

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

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 45 46015 Valencia, Spain; and)

SYRIAN PEARL AIRLINES)

Damascus International Airport)

Damascus, Syria.)

Respondents.)

ORDER RENEWING TEMPORARY DENIAL OF EXPORT PRIVILEGES

Pursuant to Section 766.24 of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (2011) (“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. (“Orion Air”) 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, then-Acting Assistant Secretary of Commerce for Export Enforcement Kevin Delli-Colli 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 Thereafter, Acting Assistant Secretary Delli-Colli issued an Order on November 2, 2009, renewing the TDO for an additional 180 days, and I similarly issued a 180-day renewal Order on April 29, 2010.²

Most recently, on October 22, 2010, I renewed the TDO against the Respondents for an additional 180 days. This renewal was effective upon issuance and was published in the Federal Register on October 29, 2010.³ The current Order would expire on April 20, 2011, unless renewed in accordance with Section 766.24 of the Regulations.

On March 28, 2011, BIS, through its Office of Export Enforcement (“OEE”), filed a written request for renewal of the TDO against the Respondents for an additional 180 days. A copy of this request was delivered to 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 “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

¹ 74 Fed. Reg. 24,786.

² The November 2, 2009 renewal Order was published in the Federal Register on November 9, 2009 (74 Fed.Reg. 57,626). The April 29, 2010 renewal Order was published in the Federal Register on May 7, 2010 (75 Fed. Reg. 25,002).

³ 75 Fed. Reg. 66,728 (October 29, 2010).

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.*

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) to Syria, and specifically to Syrian Pearl Airlines, without the U.S. Government authorization required by General Order No. 2 of Supplement 1 to Part 736 of the EAR. The aircraft is subject to the Regulations because it contains greater than a 10-percent de minimis amount of U.S.-origin content. Orion Air engaged in this re-export transaction despite having been directly informed of the export licensing requirements by the U.S. Government. Moreover, Orion Air not only engaged in this conduct after having received actual as well as constructive notice of the applicable license requirements, but then sought to evade the Regulations and U.S. export controls by giving the U.S. Government false assurances that it would put the transaction on hold due to the U.S. Government’s concerns.

BIS also produced evidence that the re-exported aircraft bore the livery, colors and logos of Syrian Pearl Airlines, a national of Syria, a Country Group E:1 destination; was flight capable; and under the terms of the lease agreement was to be based in and operated out of Syria during the lease term. The record also shows that the re-exported aircraft currently remains in Syria under the control of Syrian Pearl Airlines.

In addition to the unauthorized re-export described above, Acting Assistant Secretary Delli-Colli also concluded that additional violations were imminent based on statements by Orion Air to the U.S. Government in May 2009 that Orion Air planned to re-export an additional BAE 146-300 aircraft (tail number EC-JVJ) to Syria, and specifically to Syrian Pearl Airlines. This second aircraft was at the time undergoing maintenance in the United Kingdom, and remains located there. Moreover, the agreement between Orion Air and Syrian Pearl Airlines involved both aircraft being re-exported to Syria for Syrian Pearl Airlines' use and benefit.

On December 10, 2010, pursuant to Section 764.3(a)(2) of the Regulations, BIS authorized Orion Air and Syrian Pearl Airlines to enter into a three-way release agreement with a third party that would terminate the original lease agreement between Orion Air and Syrian Pearl Airlines and allow the third party to take legal and physical control of both aircraft. Additionally, BIS authorized the performance of maintenance needed to make both aircraft flight-worthy, and authorized the third party to remove aircraft EC-JVO from Syria to any country not listed in Country Group E:1⁴ of Supplement 1 to Part 740 of the Regulations. Evidence obtained by BIS indicates that in the more than four months since this authorization was granted, aircraft EC-JVO has not been removed from Syria and remains in Syria under Syrian control. Thus, a significant risk remains that absent renewal of the TDO, this aircraft will be operated or disposed of in violation of the Regulations. Moreover, in spite of the authorization, there has been no change regarding aircraft EC-JVJ, which remains in the same status in the United Kingdom. Absent renewal of the TDO, there remains a substantial continued risk that aircraft EC-JVJ will be re-exported contrary to the Regulations, given that, *inter alia*, Orion Air acted with actual knowledge and took deceptive and evasive action, as discussed *supra*.

⁴ Group E:1 destinations are currently Syria, Iran, Cuba, Sudan and North Korea. See Supplement No. 1 to 15 C.F.R. Part 740 (2011).

Based on my review of the record, I find that the facts and circumstances here, including those that led to the issuance of the initial TDO and subsequent renewal Orders, continue to 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 TDO 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 when acting for or on its behalf, any of its successors, assigns, agents, or employees; and Syrian Pearl Airlines, Damascus International Airport, Damascus, Syria, and when acting on its behalf, any of its successors, assigns, agents, or employees (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. 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 in any other activity subject to the EAR.

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

A. Export or re-export 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.

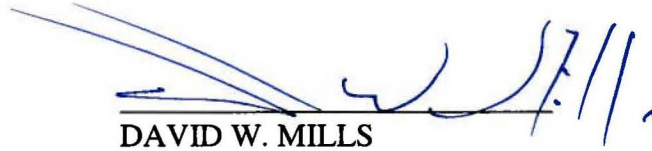
FOURTH, that this Order does not prohibit any export, re-export, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

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.

BIS may seek renewal of this Order by filing a written request with the Assistant Secretary of Commerce for Export Enforcement in accordance with the provisions of Section 766.24(d) of the Regulations, which currently provides that such a written renewal request must be submitted not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by doing so in accordance with Section 766.24(d), including filing a written submission with the Assistant Secretary for Export Enforcement, supported by appropriate evidence. Any opposition ordinarily must be received not later than seven days before the expiration date of the Order.

Notice of the issuance of this Order shall be given to Respondents in accordance with Sections 766.5(b). This Order also shall be published in the Federal Register.

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

A handwritten signature in blue ink, appearing to read 'D. W. Mills', is written over a horizontal line.

DAVID W. MILLS
Assistant Secretary of Commerce
for Export Enforcement

Issued this 18 day of April 2011.