

fine and a \$100.00 special assessment fee.

Section 766.25 of the Export Administration Regulations (“EAR” or “Regulations”) <sup>1</sup> provides, in pertinent part, that “[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act (“EAA”)], the EAR, of any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).” 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. § 24 10(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security’s Office of Exporter Services may revoke any Bureau of Industry and Security (“BIS”) licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Cheng’s conviction for violating the AECA, and have provided notice and an opportunity for Cheng to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have received a submission from Cheng. Based upon my review and consideration of that submission, my consultations with BIS’s Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Cheng’s export privileges under the Regulations for a period of eight years from the date of Cheng’s conviction.

Accordingly, it is hereby *ordered*:

I. Until December 3, 2015, Philip Cheng, currently incarcerated at Registration Number 10105–111, FCI Terminal Island, Federal Correctional Institution, P.O. Box 3007, San Pedro,

CA 90731, and with an address at: 7654 Peach Blossom Drive, Cupertino, CA 95014, and when acting for or on behalf of Cheng, his representatives, assigns, agents, or employees, (collectively referred to hereinafter as the “Denied Person”) may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

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

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

II. No person may, directly or indirectly, do any of the following:

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

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

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

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

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied

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

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Philip Cheng 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 if necessary to prevent evasion of the Order.

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

V. This Order is effective immediately and shall remain in effect until December 3, 2015.

VI. In accordance with Part 756 of the Regulations, Cheng may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Cheng. This Order shall be published in the **Federal Register**.

Dated: September 29, 2008.

**Bernard Kritzer**,

*Director, Office of Exporter Services.*

[FR Doc. E8–23795 Filed 10–8–08; 8:45 am]

**BILLING CODE 3510–DT–M**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Galaxy Aviation Trade Co. Ltd., et al.; Final Decision and Order

In the Matter of:

Galaxy Aviation Trade Company Ltd., 15 Moreland Court, Lyndale Avenue, Finchley Road, London, UK, NW2 2PJ.

Hooshang Seddigh, 15 Moreland Court, Lyndale Avenue, Finchley Road, London, UK, NW2 2PJ.

Hamid Shaken Hendi, 5th Floor, 23 Nafisi Avenue, Shahrak Ekbatan, Karaj Special Road, Tehran, Iran.

Hossein Jahan Peyma, 2/1 Makran Cross, Heravi Square, Moghan Aye, Pasdaran Cross, Tehran, Iran.

Appellants; Final Decision and Order.

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2008). The Regulations issued pursuant to the EAA, which is currently codified at 50 U.S.C. app. § 2401–2420 (2000). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of July 23, 2008 (73 FR 43603, July 25, 2008), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)).

This matter is before me upon a Recommended Decision and Order of the Administrative Law Judge (“AU”) issued on September 16, 2008.

On August 27, 2008, the Appellants, Galaxy Aviation Trade Company Ltd, Hooshang Seddigh, Hamid Shakeri Hendi and Hossein Jahan Peyma (“Galaxy”), filed with the U.S. Coast Guard’s Administrative Law Judge Docketing Center an appeal of a temporary denial order (“TDO”) issued by the Assistant Secretary for Export Enforcement on June 6, 2008, pursuant to section 766.24 of the Export Administration Regulations (“Regulations”).<sup>1</sup> The relevant facts are as follows. The Bureau of Industry and Security’s (BIS) Office of Export Enforcement had obtained information that a Boeing 747 aircraft was about to be re-exported to Iran without the proper U.S. Government authorization. Based on the information before him, the Assistant Secretary issued an *ex parte* Order on June 6, 2008, temporarily denying for 180 days the export privileges of Galaxy, as well as Iran Air (of Tehran, Iran), and Ankair (of Istanbul, Turkey), in accordance with Section 766.24 of the Regulations. The Order was published in the **Federal Register** on June 17, 2008 (73 FR 34249). On July 10, 2008, the Assistant Secretary issued a modified Order that expanded the scope of the denial as to Ankair, but did not modify the TDO as to Galaxy or Iran Air. The modified Order was likewise published in the **Federal Register** on July 22, 2008 (73 FR 42544).

