EAR and classified under ECCN 6A001) that were owned by" Company A. (Parenthetical in original). Moreover, Nordic Maritime admittedly conducted the "seismic survey in Iranian waters . . . under a contract that Nordic entered into with Mapna International FZE, a company based in Dubai, UAE." Furthermore, although feigning ignorance when it contracted to perform the seismic survey in Iranian waters that the survey on behalf of or for the benefit of Iran, Nordic Maritime admitted in its April 15, 2014 submission to BIS that "Mapna International has significant ties to Iran" and that "the work for which Mapna International was contracting was in furtherance of Mapna Group's contract with the National Iranian Offshore Oil Company to [] explore the Forouz B natural gas field."

12. In so transporting and using the items with knowledge that a violation of the Regulations had occurred or was about or intended to occur in connection with them, Nordic Maritime violated Section 764.2(e) of the Regulations.

Charge 2 15 C.F.R. § 764.2(a) – Reexport of Maritime Surveying Equipment to Iran Without Required License

13. BIS re-alleges and incorporates herein the allegations set forth in Paragraphs 1-12, *supra.*

14. Between on or about May 1, 2012, and on or about April 4, 2013, Nordic Maritime engaged in conduct prohibited by the Regulations when it reexported to Iran items subject to the Regulations without the required license.

15. Pursuant to Sections 742.4, 742.8, and 746.7 of the Regulations, the items—U.S.-origin maritime surveying equipment, including specifically compass birds and streamer sections, classified under Export Control Classification Number ("ECCN") 6A001 and controlled for National Security and Anti-Terrorism reasons—could not lawfully be exported or reexported to Iran without a BIS license. Section 746.7 of the Regulations

also prohibited the export or reexport of any item subject to the Regulations if the transaction was prohibited by the ITSR. At all times pertinent hereto, the ITSR prohibited, *inter alia*, the unauthorized reexportation or supply, either directly or indirectly, of the items to Iran. *See* 31 C.F.R. §§ 560.204-205.

16. In order to avoid duplication regarding transactions involving items subject to both the Regulations and the ITSR, Section 746.7 of the Regulations provided that authorization did not need to be obtained from both BIS and OFAC, but instead that authorization by OFAC under the ITSR was considered authorization for purposes of the Regulations.

17. However, Nordic Maritime reexported the items to the Forouz B natural gas field in Iran without seeking or obtaining authorization from BIS, or from OFAC, in connection with the items. Nordic Maritime used the items to conduct a seismic survey of the Forouz B gas field in furtherance of Mapna Group's contract with the National Iranian Offshore Oil Company, an Iranian Government entity.

18. In so doing, Nordic Maritime violated Section 764.2(a) of the Regulations.

Charge 3 15 C.F.R. § 764.2(g) – False or Misleading Statements to BIS in the Course of an Investigation

19. BIS re-alleges and incorporates herein the allegations set forth in Paragraphs 1-18, *supra*.

20. On or about April 15, 2014, Nordic Maritime made false or misleading statements to BIS in the course of the investigation of the violations and the related unauthorized reexport to Iran described in Paragraphs 1-18, *supra*.

21. Specifically, Nordic Maritime made a written submission to BIS admitting that the company had acquired the items from Company A and that Nordic Maritime was aware that the items were of U.S. origin.

22. However, Nordic Maritime further stated that Company A had never "(1) advised Nordic that any of the equipment onboard the vessel was re-exported pursuant to a BIS export license," "(2) communicated to Nordic any BIS export license conditions" or "(3) provided a copy of the BIS license to Nordic." These statements were false or misleading.

23. In fact, Nordic Maritime knew that the items had been subject to a BIS reexport license issued in July 2011 to and was held by Company A. Nordic Maritime had been warned by counsel to Company A, on or about April 11, 2012, via a letter to Nordic Maritime's Chairman, Morten Innhaug, that the items had been reexported pursuant to a BIS license. Moreover, on or about June 29, 2012, Nordic Maritime had obtained a copy of the license, including the license conditions, from Company A.

24. In so making false or misleading statements to BIS during the course of an investigation, Nordic Maritime violated Section 764.2(g) of the Regulations.

* * * * *

Accordingly, Nordic Maritime is hereby notified that an administrative proceeding is instituted against it 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, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of $289,238 per violation,[4] or twice the value of the transaction that is the basis of the violation;[5]
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

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

Nordic Maritime is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Nordic Maritime is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *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 Nordic Maritime have a proposal to settle this case, Nordic Maritime should transmit it to the attorney representing BIS named below.

Nordic Maritime is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Nordic Maritime may be eligible for assistance from the Office of the National

---

[4] *See* 15 C.F.R. § 6.4(b)(4). 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.

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

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, Nordic Maritime'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 Nordic Maritime's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Brian Volsky
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

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

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement