

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

Empresa de Transporte Aéreocargo del Sur, S.A.
a/k/a Aerocargo del Sur Transportation Company
a/k/a EMTRASUR
Avenida Intercomunal, Edificio Sede, Sector 6.3, Maiquetia
Distrito Federal, Venezuela

Avenida Lecuna Torre Oeste Piso 49, Libertador
Caracas, Venezuela

ORDER TEMPORARILY DENYING EXPORT PRIVILEGES

Pursuant to Section 766.24 of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (2021) (“EAR” or “the Regulations”),¹ the Bureau of Industry and Security (“BIS”), U.S. Department of Commerce, through its Office of Export Enforcement (“OEE”), has requested the issuance of an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of Venezuela-based cargo airline Empresa de Transporte Aéreocargo del Sur, S.A., a/k/a Aerocargo del Sur Transportation Company, a/k/a EMTRASUR (“EMTRASUR”). OEE’s request and related information indicates that EMTRASUR is a subsidiary of Consorcio Venezolano de Industrias Aeronauticas Y Servicios Aereos, S.A., a/k/a

¹ 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, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. § 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.* (“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as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. § 4820(a)(5).

CONVIASA (“CONVIASA”), a Venezuelan state-owned airline. On or about February 7, 2020, U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) added CONVIASA to the list of Specially Designated Nationals (“SDN”) pursuant to Executive Order (E.O.) 13884.²

I. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 C.F.R. §§ 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or 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 charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or 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.*

II. OEE’s Request For A Temporary Denial Order (“TDO”)

OEE’s request is based upon facts indicating that EMTRASUR engaged in conduct prohibited by a BIS-issued temporary denial order (“TDO”) against Iranian airline Mahan Air a/k/a Mahan Airlines a/k/a Mahan Airways (“Mahan Air”) and the Regulations by acquiring

² See <https://home.treasury.gov/news/press-releases/sm903>

custody and/or control from Mahan Air of a U.S.-origin Boeing 747 aircraft bearing manufacturer's serial number 23413 ("MSN 23413"), an item subject to the EAR and classified under ECCN 9A991. In or around October 2021, Mahan Air transferred custody and control of MSN 23413 to EMTRASUR's parent company, CONVIASA, through an intermediary. Open source evidence, including flight tracking data, reveals the aircraft, which was operating under Iranian tail number EP-MND, has now been painted in EMTRASUR's livery and logo and bears Venezuelan tail number YV-3531.

Mahan Air has been on BIS's Denied Persons List since March 2008, due to numerous significant, continuing, deliberate, and covert violations of the Regulations. The BIS-issued TDO against Mahan Air ("Mahan Air TDO") has been renewed on or about every six months thereafter and remains in effect.³ Any named parties to the TDO, which further encompasses any related parties, agents, representatives or those acting for or on their behalf, are broadly prohibited from directly or indirectly participating "in any way" in a transaction involving U.S.-origin commodities or those subject to the EAR. The TDO also prohibits third-parties from engaging in a broad range of conduct subject to the Regulations with denied persons.

Since October 2011, Mahan Air also has been designated as a Specially Designated Global Terrorist ("SDGT") by OFAC pursuant to Executive Order 13224 for providing financial, material and technological support to Iran's Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF). *See* 77 Fed. Reg. 64,427 (October 18, 2011).

³ Mahan Airways' status as a denied person was most recently renewed by BIS through a TDO issued on May 12, 2022. *See* 87 Fed. Reg. 30,173 (May 18, 2022). The May 12, 2022 renewal order summarizes the initial TDO issued against Mahan in March 2008, and the other renewal orders prior to May 12, 2022. *See id.*

In addition to the prohibited conduct arising from EMTRASUR acquiring custody and/or control of the aircraft from Mahan Air, EMTRASUR's continued use of MSN 23413 on flights into Iran and Russia runs afoul of General Prohibition 10, which (among other restrictions) prohibits the continued use of an item that was known to have been exported or reexported in violation of the EAR. *See* General Prohibition 10 of the EAR at 15 C.F.R. § 736.2(b)(10).