On August 27, 2008, the U.S. Coast Guard’s Administrative Law Judge Docketing Center received a one-page letter from Galaxy appealing the TDO and requesting that it be withdrawn as to Galaxy. Galaxy filed no other materials or information to substantiate its request (section 766.24(e)(2)–(3) of the Regulations). The appeal did not indicate that it had been served on the BIS as required by section 766.24(e)(3) of the Regulations. After the Docketing Center confirmed that the appeal had not been served, a copy was sent to BIS by facsimile on September 2, 2008. On September 11, 2008, BIS filed a written response seeking a continuation of the TDO, along with multiple exhibits

<sup>1</sup> The Regulations issued pursuant to the Export Administration Act of 1979, as amended. 50 U.S.C. app. § 24012420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of July 23, 2008 (73 FR 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)).

supporting its request. Ankair and Iran Air have not appealed the TDO.

On September 16, 2008, following a review of the entire record before him, the ALJ found in his Recommended Decision and Order that “BIS has met the standard contained in Section 766.24 of the Regulations and has introduced evidence that the potential violations under investigation are significant, deliberate and covert, and not merely technical or negligent.” He further found that it is “reasonable to believe that the temporary denial order is required in the public interest to prevent an imminent violation” of the export control laws and regulations. The AU recommended that the TDO issued on June 6, 2008, and modified on July 10, 2008, be affirmed and Galaxy’s appeal be denied.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law made by the AU in his Recommended Decision and Order.

Accordingly, it is ordered,

First, the Temporary Denial Order issued by the Assistant Secretary for Export Enforcement on June 6, 2008, and modified on July 10, 2008, is affirmed, and this appeal is denied.

Second, the Appellants are advised that they may appeal to the United States Court of Appeals for the District of Columbia in accordance with Section 766.24(g) of the Regulations and 50 U.S.C. app. 2412(d)(3).

Third, this Final Decision and Order shall be served on Appellants and on BIS and shall be published in the **Federal Register**. In addition, the AU’s Recommended Decision and Order, except for Section IV relating to the Recommended Order, shall also be published in the **Federal Register**.

This order, which constitutes the final agency action with regard to this appeal, is effective upon publication in the **Federal Register**.

Dated: September 19, 2008.

**Mario Mancuso,**

*Under Secretary of Commerce for Industry and Security.*

**UNITED STATES DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

In the Matter of:

Galaxy Aviation Trade Company Ltd., 15 Moreland Court, Lyndale Avenue, Finchley Road, London, UK, NW2 2PJ.

Hooshang Seddigh, 15 Moreland Court, Lyndale Avenue, Finchley Road, London, UK, NW2 2PJ.

Hamid Shakeri Hendi, 5th Floor, 23 Nafisi Avenue, Shahrak Ekbatan, Karaj Special Road, Tehran, Iran,

Hossein Jahan Peyma, 2/1 Makran Cross, Heravi Square, Moghan Aye, Pasdaran Cross, Tehran, Iran.

Respondents/Appellants; AJL Recommended Decision and Order.

**I. Preliminary Statement**

This Recommended Decision and Order is made in regard to a recent Temporary Denial Order (“TDO”) wherein the Assistant Secretary of Export Enforcement (“Assistant Secretary”) of the Bureau of Industry and Security, United States Department of Commerce (“BIS”) denied export privileges to Respondents Galaxy Aviation Trade Company Ltd., Hooshang Seddigh, Hamid Shakeri Hendi and Hossein Jahan Peyma (collectively, “Galaxy” or the “Galaxy Respondents”). Specifically, the Assistant Secretary issued the TDO on June 6, 2008 pursuant to Section 766.24 of the Export Administration Regulations (“EAR” or the “Regulations”),<sup>1</sup> and modified said TDO as to Respondent Ankair on July 10, 2008. The case involves allegations that Respondents were likely to effectuate a re-export of a Boeing 747 to Iran.

