

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

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Orion Air, S.L.)
Canada Real de Merinas)
7 Edificio 5, 3'A)
Eisenhower business center)
28042 Madrid, Spain)
)
Ad. de las Cortes Valencianas no 37)
Esc.A Puerta 45 46015 Valencia, Spain)
)
)
Syrian Pearl Airlines)
Damascus International Airport)
Damascus, Syria)
)
Respondents.)
)

ORDER RENEWING ORDER TEMPORARILY DENYING EXPORT PRIVILEGES

Pursuant to Section 766.24 of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (2009) (“EAR” or the “Regulations”), I hereby grant the request of the Bureau of Industry and Security (“BIS”) to renew for 180 days the Order Temporarily Denying the Export Privileges of Respondents Orion Air, S.L. and Syrian Pearl Airlines (collectively, “Respondents”), as I find that renewal of the temporary denial order (“TDO” or the “ORDER”) is necessary in the public interest to prevent an imminent violation of the EAR.

I. Procedural History

On May 7, 2009, I signed an Order Temporarily Denying the Export Privileges of the Respondents for 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations. Pursuant to Section 766.24(a), the TDO was issued *ex parte* and was effective upon issuance. Copies of the TDO were sent to each Respondent

in accordance with Section 766.5 of the Regulations and the Order was published in the *Federal Register* on May 26, 2009.¹ The TDO would expire on November 3, 2009, unless renewed in accordance with Section 766.24 of the Regulations.

On October 13, 2009, BIS, through its Office of Export Enforcement (“OEE”), filed a written request for renewal of the TDO against the Respondents for 180 days and served a copy of its request on the Respondents in accordance with Section 766.5 of the Regulations. No opposition to renewal of the TDO has been received from either Orion Air or Syrian Pearl Airlines.

II. Discussion

A. Legal Standard

Pursuant to section 766.24(d)(3) of the EAR, the sole issue to be considered in determining whether to continue a TDO is whether the TDO should be renewed to prevent an imminent violation of the EAR as the term “imminent” violation is defined in Section 766.24. “A violation may be ‘imminent’ either in time or in degree of likelihood.” 15 C.F.R. 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that “the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical and negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

¹ 74 Fed. Reg. 24,786.

B. Findings

As part of its initial TDO request, BIS presented evidence that on or about May 1, 2009, Orion Air re-exported a BAE 146-300 aircraft (tail number EC-JVO), an item subject to the Regulations because the aircraft contains greater than a 10 percent de minimis of U.S.-origin content, to Syria and specifically to Syrian Pearl Airways without the U.S. Government authorization required by General Order No. 2 of Supplement 1 to Part 736 of the EAR. This re-export took place after Orion Air had been directly informed of the export licensing requirements by the U.S. Government, and thus had actual as well as constructive notice of those licensing requirements, and occurred despite assurances made by Orion Air that it would put the transaction on hold based on the U.S. Government's concerns. BIS has also produced evidence that the re-exported aircraft bears the livery, colors and logos of Syrian Pearl Airlines, a national of Syria, a Country Group E:1 destination. The aircraft currently remains in Syria under the control of Syrian Pearl Airways and is flight capable. These facts, in addition to Orion's conscious disregard of U.S. Government warnings, heighten the concerns of further violations in connection with this aircraft should the TDO not be renewed.

Additionally, BIS argued that future violations of the EAR remain imminent based on previous statements by Orion Air to the U.S. Government that Orion Air had planned to re-export an additional BAE 146-300 aircraft, currently located in the United Kingdom, to Syria and specifically to Syrian Pearl Airlines. Evidence indicates that the issuance of the original TDO prevented this unlicensed reexport to Syria, and to date neither Orion nor Syrian Pearl has presented BIS with evidence of an alternative disposition of the second aircraft that is in compliance with the Regulations. Therefore, absent renewal of the TDO, there remains a risk that this aircraft would be reexported contrary to U.S. export control laws.

I find the facts and circumstances here, including those which led to the initial TDO, show that renewal of the TDO for an additional 180 days is necessary and in the public interest to prevent an imminent violation of the EAR. Furthermore, renewal of the Order is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with the Respondents in export transactions involving items subject to the EAR.

IT IS THEREFORE ORDERED:

FIRST, that, Orion Air, S.L., Canada Real de Merinas, 7 Edificio 5, 3'A, Eissenhower business center, 28042 Madrid, Spain, and Ad. de las Cortes Valencianas no 37, Esc.A Puerta 4546015 Valencia, Spain; and Syrian Pearl Airlines, Damascus International Airport, Damascus, Syria. (each a "Denied Person" and collectively the "Denied Persons") 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 Export Administration Regulations ("EAR"), or in any other activity subject to the EAR including, but not limited to:

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

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

SECOND, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by any Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby any 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 any Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from any Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by any Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by any Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

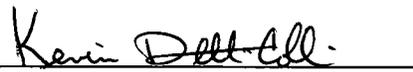
FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and shall be published in the *Federal Register*.

This Order is effective upon issuance and shall remain in effect for 180 days.



KEVIN DELLI-COLLI
Acting Assistant Secretary of Commerce
for Export Enforcement

Entered this 2nd day of November 2009.