Moreover, there are no license exceptions available for this General Prohibition.⁴ Specifically, OEE's investigation, including publicly available flight tracking information, indicates that EMTRASUR operated MSN 23413 on flights into and out of Tehran, Iran and Moscow, Russia.

The information about those flights includes the following:

Tail Number	Serial Number	Aircraft Type	Departure/Arrival Cities	Dates
YV-3531	23413	747-300M	Caracas, VZ/ Tehran, IR	February 19, 2022
YV-3531	23413	747-300M	Caracas, VZ/ Tehran, IR	March 13, 2022
YV-3531	23413	747-300M	Caracas, VZ/ Tehran, IR	April 17, 2022
YV-3531	23413	747-300M	Caracas, VZ/ Tehran, IR	May 21, 2022
YV-3531	23413	747-300M	Tehran, IR/ Moscow, RU	May 24, 2022
YV-3531	23413	747-300M	Moscow RU/ Tehran, IR	May 25, 2022

BIS has become aware that, on or about June 6, 2022, MSN 23413 landed at Ezeiza International Airport in Buenos Aires, Argentina. On or about June 8, 2022, MSN 23413 departed to Uruguay to refuel. But Uruguay refused to grant MSN 23413 access to its airspace due to its association with multiple sanctioned entities. That same day, on or about June 8, 2022,

⁴ Section 736.2(b)(10) of the EAR provides: General Prohibition Ten - Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur). You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR.

MSN 23413 landed a second time at Ezeiza International Airport in Buenos Aires, Argentina. After MSN 23413 landed a second time, the Government of Argentina temporarily detained the aircraft. Based upon the on-going violations by EMTRASUR, and the potential release of the MSN 23413 from detention, there are heightened concerns of future violations of the EAR, especially given that any subsequent actions taken with regard to MSN 23413 may violate the EAR. Such actions include, but are not limited to, refueling, maintenance, repair, or the provision of spare parts or services. *Id.*

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that a violation of the Mahan Air TDO occurred in connection with Mahan Air's transfer of custody and/or control of MSN 23413 to EMTRASUR in or about October 2021. EMTRASUR also took subsequent actions in apparent violation of the Regulations by operating the aircraft on flights into Iran as well as flights into Russia after February 24, 2022, without the required BIS authorization. Moreover, the continued operation of MSN 23413 by EMTRASUR, and the company's on-going need to acquire replacement parts and components, many of which are U.S.-origin, presents a high likelihood of imminent violations warranting imposition of a TDO. I further find that the violations under investigation have been "significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]" Therefore, issuance of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with EMTRASUR in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with Section 766.24 and 766.23(b) of the Regulations.

IV. Order

IT IS THEREFORE ORDERED:

FIRST, Empresa de Transporte Aéreocargo del Sur, S.A., a/k/a Aerocargo del Sur Transportation Company, a/k/a EMTRASUR, Avenida Intercomunal, Edificio Sede, Sector 6.3, Maiquetia, Distrito Federal, Venezuela, and Avenida Lecuna Torre Oeste Piso 49, Libertador, Caracas, Venezuela, and when acting for or on its behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), 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 except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

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

A. Export, reexport, or transfer (in-country) to or on behalf of EMTRASUR any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by EMTRASUR 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 EMTRASUR acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from EMTRASUR of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from EMTRASUR 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 except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; 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 EMTRASUR, or service any item, of whatever origin, that is owned, possessed or controlled by EMTRASUR if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

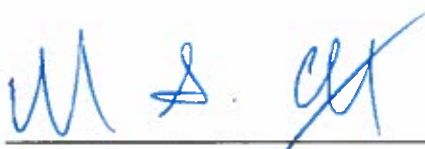
THIRD, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to EMTRASUR by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may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

In accordance with the provisions of Sections 766.24(e) of the EAR, EMTRASUR 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. A renewal request may be opposed by EMTRASUR as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce 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 provided to EMTRASUR and shall be published in the *Federal Register*.

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



Matthew S. Axelrod
Assistant Secretary of Commerce
for Export Enforcement

Dated: August 2, 2022