In June 2008, BIS’s Office of Export Enforcement (“OEE”) presented evidence to the Assistant Secretary seeking a TDO in accordance with Section 766.24 of the Regulations, in order to prevent the imminent re-export, in violation of Section 746.7 of the Regulations, of a Boeing 747 (or any other U.S.-origin aircraft) to Iran without U.S. Government authorization.

Based on the evidence presented by OEE, the Assistant Secretary issued an *ex parte* Order on June 6, 2008, temporarily denying for 180 days the export privileges of the Galaxy Respondents, as well as of Iran Air (of Tehran, Iran), and Ankair (of Istanbul, Turkey). The Order was published in the **Federal Register** on June 17, 2008 (73 FR 34249). On July 10, 2008, the Assistant Secretary issued a modified Order that expanded the scope of the denial as to Respondent Ankair, but did not modify the TDO as to the Galaxy Respondents or Respondent Iran Air.<sup>2</sup> The modified Order was published in

<sup>1</sup> The Regulations issued pursuant to the Export Administration Act of 1979, as amended. 50 U.S.C. app. 24012420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of July 23, 2008 (73 FR 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)).

<sup>2</sup> The modified Order was served on the 110 respondents and was also published in the **Federal Register** on July 22, 2008 (73 FR 42544). Respondents Ankair and Iran Air have not appealed the 110 and are not parties to this appeal proceeding.

the **Federal Register** on July 22, 2008 (73 FR 42544).

On August 27, 2008, the U.S. Coast Guard's Administrative Law Judge Docketing Center ("ALJ Docketing Center") received a one-page letter from Galaxy Respondents appealing the TDO and requesting that the TDO be withdrawn as to the Galaxy Respondents. This letter did not include a certificate of service or other indication that the Galaxy Respondents had served it on BIS as required by section 766.24(e)(3) of the Regulations. On September 2, 2008, the AU Docketing Center contacted the Office of Chief Counsel for Industry and Security at the Department of Commerce, which represents BIS in administrative matters pending before the ALJs. After the Office of Chief Counsel confirmed that it had not been thus served with the appeal, the ALJ Docketing Center forwarded a copy thereof on September 2, 2008. Exhibit 12. On September 11, 2008, BIS filed a written response with sixteen (16) exhibits to Galaxy's appeal seeking a continuation of the TDO. On September 15, 2008, BIS filed a proposed Recommended Decision and Order. ALJ Exhibit 1. This Recommended Decision and Order will not address the TDO or modified TDO with respect to Ankair and Iran Air as neither has appealed.

## II. Recommended Findings of Fact

Based upon the record before me, I make the following findings of fact:

1. The TDO was issued by the Assistant Secretary of Commerce for Export Enforcement on June 6, 2008. It was published in the **Federal Register** on June 17, 2008 (73 FR 34249). A modified Order expanding the scope of the denial as to Respondent Ankair was issued on July 10, 2008, and was also served and published in the **Federal Register** on July 22, 2008 (73 FR 42544). Exhibits 1 and 2.

2. Respondents Galaxy Aviation Trade Company Ltd., Hooshang Seddigh, Hamid Shaken Hendi and Hossein Jahan Peyma filed with the AU Docketing Center a one-page letter appealing the TDO and denying any involvement in the purchase of a Boeing 747 from Ankair. Exhibit 12.

3. On June 6, 2008, prior to the issuance of the TDO, Yavuz Cizmeci, the Chairman/Chief Executive Officer of ACT Airlines and Chief Executive Officer of Respondent Ankair, reported to a BIS special agent that Ankair owned a Boeing 747, tail number CALK, manufacturer serial number 24134, and that that aircraft was going to be sold to Galaxy Aviation of the United Kingdom. Exhibit 7.

4. Galaxy Aviation Trade Company Ltd. corporate records listed Hooshang Seddigh, Hamid Shaken Hendi, and Hossein Jahan Peyma as its shareholders on June 6, 2008, which was the date the TDO was imposed. Exhibit 9.

5. Hamid Shaken Hendi has an address in the same building as Iran Air's Headquarters in Tehran, Iran. Hossein Jahan Peyma also has an address in Tehran, Iran. Exhibits 8 and 9.

6. Galaxy Aviation Trade Company Ltd. corporate records listed Sam David Mahjoobi of the U.K. as a corporate officer of Galaxy on June 6, 2008, which was the date the TDO was imposed. Exhibit 9.

7. BIS is in possession of a document titled "Aircraft Sale and Purchase Agreement" involving the sale of the Boeing 747, tail number TC-AKZ, manufacturer serial number 24134. Ankair is listed as the Seller and Sam David Mahjoobi is listed as the Buyer. Paragraph 1.1 of the agreement states "Delivery or Delivery Date means the dates beginning 20 June 2008 and ending 27 June 2008 on which the Aircraft, Engines, and Documents are delivered to Buyer in Istanbul and the Bill of Sale for the Aircraft is executed and submitted to the Buyer by Seller." The document is signed and initialled on each page by the respective parties to the transaction. Exhibit 15.

8. Photographs dated June 27, 2008, from the Web site iraviation.com show the Boeing 747, tail number TC-AKZ in Tehran, Iran on that date. Exhibit 11.

9. The Aero Transport Data Bank shows the operational history of a Boeing 747, Manufacturer's serial number 24134 as now being operated by Iran Air on June 27, 2008 and lists a new Iranian tail number TC-AKZ. Exhibit 10.

10. The Boeing 747 aircraft at issue is of U.S.-origin and is subject to the Export Administration Regulations. It is classified under Export Control Classification Number 9A991.b on the Commerce Control List and is controlled for anti-terrorism reasons, and at the time of the alleged violations required U.S. Government authorization for export or re-export to Iran. Exhibit 4; 15 CFR part 774, Supp. 1; 15 CFR 746.7.

11. A United States Department of Treasury records search revealed that Galaxy Respondents did not obtain U.S. Government authorization for the re-export to Iran of this U.S.-origin aircraft. Exhibit 5.

12. A record from the Republic of Turkey Ministry of Transport shows that this Boeing 747 aircraft was deregistered in Turkey effective June 27, 2008. Exhibit 13.

13. BIS Assistant Director of the Office of Export Enforcement declared that Respondents informed Turkish civil aviation authorities on or about June 27, 2008 that the aircraft's registration was being switched to Pakistan. See Exhibit 13; Exhibit 14, at ¶ 4.

14. BIS Assistant Director of the Office of Export Enforcement declared that Pakistan Civil Aviation Authorities have informed the U.S. Government that this Boeing 747 aircraft was never registered (or de-registered) in Pakistan. Exhibit 14, at ¶ 5.

## III. Discussion

### A. Standard for BIS's Issuance of Temporary Denial Order

The Assistant Secretary for Export Enforcement ("Assistant Secretary") may issue a TDO on an ex parte basis "upon a showing by BIS that the order is necessary in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or authorization issued thereunder."<sup>3</sup>

With regard to whether a violation may be "imminent," the Regulations provide that:

A violation may be "imminent" either in time or in degree of likelihood. To establish grounds for the temporary denial order, 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. To indicate 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 or negligent, and that it is appropriate to give notice to companies in the United States and abroad to cease dealing with the person in U.S.-origin items in order to reduce the likelihood that a person under investigation or charges continues to export or acquire abroad such items, risking subsequent disposition contrary to export control requirements. 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.<sup>4</sup>

BIS may therefore show that a violation is about to occur or that the facts and circumstances of the matter under investigation demonstrate a reasonable belief in the likelihood of a future violation or violations.<sup>5</sup> Consequently, a TDO may be issued and

<sup>3</sup> 15 CFR 766.24(b)(1).

<sup>4</sup> 15 CFR 766.24(b)(3).

<sup>5</sup> *Id.*

maintained in force, when, as in this case, matter is still under investigation by BIS.

### B. Appeal Procedure for Temporary Denial Order

Once a TDO has been issued or renewed, any respondent may appeal the issuance or renewal of the TDO at any time to an administrative law judge ("AU").<sup>6</sup> The filing of the appeal shall stay neither the effectiveness of the TDO nor any application for renewal.<sup>7</sup> Section 766.24(e)(3) states that a "full written statement in support of the appeal must be filed in support of the appeal together with appropriate evidence, and be simultaneously served on BIS, which shall have seven [working] days from receipt to file a reply."<sup>8</sup> Section 766.24(e)(4) provides, in turn, that within 10 working days after the appeal is filed, the AU is to submit a Recommended Decision to the Under Secretary for Industry and Security ("Under Secretary") addressing whether the issuance of the TDO should be affirmed, modified, or vacated.<sup>9</sup>

As discussed above, an appellant must simultaneously serve a copy of any appeal on BIS and the AU docketing center and thus, no appeal is perfected unless or until BIS is served with a copy thereof. That is to say that no timeline can begin to run until BIS has been served with the appeal. In the instant case, Galaxy served the AL Docketing Center with its appeal on August 27, 2008, but there was no evidence it ever served a copy thereof on BIS. On September 2, 2008, the AU Docketing Center served a copy of Galaxy's appeal on BIS after confirming that BIS in fact had not yet been served. Exhibit 12.

For the purpose of this case, the appeal will be treated as being perfected on September 2, 2008 when BIS was served a copy thereof. Therefore, BIS's reply brief filed on September 11, 2008 was filed within seven (7) working days of the appeal and was thus timely.

### C. Temporary Denial Order Necessary in the Public Interest To Prevent Imminent Violation

After careful consideration of the entire record, I find that the TDO was necessary in the public interest to prevent an imminent violation of the EAA, the EAR, or an order, license, or authorization thereunder. There was

and is sufficient reason to believe in the likelihood of a violation and the Assistant Secretary's TDO should be affirmed.

#### 1. BIS's Showing

In June 2008, as part of an on-going investigation, BIS obtained evidence that Iran Air, an Iranian government owned airline, was seeking to acquire aircraft, including a Boeing 747 cargo plane from Turkey, through a third party in the United Kingdom ("U.K."). Exhibit 7, at ¶ 6. Iran, a state-sponsor of terrorism, is the subject of a broad U.S. trade embargo.<sup>10</sup> On June 6, 2008, prior to the issuance of the TDO, BIS special agents interviewed HBK Investments ("HBK"), which in turn contacted ACT Airlines ("ACT") of Istanbul, Turkey concerning ACT's potential sale of a Boeing 747 to Iran. Exhibit 7, at ¶ 6. HBK owns 17.5% of ACT. Exhibit 7, at ¶ 5. ACT's Chairman and/or Chief Executive Officer ("CEO") Yavuz Cizmeci—who also is CEO of Respondent Ankair—denied that ACT owned the plane and stated that it actually was owned by Ankair and that Ankair was going to sell the aircraft to Galaxy Aviation of the U.K. Exhibit 7, at ¶ 1. The Regulations issued pursuant to the Export Administration Act of 1979, as amended. 50 U.S.C. app. 24012420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended by the Notice of July 23, 2008 (73 FR 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.1701—1706 (2000)). 4–6; Exhibit 14, at ¶ 3. Notably also, BIS did not raise the name Galaxy Aviation with HBK during the initial discussion; rather, HBK first raised Galaxy Aviation's name with BIS based on the information provided by Ankair and ACT. Exhibit 7, at ¶ 6.

Further examination of Galaxy's corporate records revealed to BIS that Respondent Hamid Shaken Hendi, one of Galaxy's three listed shareholders, has an address in the same building as Respondent Iran Air's headquarters in Tehran, Iran. Exhibit 8 & 9. Moreover, another of Galaxy's principal shareholders, Respondent Hossein Jahan Peyma, also has a Tehran, Iran address. See Exhibits 8 and 9.

BIS's investigation has developed additional evidence indicating that the transaction which the TDO was originally issued to prevent between

Ankair and Galaxy has actually occurred. Specifically, BIS has presented evidence that the Boeing 747 in question was reexported to Iran after issuance, service, and publication of the TDO in question in this case. BIS has obtained a copy of contractual documents indicating that Ankair was to deliver the 747 between June 20 and June 27, 2008. Exhibit 15.

Moreover, the Aero Transport Data Bank,<sup>11</sup> a worldwide fleet list of all airlines operating transport aircraft, indicates that the Boeing 747 referenced in the TDO left Turkey and has not only been re-exported to Iran, but also has been issued a new Iranian tail number. Exhibit 10; Exhibit 14, at ¶ 6. BIS has submitted evidence that this occurred subsequent to the issuance and publication of the TDO at issue in this case. *Id.* In addition, consistent with the delivery period set forth in the contract, a plane-spotter photo was posted to the aviation Web site iraviation.com that shows the aircraft on the ground in Tehran, Iran on June 27, 2008, at precisely the end of delivery period set forth in the contract. Exhibit 11. There is further evidence that this same day, June 27, 2008, the Turkish Ministry of Transport sent a letter to its counterparts at the Pakistan General Civil Aviation Authority, informing them that the aircraft was de-registered in Turkey effective that date. Exhibit 13; Exhibit 14, at ¶ 4. This letter was apparently sent to the Pakistan for or received by Iran Air or Ankair or Ankair's parent, Dunyaya Bakis Hava Tasimaciligi A.S., also known as ("a/k/a") Dunyaya Bakis Air Transportation, Inc. ("DBHT"). Exhibit 5. A similar U.S. Department of Treasury records search reveals that no such license was obtained with respect to these individuals. Exhibit 5.

Nevertheless and as discussed above, the unauthorized re-export of a Boeing 747 to Iran will likely occur or occur again in violation of the requirements of Section 746.7 of the Regulations. It is clear that this would constitute a significant violation of the Regulations something more than a technical or negligent infraction. Furthermore, there is sufficient reason to believe that Respondents took deliberate actions here which further support the possibility of imminent future violations. This, together with BIS's specific concern that two additional U.S.-origin aircraft under the control of Ankair will be or have recently been re-exported to Iran, and with Respondent's

<sup>11</sup> References in BIS's opposition brief to the "Aero Transport Database" should instead read "Aero Transport Data Bank."

<sup>6</sup> 15 CFR 766.24 (e)(1)(i).

<sup>7</sup> 15 CFR 766.24 (e)(1)(ii).

<sup>8</sup> The word "working" was inserted because intermediate Saturdays, Sundays, and legal holidays are excluded from the computation of time when the period of time prescribed or allowed is seven days or less. 15 CFR 766.5(e).

<sup>9</sup> 15 CFR 766.24(e)(4); 50 U.S.C. app. 2412(d)(2).

<sup>10</sup> See Executive Orders 12957 (March 16, 1995), 12959 (May 6, 1995), and 13059 (August 19, 1997).

lack of appropriate evidence to support its written appeal further substantiates the public need to affirm the Assistant Secretary's TDO. Exhibit 16.

#### IV. Conclusion

I hereby find that BIS has met the standard required by section 766.24 of the Regulations and has introduced evidence that the potential violations under investigation are significant, deliberate and covert, and not merely technical or negligent. It was and is reasonable to believe that the temporary denial order is required in the public interest to prevent an imminent violation of the Act, the Regulations, or any order, license or other authorization issued under the Act.

Therefore, I recommend that TDO issued by the Assistant Secretary on June 6, 2008, and modified on July 10, 2008 be affirmed and Respondents' corresponding appeal be denied.

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the respondent, as provided in section 766.24 of the Regulations.<sup>14</sup>

#### [REDACTED SECTION]

Done and Dated, September 16, 2008, New York, NY.

The Honorable Walter J. Brudzinski,  
Administrative Law Judge.

#### ATTACHMENT A, Exhibit Lists

##### A. BIS Exhibits 1–16:

1. June 6, 2008 Order Temporarily Denying Export Privileges.
2. July 10, 2008 Order Modifying Temporary Denial of Export Privileges.
3. June 25, 2008 Article Entitled "Iran Air Drops Plans to Buy Russian Aircraft Over Cost Fears."
4. September 10, 2008 Letter to Mr. Thomas Madigan, Director Office of Export Enforcement.
5. August 5th and August 25th Letters Regarding U.S. Department of Treasury Records Search.
6. August 7, 2008 Letter to Mr. Hamit Kahveci, World Focus Airlines.
7. September 10, 2008 Declaration of Tracy E. Martin.
8. Excerpt of IranAir Web site.
9. Current Appointments Report for: GALAXY AVIATION TRADE COMPANY LTD.
10. Airframe History of B.747 msn 24134.
11. Photographs of airplane.
12. July 25, 2008 Letter to Office of the Administrative Law Judge from Galaxy Aviation Trade Company Ltd.
13. June 27, 2008 Letter to Director of General Civil Aviation Authority Pakistan

<sup>14</sup> See 15 CFR 766.24(e) (indicating that within five working days after receipt of a recommended decision concerning a TDO appeal, the Under Secretary is to issue a written order affirming, modifying, or vacating the recommended decision.

from the Republic of Turkey Ministry of Transport.

14. September 11, 2008 Declaration of John Sonderman.

15. May 20, 2008 Aircraft Sale and Purchase Agreement.

16. Aero Transport Data Bank (world wide fleet list) publicly available at <http://www.aerotransport.org/>.

B. Respondents did not file any exhibits.

C. ALJ Exhibit 1:

1. BIS's Recommended Decision and Order Received September 16, 2008.

#### Certificate of Service

I hereby certify that I have served the foregoing RECOMMENDED DECISION AND ORDER as indicated below to the following person(s):

Mario Mancuso, Under Secretary of Commerce for Industry and Security, U.S. Department of Commerce, Room H-3892, 14th Street & Constitution Avenue, NW., Washington, DC 20230, Fax: 202-482-2387. (By Facsimile and Federal Express.)

Gregory Michelsen, Attorney-Advisor, Attorney for Bureau of Industry and Security, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, Room H-3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230, Fax: 202-482-0085. (By Facsimile and Federal Express.)

Galaxy Aviation Trade Company Ltd. and Hooshang Seddigh, 15 Moreland Court, Lyndale Avenue, Finchley Road, London, UK NW2 2PJ. (By First Class Mail, Postage Prepaid.)

Hamid Shakeri Hendi, 5th Floor, 23 Nafisi Avenue, Shahrak Ekbatan, Karaj Special Road, Tehran, Iran. (By First Class Mail, Postage Prepaid.)

Hossein Jahan Peyma, 2/1 Makran Cross, Heravi Square, Moghan Ave., Pasdaran Cross, Tehran, Iran. (By First Class Mail, Postage Prepaid.)

ALJ Docketing Center, Attention: Hearing Docket Clerk, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202-4022, Fax: (410) 962-1746. (By Facsimile and Federal Express.)

Done and dated this 16th day of September, 2008 at New York, New York.

**Regina V. Maye,**

*Paralegal Specialist to the Hon. Walter J. Brudzinski, Administrative Law Judge.*

[FR Doc. E8-23726 Filed 10-8-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-351-840)

#### Certain Orange Juice from Brazil; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 9, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3874.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 25, 2008, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain orange juice from Brazil. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 22337 (April 25, 2008). The period of review is March 1, 2007, through February 29, 2008, and the preliminary results are currently due no later than December 1, 2008. The review covers two producers/exporters of the subject merchandise to the United States.

##### Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because of certain technical issues contained in supplemental questionnaire responses. Analysis of these issues requires additional time. Therefore, we have fully extended the deadline for completing the preliminary results until March 31, 2009. The deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This extension notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: October 3, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

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